MULTINATIONAL CORPORATIONS
AND
NATIONAL JURISDICTION

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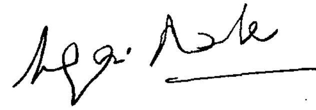
P R E F A C E

PREFACE

The activities of the multinational corporations, particularly in the years after the Second World War have caused concern to most of the developing nations where they operate because of the erosion of their sovereignty by such activities. As the group of eminent persons appointed by a Resolution of the Economic and Social Council to study the role of the multinational corporation, has pointed out - they are today "important actors on the world stage". As India is one of the developing nations where multinationals operate, I felt that there was a need for an analytical study of the political, economic and social impact of the activities of these multinational corporations on the sovereignty of the states, an important area in international law. This dissertation is an attempt to bring to focus these problems on the basis of analysis of facts relating to the operation of multinationals in several countries with particular reference to India.

I am most grateful to Professor R.P. Anand, Chairman of International Legal Division, School of International Studies, Jawaharlal Nehru University for the very valuable guidance and advice given to me in the preparation of this dissertation. I must also record here my grateful thanks to Dr. Rahmatullah Khan whose guidance was smilingly forthcoming whenever I sought them. I had to seek assistance and help of

a number of friends and colleagues and though it would be invidious to single out any one of them, I must record my appreciation of the assistance rendered by Shri A.C. Dey. My thanks are due also to the Librarians of Indian Law Institute, the Indian Society of International Law, the Jawaharlal Nehru University, the U.N. Library, the U.S.I.S. (American) Library, Indian Council of World Affairs Library, British Council, Rattan Tata (Delhi School of Economics) Library.



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V. Gauri Shanker

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CHAPTER I

CHAPTER I

INTRODUCTION

The expression "Multinational Corporation" has been used in this thesis in accordance with the Economic and Social Council Resolution No. 1721 (LIII) of 2 July 1972 and is meant to cover all enterprises "which own or control production or service facilities outside the country in which they are based."[1] In Article 2 of the Charter of Economic Rights and Duties of States, the expression used is "trans-national corporation" and not multinational corporation.[2] It seems, however, that it might be more appropriate to choose the former expression because a truly multinational corporation would, in theory, offer no problem in international relations as it would not belong to any particular nation-state and would make no distinction between home and host countries.[3] But in this sense,

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1 UN Doc. ST/ESA/6, p. 25.

2 "2(b) - To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph...."

3 The word 'multus' in Greek means "many" and the word 'natio' in Latin means "people", "nation", and therefore multinational would etymologically signify a person, or thing or pertaining to many nations or people.

there is no truly multinational corporation as such. It is only when there is an international order with a legal regime to provide for the creation of supra-national corporations that one would envisage the emergence of truly multinational corporations. As of today, all the conflicting situations are brought about because of the activities of enterprises having a "home country", and spreading its activities in other countries in a bid to have economic domination in the world of trade, regardless of territorial barriers. Many definitions have been offered to indicate such enterprises and these definitions range from a simple one given by Brooke and Remmers to an elaborate one given by Richard D. Robinson.[4] These definitions are given in Annexure II to the Document on "Multinational Corporations in World Development", of the United Nations and are reproduced for facility of reference in Annexure I. It may be of interest to know that the Indian Parliament has also given a statutory definition of "multinational corporation" in the Foreign Contribution (Regulation) Bill, 1973.[5]

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4 UN Doc. ST/ECA/90.

5 The Foreign Contribution (Regulation) Bill, 1973. "Clause 2(k)....

Explanation:- For the purpose of this Act, a corporation incorporated in a foreign country or territory shall be deemed to be a multinational corporation if such corporation --

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) carries on business, or otherwise operations, in two or more countries or territories."

The activities of multinational corporations, particularly after the Second World War, have sent waves of resentment even among developed nations. The part played by one of the biggest multinationals, viz. the International Telephone and Telegraphic Corporation, in the overthrow of the Allende regime in Chile, attracted world-wide attention, so much so that the United Nations felt compelled to take note of the anxiety felt by nations in regard to the potential danger of their national sovereignty being eroded by these international combines whose objective is only to maximize their profits within the overall strategy of the global firm, regardless of the political, social and economic consequences that may follow in the wake of their activities pursued with a relentless drive towards profit making. This led to the adoption by the Economic and Social Council of a unanimous resolution on 2 July 1972 (resolution 1721 - LII) requesting the Secretary General to appoint a group of eminent persons to study the role of multinational coporations and their impact on the process of development, especially that of developing countries, and also their implications for international relations.[6] Prior to and after submission of report of the group of eminent persons,

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6 Preceding this resolution, there were other resolutions adopted in the same year regarding the impact of multinational corporations on world trade and development, transfer of technology, labour and social relations. /Annexure I to the UN Doc. ST/ECA/190, pp. 107-17/

a wide-ranging debate has been carried on among the economists and international lawyers on the advantages and demerits resulting from the operation of multinational corporations.

It is claimed on behalf of the multinational corporations that by focussing on the economic rationality, the multinational corporation (MNC) represents the interests of all against the parochial interests of separate nations, and is the best available mechanism for the transfer of capital to the developing world which is crucial in overcoming the income gap. It helps in diffusion of technology and training people in modern managerial skills. It is suggested that by rationalizing operations in many countries it (MNC) is an effective instrument in world economic development. It is said that, as an agent of change MNC is altering value systems, social attitudes and behaviour patterns in ways which will ultimately reduce barriers to communications between peoples and establish the basis for a stable world order.[7]

However, in the light of the actual political and economic effects of the operations of the multinational corporations, and the impact on the cultural pattern, social attitudes in the societies in which they operate, one cannot escape the conclusions that, these "giant octopus corporations with multiple subsidiaries", as Judge Jessup called them,[8]

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7 See John Dicbold, "Multinational Corporation - Why be Scared of Them", Foreign Policy, no. 12, Fall 1973, pp. 84-85.

8 The Barcelona Traction, Light and Power Company Ltd. case, ICJ Reports, 1970, p. 170.

have scant regard for national interests. In fact, the existence of the multinational corporations, unbridled by any international legal system laying down a code of conduct and functioning in national jurisdictions whose economic strength and municipal laws are too weak to stand up to the might and influence of these corporations, have created such tensions and conflicts among nations that they put to insignificance the benefits claimed on their behalf. Each of these multinational coporations is an "Empire" in itself and, one could go further than Luis Turner, and call them the "Visible Empires".[9]

In the recent Conference of Non-aligned Nations at Algiers held in 1973, India's Prime Minister, Smt. Indira Gandhi, stated:

> As the economic struggle becomes more acute, the long suppressed voices of people sharpen, but with every step forward - the resistance of entrenched groups, often aligned with foreign interests, especially the faceless multinational corporations becomes more vehement, unscrupulous and at the same time more subtle....In India we see these constraints in operation every day. 10

Y.B. Chavan, the Indian External Affairs Minister, in his speech on 2 September 1975 in the special session of the UN General Assembly, also voiced his fears about the harmful effects caused to the developing countries by transnational firms.[11]

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9 See Luis Turner, The Invisible Empires (London, 1970), p. 55.

10 Prime Minister's speech on 6 September 1973 quoted in Government of India, Ministry of External Affairs, Publication Division, p. 5.

11 The Hindu (Madras), 4 September 1975.

In the Commonwealth Parliamentary Conference held in New Delhi on 30 October 1975, there was almost a near unanimous condemnation of the harmful effects, the unregulated multinational enterprises bring about in developing nations.
Max Saltsman, Canadian Delegate, compared the multinational corporations activities with the colonialism of the past and termed it as "neo-colonialism". Senator Griffiths (Barbados), told the Commonwealth Conference that the multinational corporations operating in his country did not regard themselves "as obligated to uphold the interests of the region. They are obligated to the shareholders of the companies in which they serve".[12]

In the recent International Conference against Fascism held at Patna between 4 and 7 December 1975, H.D. Malaviya (Member of Parliament), characterized the multinational corporations as a 'State' within a 'State' and, quoting a West German journal, Der Spiegel, stated that "these industrial giants produce goods in all continents, boss hundreds of thousands of workers, deprive governments of power and sow discord among countries".

Fears of domination by multinationals have been voiced even by leaders of developed industrialized countries. For example, Harold Macmillan, the British Prime Minister said

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12 Commonwealth Parliamentary Conference, Official Report (unpublished).

in 1966 that "there is a fear that the American investment in Europe may bring American domination and in the last resort even subjugation".[13] The position today is that the sovereign States today are suddenly feeling "naked" as stated by Raymond Vernon in his book Sovereignty at Bay. Concepts such as national sovereignty and national economic strength appear curiously drained of meaning.[14] A. Barber summarized the present situation as follows:

> The international corporation is acting and planning in terms that are far in advance of the political concept of the nation state. As the renaissance of the fifteenth century brought an end to feudalism, aristocracy and the dominant role of the church, the twentieth century renaissance is bringing an end to middle class society and the dominance of the nation state. The heart of the new power structure is the international organization and the technocrats who guide it. Power is shifting away from the nation state to international institutions--public and private. Within a generation, about 400 to 500 multinational corporations will own about two-thirds of the fixed assets of the world. 15

Indeed, the slogan of Watson, the founder of the IBM, is: "World Peace through World Trade". So also Herbert C. Knortz, the Executive Vice-President of the ITT, urged all the national governments to adjust their policies to reap the full benefits

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13 Jack N. Behrman, National Interests and the Multinational Enterprise (Prentice Hall, London, New York, 1970), p. 32.

14 Raymond Vernon, Sovereignty at Bay (Penguin, 1971), p. 13.

15 Barber, A.; Emerging World Power - The World Corporation: War/Peace Oct., 1968.

from these multinational corporations.[16]

To be able to speak in such a language, multinational corporations must have behind them enormous power potential, the form of finance, technology and management skills without which, at least in their opinion, the world will remain damned in continued darkness. It is the present economic system that has produced these giants. Economics has not so far produced any theory of international investment. The traditional theories based on laws of international trade - purchasing power parity of currencies, stabilization of imports and exports - have all lost their relevance in the wake of massive movement of capital, technology and skills of production, all forming part of a new system of international investment. Tariffs, quotas and currency regulations, internally devised by each nation to guard its pitiful frontiers, are bypassed with impunity by these multinational corporations which straddle across nations in their pursuit for profits.

International production by these corporations through their various affiliates all over the globe was estimated at $ 330 million in 1971 which was "somewhat larger than the total exports of all market economies".[17]

Assuming an annual rate of growth of production of 10%, against the annual rate of growth of world trade by 6%, it is estimated that by the end of the century, the total pro-

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16 Vital Speeches of the Day, 1974, p. 535.

17 UN Doc. ST/ECA/190, p. 14.

duction by these multinational corporations will be over $ 2,500 billion, far exceeding world trade. The point of mentioning this magnitude could be unimportant if regard is not taken of the growing centralization of this production in the hands of a few multinational giants. Comparisons have been made of the total turnover of some of the multinational corporations with the Gross National Products (GNP) of some sovereign States. These comparisons have been characterized as crude and irrelevant in some quarters, and hailed as definite indicators of the superior power positions of these multinational corporations as compared to several of the nation States. In any case, it cannot be denied that they are in a position to dictate to the nation States. Even the United Nations' Document ST/ECA/90 has commented upon this power potential. In Annexure II are given the figures available of 50 largest industrial companies of the world by sales, as published in Fortune in August 1975. In Annexure III are given the GNP at market rates of some of the major States in Asia, Africa and Europe whose combined total GNP is less than the turnover of the companies listed in Annexure II.

It will be seen from Annexure II that the total sales of the top 50 multinational corporations is $ 538.5 billion, whereas the GNP of the developing countries, as published by World Bank Atlas as of mid-January 1975, comes to only 509 billion dollars.

Of the 50 largest companies, the American based multinational corporations are the largest and account for 57% of the total sales, 53% of the assets, 52% of the employees and 68% of the net income. Industry-wise, the oil companies top the list, accounting for half of the total sales and two-thirds of the total net income. Thus, the lead maintained by the US as the base of the multinational corporations, found in the UN Document on multinational corporations in world development,[18] and in the US Tariff Commission Report of 1973,[19] will probably continue in spite of vigorous attempts made to contain them.

Not unnaturally, the report of the group of eminent persons calls these multinational corporations as "import actors in the world stage".[20] The sheer size and command over the resources these "actors" possess and the need to preserve the economic influence they have come to acquire, leads them to seek wide political influence and power for the protection of their interests.

In the context of these developments, the need for regulating or controlling these multinational corporations, assuming that world has come to a stage where world economic development is not possible without the help of these

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18 UN Doc. ST/ECA/90.

19 US Senate, Committee on Finance, Congress 93, Session 1, February 1973.

20 UN, <u>The Impact of Multinational Corporations on Development and on International Relations</u>.

corporations, has become significant. There have been conflicts between states in which these corporations have their seat of power (or incorporated) and the countries where they operate. Even within each of these States the effects of their activities on the balance of payments, labour relations, fiscal and trade policies have been a matter of concern. At international level the operations of these corporations have an important bearing on the functioning of the entire international monetary and trade system, both in the short- and the long-run. In the recent monetary crises leading to two devaluations of the US dollars in 1971 and 1973 and movement of hot money across Europe, the part played by Multinational corporations have come in for sharp criticism.

The foregoing paragraphs would indicate the importance of the subject, particularly with reference to the legal controls that are necessary to minimize, if not altogether eliminate, the harmful effects to the national economy and political stability of various States where these multinational corporations operate.[21] It must not be forgotton that technology, management skills, sourcing for raw materials, direct capital investment, exploitation of export markets, all form a necessary package in the development of nation's economy.

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21. VERA ANSTEY, The Economic Development of India (London, 1957)

Even the Communist countries have realized the importance of these multinational corporations as a source of this package. It may be said that the under-developed countries are perhaps not as yet in need of the sophisticated process of development which the multinational corporations offer, because the primary problem in such under-developed society is to give employment to the large force of unemployed population and in producing the basic goods necessary for removal of misery and poverty.[22] But no State today can stand isolated and the measure of the problem of plenty and poverty standing side by side within a nation State is in most cases the same as among nation States. Therefore, the areas where the services of the multinational corporations can be utilized to the greatest advantage of the nation State must be determined first and then the conditions under which these multinational corporations must operate in these areas should be decided. This is not a simple economic proposition, nor a solely political one, but it is a problem

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22 "The technology that is needed for the basic goods is either a well-known technology that any student in any engineering school would learn, or else it is something that scientists could develop but do not develop now because if they are trained in with multinational corporations their interest tends to be is very elaborate goods like open heart surgery to have an exempts, rather than simple preventive medicine."

Stephen Hymer in his evidence before the UN Doc. ST/ESA/15.

requiring the attention of international lawyers who have to find the best legal instrument and institutional framework within the municipal law and under the international legal system. At present studies in this direction are being conducted at the United Nations level by the UN Centre for Transnational Corporation, at the various regional levels, such as OECD Andean countries, the non-aligned nations, and also at national levels, as in Yugoslovakia and Mexico, which have made special regulatory laws in this regard. It is the purpose of this thesis to trace the origin and problems of the multinationals with special reference to India, and point out the tensions and conflicts and economic problems created by their activities within the jurisdictions they operate. Suggestions for taming them so as to enable the world community in general and the nation States in particular will also be attempted.

The plan of this thesis is as follows:

CHAPTER	I	INTRODUCTION
CHAPTER	II	HISTORICAL BACKGROUND
CHAPTER	III	STAGES OF EVOLUTION OF MULTINATIONALS AND THEIR CHARACTERISTICS
CHAPTER	IV	THE POLITICAL AND ECONOMIC EFFECTS OF THE ACTIVITIES OF MNCs.
CHAPTER	V	CONCLUSION.

CHAPTER II

CHAPTER II

THE HISTORICAL ORIGIN AND GROWTH OF MULTINATIONAL CORPORATIONS

The history of the multinational firm has its roots not merely in the companies of merchant traders of mediaeval Venice and the English, Dutch and French trading companies of the seventeenth and eighteenth centuries[1] but in the ancient civilizations the first travelling merchants emerged and such travelling merchants were private individuals who traded across the frontiers of their land in products produced by the skills and resources of the people of the home country. It is not customary to recognize in contexts such as these, the historical evolutions of institutions in the East but it must be set down for record that there existed in the centuries immediately before the Christian era and early century of the Christian era flourishing sea-faring trade with permanent establishment between India and Malaysia, between India and Indonesia, and also between India and Rome. An early Jataka story tells of ships sailing from the port of Bhrgukachha to a place called 'Baveru' which must be Babylon.[3]

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1 Neil H. Jacoby, Multinational Corporation (Center Magazine, Vol. 3 1970)

2 Richard D. Hays, International Business - An Introduction to the World of Multinational Firm (New Jersey, 1972), p. 260.

3 BASHAM, A.L., The WONDER That WAS INDIA, p. 7 (London, 1954)

"The Pali Questions of Milenda", probably, of the first century A.D. mentions the possibility of a merchant sailing to Alexandria, Burma, Malaya and perhaps to China. With the decline and fall of Rome, the trade with the West declined and the trade between India and China increased, particularly between South-India and China.[4] The ports of Tamralipta, Musiri, Korki and Kaveripattinam are well-known in ancient history as ports from which trans-national trade operated. However, the main distinction between thease early trans-national traders and the modern multi-national corporations lies in the fact that the early trading activities never indulged in exploitation nor did they bring the home country and host-country into conflicts.

Till the industrial revolution, the East dominated the international trade. (There was no question of international investment those days). It was industrial revolution which brought a reversal in the pattern of trade and revolution in the patterns of production. As Mathew J. Kust remarks in his book, "<u>Foreign Enterprise in India - Laws and Policies</u>" -

> At certain periods of history, mankind achieved major break-throughs in its accumulation of productive technology. The industrial revolution was such a major break-through when man learnt to harness the foremost of mechanics and chemistry after centuries of dependence on human and animal power. As long as technology was dependent on the latter, India was the foremost manufacturer in the world because she had evolved a suitable

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4 Hays, n. 2, p. 226.

> socio-economic organisation and performed the human skills and techniques for the purpose.

The industrial revolution is a product of the later half of the eighteenth century and the first half of the nineteenth century.[5]

Within a period of twenty years i.e. 1765 and 1785, several inventions appeared, particularly in the textile fields and these inventions set a chain of further changes in the industrial techniques of production. It is not as if the industrial revolution was confined only to Great Britain though it was a pioneer in the matter of inventions. In France, attempts were made at the time of Nepolean Boneaparte to introduce mechanization of industry and developments in this direction were completed during the time of Nepolean III. Germans followed in the eighties of the nineteenth century and Russia also received the benefits of industrial revolution in the last decade of the last century.[6]

An important result of industrial revolution was the emergence of industrial organizations and a commanding position taken by capital in the new economic order. The new patterns of production greatly increased the variety and volume of

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5 The term 'industrial revolution' was first coined by Arnold Toynbee in 1884. However, Southgate states that it was used earlier by a French writer Blanqui, as early as 1837 and later by Engels and Karl Marx. G.W. Southgate, _English Economic History_ (London, 1954), p. 115.

6 Ibid., p. 121.

manufactured goods coming out of the factories, widening in this process the scope for employment and increased demand for goods. Technology was, for the first time, recognized as necessary and engineers were used in the construction of machinery. The increased output from the factories was more than necessary to satisfy even the growing internal market and therefore a necessity arose for development of exports.

Fillip to export trade already existed in the Charters issued to the great companies such as "The Muskovi Co."(1553), "The Turkey Co." (1581), "The East India Co." (1600), "The Hudson Bay Co." (1670), "The Royal African Co." (1672), and "The South Sea Co." (1711). These companies had trade establishments in several parts of the world and had some of the features of the modern multi-national enterprises.

In so far as India was concerned, the East India Company exhibited all the features of economic and political exploitation which one associates with modern multi-national corporations. The annual profits from the 'diwani' was estimated at £ 1,650,000, most of which was used to purchase Indian goods to export to England, draining thus any furnished change accrual to India. Between 1765 and 1813 sums amounting to £ 75 million were thus drained from India. Further, high salaries paid to officials from the Indian revenues added to the drain. There was also a question of home charges which was financial strategem whereby the Indians were made for their

own conquest and rule and the extension of the British Empire in Asia. These home charges accumulated as debt payable by India with growing rates of interests. When the trading privileges were terminated in 1813, dividends of 10.5% to the East India Company, shareholders were added to the home charges again to be paid from the Indian revenue. As R.C. Dutt wrote: "The Empire was thus transferred from the Company to the Crown, but the Indian people paid the purchase money." If home charges are seen as a precursor of headquarters expenses of the multi-nationals, remittances and salaries of foreign personnel employed in India are the eighteenth century version of remittances of salaries and technical fees of foreigners employed in local subsidiaries of a modern multinationals. The profits of the Company remitted to England out of the Indian revenue are the forerunner of remittance of profits and dividends by a subsidiary to a parent company. It is submitted that there is a near parallel between the East India Company and the modern multi-national corporations.

In any historical account of the multi-national corporations, the activities of US based corporations must form an important chapter for the reason that the impact of US enterprises operating in foreign countries is great and still growing and, although there may be pauses in this process, there is every reason to suppose that the impact will grow still.[7]

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7 Raymond Vernon, The Role of U.S. Enterprises Abroad, DAedlaus (1966)

The joint stock corporation in the USA started to take shape following the Civil War and the stability that followed it. Ironically, however, the growth of this combination in corporate form was not so much with the motive to make profits as to arrest the declining profits as a result of competition among the various business firms. It was stated before the Industrial Commission (1889) that the chief motivating force for business combinations was competition which was so vigorous that "profits of nearly all competing establishments were destroyed".[8]

Once the process of combination started growing, it led to monopolistic integration as illustrated in the case of The Standard Oil Co. Initially, the business integration was in the form of pools - a loose organization of members, who, to get rid of competition, allocated the business among themselves. These pools became unattractive after 1887 when the inter-state Commerce Act declared "Rail-Road Pools" illegal. Then, these pools were succeeded by "Trusts" under the terms of which stock holders deposited with the Board of Trusts all their stocks and received trust-certificate for their holdings entitling them to a share of the profit, but without any voting rights. A formal trust of this type was set up in 1882 in the case of The Standard Oil Company, whose management was entrusted

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8 Viswanathan and others, The Modern Economic History of England, America and Russia (Madras, 1968), p. 203.

to a Board of nine men. Soon this form of business caught the imagination of other trade and it spread to commodities like sugar, cotton, steel, oil and whisky. When these combinations suddenly became strong and tended to operate on monopolistic lines, they became unpopular. Public anger manifested itself in the formulation of "Anti-trust Laws" by a few individual States and by the Federal government in 1890. Court actions were started and after three years many of the trusts were dissolved and were succeeded by a new form of business organization, known as 'the holding company'. The holding company was the dominant form of business organization in the US till 1907. Most of the great US corporations had taken on this new garb; the leading example of the holding company was the US Steel Corporation which combined eleven constituents controlling 170 concerns. When the holding companies began to consolidate further by amalgamations and mergers, the Roosevelt administration countered the move with vigorous application of 'Anti-trust Laws' and secured conviction in many cases. This produced a new form of combination in which several units, instead of formally uniting, had a common Board of Directors under a system of inter-locking directorates. This can be said to be the germ of central management and control, which is one of the techniques adopted by the modern multi-national corporations.

There has thus been a continuing war between the administration and business, the former trying to curb

monopolistic combines and the latter trying to use all its ingenuity in taking on new incarnations for maximising business efficiency and profits. The armoury used by the administration in this regard were in the main the Sherman Act and the Clayton Act. Though the initial intention was to use the provisions of these Acts for curbing activities which restricted competition within the US, a gradual development of extra-territorial application of the provisions of these two Acts has led to serious conflicts between the US and the other countries when the activities of US subsidiaries were sought to be brought within the jurisdiction of US courts under what was known as "Effects Doctrine". This will be examined in greater detail in subsequent chapters and it would suffice to know that some of the notable victories gained over the emerging economic giants were in the case of North Securities Co., the American Tobacco Co., and the Standard Oil Co. For administration of the provisions of the Anti-trust Laws, a federal trade commission was appointed under the Federal Trade Commission Act, with powers to investigate any corporation engaged in commerce, except banks and common carriers, and to require from them annual and special reports and other information. Even during President Wilson's administration, this Federal Commission received 2,000 complaints of unfair competition, bribery and false advertisement.

Soon after 1914, however, there was a relaxation in the application of these laws and the US Government deliberately

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allowed the combines to grow in and across the frontiers of US, having become aware of the advantages of large scale production and the pent up demand for goods abroad in countries ravaged by the First World War.

As big industrial business emerged in the 1880s and 1890s, Henry Demarest Lloyd became the most popular of an increasing number of critics. The Standard Oil Company and its virtual monopoly of refining was the target of attack in Lloyd's widely read book of 1894, Wealth Against Commonwealth.

It is claimed that William Lever of Britain founded the first real multi-national firm when he established manufacturing and distributing agencies in many foreign countries controlled by a strong organization exhibiting the characteristics of a modern multi-national.[8a]

However, Christopher Tugendhat[9] thinks that the Singer Sewing Corporation has the strongest claim to be regarded as the first multi-national corporation because it was the first company to manufacture and mass market a product in basically in and under the same printed name all over the world.

Among the pioneers the names of Friedrich Bayer, a German who took a share in an aniline plant in Albany in

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8a Fortune, vol. 38, February 1948, p. 78.

9 Christopher Tugendhat, The Multinationals (New York, 1971).

New York in 1865; Alfred Nobel, the famous Swede, who set up an explosive plant in Hamburg; Singer which established its first over-seas factory at Glasgow; and Jurgens, a Dutch margarine manufacture which built a factory in Germany, may be mentioned.

When US started going abroad, it did so in the characteristic US way - in a big way. In 1901 the American owned Westinghouse in England was the biggest industrial plant in the whole of English soil. Rockefeller's Standard Oil was the largest oil company in Europe, and by 1914 Ford was producing a quarter of the cars produced in Britain.[10]

National Cash Register, Eastern Kodak and General Electric had all established their overseas plants and the Committee of Finance of the US Senate (hereinafter referred to as Tariff Commission Report, 1973) has illustrated the following corporations as having become multi-nationals prior to the second world war:[11]

(1) Caterpiller Tractor

(2) Chryslar Corporation

(3) Firestone Tyre & Rubber Co.

(4) Ford Motors

(5) General Electrical

(6) General Motors

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10 US, Tariff Commission, 1973, p. 93.

11 Ibid.

(7) I.B.M.

(8) International Harvester

(9) Singer

(10) Coca Cola

(11) Eastman Kodak

(12) National Register

(13) Quaker Oats

In certain cases the initial suggestions to establish a subsidiary by an American company came from a foreign national company which wanted to utilize the American technology and capital. An early expansion of Ford Motor Company came this way. It was Gordon MacGregor who approached Henry Ford in 1903 for establishing Ford in Canada and it was Perceval Perry of Britain who initiated the scheme for the British Ford at Dearborn. It was not as if that it was America who have invaded Europe. There were reverse incursions also. The British Courtolds acquired control over the US Rayon industry through its subsidiary American Viscose Corporation and the binational Royal Dutch Shell became a force in the oil industry in US. In dyes and chemicals US producers were beaten by the Germans and Swiss.

In spite of this European inroads into American market, it was insignificant compared to the American dominance of the European market. As early as in 1902, a book by Mackenzie, <u>The American Invaders</u>, cried:

> America has invaded Europe, not with armed men, but with manufactured goods. Its leaders have been captains of industry and skilled financiers whose conquests are having a profound effect on the lives of the masses from Madrid to St. Petersburg....Our aristocracy marry American wives, and their coachmen are giving place to American-trained drivers of American-built automobiles....Our babies are fed on American foods and our dead are buried in American coffins. 12

Much the same outbrust was to be heard 65 years later when Jean Jackques Servan Schveiber's Le Defi American came out.

The next stage in the evolution of multi-national corporations is for the industries in the same product line operating in different countries to agree on cartelization. Such agreements restricted international competition and made it possible for the giant industries to grow in strength with advanced knowledge of technology and power provided by easy finance by multi-national banks operating side by side with manufacturing industries.

It will be of interest in this connection to know how Du Pont and I.C.I. came together for a multinational integration. George W. Stocking and W. Watkins in their book Cartels in Action point out that Dupont and ICI combination illustrates how cartelization of a particular industry within a country was merely regarded as a first step towards an

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12 Tugendhat, n. 9, p. 16.

agreement with similar concerns abroad to the man who started the ICI (Sir Harry). The formation was only a first step in a comprehensive scheme to rationalize chemical manufacture of the world and he has already conceived the working arrangements between three major groups, the IG in Germany, Imperial Chemical Industries in the British Empire, and Du Ponts and Allied Chemical and Dye in America.[13]

Present Trend

In the years between the two world wars and the period immediately following it, while Europe lay ravaged by war and was growing under economic crises the US economy prospered. The internal economic structure in the US economy had responded quickly to the growth demanded by not only the vast domestic demands but also demands for establishing consumer and capital industries in Europe and several parts of Asia. It may be mentioned in this connection that the extension of multinational enterprises based in the US had already started in the 30s of this century to the Latin American countries after the US industrial empire had spread to Canada in the north and Mexico in the south. While the geographical proximity and the vast demand existing and potential could explain to some degree the American industries' domination of the Western Hemisphere, the spread of the US enterprises into Europe and Asia was facilitated by certain singular factors:

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13 Tugendhat, n. 9, p. 20.

(i) Between the years 1880 and 1890, the US went through a period of industrial concentration and over 5,000 companies were consolidated into 300 trusts.[14] This combination made it necessary to plan and operate on a scale which brought surpluses far beyond the capacity of the home market to absorb and, therefore, forced the giant combinations to seek export markets. The huge profits earned in the home market were adequate inducements to establish subsidiaries abroad, even if it meant incurring loss in the initial period, which could be absorbed. Further, the tax policy of the US, in not taxing the income of the foreign subsidiary unless repatriated, encouraged the starting of subsidiaries. The Marshall Plan generated a flow of $ 17 billion of foreign aid to Europe during 1948-52. In the next two decades, the Europe's per capita income rose dramatically and effective consumer demand for American goods also rose sharply. This helped the US industries to move quickly to take opportunities in the European market and, as Raymond Vernon remarks:

> The Marshall Plan may have been principally a political vehicle by which expansionist U.S. business were helped by U.S. government to gain foothold in the weakened European economy. 15

(ii) Immediately after the war, many of the countries in Europe and Asia, both developed and underdeveloped, had been

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14 Ibid., pp. 14-15.

15 Raymond Vernon, Sovereignty At Bay (New York, 1971), p. 91.

competing with each other to get the US enterprises invest in their countries for the purpose of development. In the countries which had experienced colonial rule of the British, the Dutch and the Portuguese, the preference was for the US enterprises because of the psychological dislike of enterprises associated with the erstwhile colonial masters. This competition among nations enabled the US enterprises to bargain for fiscal and trade concessions enabling them to establish branches and subsidiaries and reap high profits.

(iii) For many years the European governments were short of foreign exchange and hence they could not invest abroad.

(iv) Immediately after the Second World War, the Pound Sterling lost its pre-eminent position as an international currency to the Dollar, but there was an acute shortage of Dollars in Europe till 1960. The US companies were ready to invest abroad and this was encouraged by the US Government itself. The US Government did not wish to come out openly for financial assistance and guarantees needed to launch Europe on the road to economic recovery. Since a direct aid by government agencies had many obstacles to tide over, the administration felt that the US companies could be a convenient tool to achieve this objective. "It exhorted companies to go overseas and took practical steps to help them by negotiating double taxation agreements with a large number of governments and by guaranteeing their investments against restraints on the

repatriation of profits."[16]

(v) The tariff and quota restrictions imposed as a precautionary methods by many governments impelled many US enterprises to jump over the wall, as it were, by establishing local plants, thereby circumventing tariff quota and exchange controls.

(vi) The Anti-trust legislation viz., the Sherman and the Clayton Acts also proved another factor for driving the US companies abroad, because basically till the extra-territorial arms of the Anti-trust laws began to reach the foreign combines on the basis of "effects principle", it was found safer to establish companies abroad, rather than integrate them at home.

(vii) When the European Economic Community and the European Economic Market came into being, far from shutting out American companies, it created a climate for these companies to locate their plants within the community, because instead of competing in every one of the countries in Europe, a whole market was available within the community with fiscal and other incentives. A stable market with political and economic stability of the organization attracted US investors more to this European Economic Community.

(viii) The comparatively low cost of production in the underdeveloped countries, particularly the low wage levels, was

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16 Tugendhat, n. 9, p. 28.

another reason why US firms found it feasible to establish branches or subsidiaries abroad. In his book Sovereignty at Bay, Raymond Vernon lists the Colt, the Singer, the ITT, the Westinghouse, the Eastman Kodak, Parke-Davies and the United Shoe Machinery as some of the companies which located their foreign plants on account of lower costs of production and local competitive threat.[17]

(ix) The tremendous advance made in the field of science and technology by the US was one of the foremost reasons for American leadership in world business. As Raymond Vernon remarks:

> One new force that was widely thought to have altered the post-war balance between the U.S. and Europe was the existence of extensive research and development programmes, sponsored and financed by various agencies and the U.S. government. According to this view, the stimulus provided by military based research widened the development lead of US enterprises well beyond anything previously encountered in modern industrial history. 18

Between 1951 and 1969, the US took twenty-one of the thirty-one Nobel prizes in physics, nine out of 37 in chemistry and 23 out of 40 in medicine and physiology.

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17 Vernon, n. 15, p. 79, tables 3-5.

18 Ibid., p. 94.

The gross expenditure on Research and Development (R&D) by the US in the middle of 1960s was fifteen times that of Germany, ten times of UK and three times that of all western Europe combined. An idea of the magnitude of expenditure incurred on R&D by individual concerns, apart from amounts spent by US Government itself, can be had if one looks at the balance sheet of the International Business Machines (IBM) for the year 1974. The total amount spent by the IBM in 1974 on R&D was $ 890 million.[19] Apart from spending huge amounts on R&D, the Americans were quick to apply the technology for commercial purpose. "Many European and Japanese businessmen who were aware of the latest technology were slow to apply it. The difference between the U.S. industries and the industry of Europe and Japan therefore lay not so much in the state of industrial knowledge as in the development and application of that knowledge."[20]

By the beginning of this decade (1971) therefore, there was an inevitable lead of US multinational enterprises over multinational enterprises of other countries. The UN document on "The Multinational Corporations in World Development" has listed 650 industrial corporations, of which 358 are US corporations, followed by 74 belonging to Japan, 61 belonging

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19 IBM, Annual Report, 1974.

20 Vernon, n. 15, p. 92.

to UK and 45 belonging to the Federal Republic of Germany.[21] Of these 650 corporations, 4 corporations alone accounted for a total combined sale of $ 76,131 million, and of these three were from US. Twelve corporations, of which nine were from US, had a total sale of $ 77,807 million. 295 corporations, of which 115 were from US, had a total sale exceeding $ 380,000 million.

It will be seen that out of 211 corporations with an annual sale exceeding $ one billion (the standard taken by the UN document on "Multinational Corporations" for the purpose of identifying the problems of multinational corporations), 127 corporations belong to the US. "The very size of these corporations, as compared with other entities including the economies of many nations, suggests an important source of power."[22]

As has been pointed out in Chapter I, the gross annual sales of the multinational corporations exceeded the gross national products of many countries and though in certain quarters such comparisons have been characterized as crude and unscientific,[23] it cannot be denied that the economic strength possessed by such giant corporations gives them a bargaining

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21 UN Doc. ST/ECA/190.

22 Ibid.

23 H.C. Knortz, Vital Speeches (1974). See also evidence given by some of the witnesses representing transnational corporations before the Group of Eminent Persons. UN Doc. ST/ESA/15.

power, far stronger than the bargaining powers of nation-States where they operate. The UN document estimates that international production in 1971 exceeded the total export of all market economies (the international production was $ 330 billion against the total export of $ 310 billion).

The multinational enterprises have, therefore, grown with new strategies based on global expansion transcending the geographical and political barriers of individual States. This has naturally created alarm among nations, particularly the emerging developing nations, in Latin America, Africa and the East. This alarm crystallized into action in two directions: (i) in the U.N. Economic and Social Council passing a Resolution [no. 1721 (LIII)] on 28 July 1972 requesting the Secretary-General to appoint a study group to examine the role of multinational corporations, and (ii) also a resolution[24] sponsored by the United Nations Conference on Trade and Development "to establish generally accepted norms to govern international economic relations systematically", which led ultimately to the "Charter of Economic Rights and Duties".

√ India

Multinationals in India

The main thrust of foreign private investment through multinational corporations in so far as India is concerned had

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24 UN Res. 45 (III), 18 May 1972.

been from the UK mainly because of the colonial past. As pointed out by J. Ade Oyelabi,[25] the distinctive feature of foreign investment in low developed countries has been that "the former control of politico-economic life of these countries by the governments of Western countries has not ended, but merely been passed on to the multinational investors". It is, therefore, not surprising that right from the pre-independence days to the present day the predominance of foreign corporations operating in India has been held by enterprises belonging to the United Kingdom. It is only after the two world wars that the corporations belonging to the United States made their entry into India. Mention has already been made of the operations of the East India Company and it remains only to analyse the position of the British commercial capital in India in the decade preceding the world war and in the years after independence.

Initially, the British companies were dominating the public utility and mineral industries (extractive industries) and those areas of agricultural sectors which provided raw materials for British industries, such as jute, tea, and rubber. Among public utilities, the railways provided the most important of the British monopoly capital in colonial India. The total capital investment in 1938-39, according to the Statistical Abstract for the British India (published in

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25 The Dusseldorf Conference on Multinational Corporations (New York, 1974), p. 105.

London in 1942), was Rs.8,478.2 million, on which the return was Rs.359.6 million. In 1943-44, the capital investment was Rs.8,585.3 million and the profit was doubled to Rs.852.1 million.

Investments in other British companies operating in India totalled £ 300 million in 1929.[26] Among the manufacturing concerns, the Indian Iron & Steel Co., and the Steel Corporation of Bengal, were the two big metallurgical plants under British ownership and control.

As on 30 June 1948, according to Reserve Bank of India figures, the value of total foreign business investment in India[27] in manufacturing, mining, utilities, transport, trading, financial plantation and other industries, was Rs.3,204 million, of which Rs.2,301 million (71.9%) were accounted for British business investments alone, followed by US i.e. Rs.179.7 million (5.7%). The investment was both direct, i.e. financial as well as portfolios i.e. shares. Over the period 1948-55, the British investment had increased and the main increases were in manufacturing and plantation industries. The relevant figures are given below:[28]

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26 S. Melman, "Foreign Investments in India in 1929" <u>British Monopoly in the Economy of Colonial India</u> (Delhi, 1963), p. 19.

27 Ibid., pp. 16-62.

28 Ibid., p. 82.

(Rs. in million)

Trade Classification	As on 30.6.48	As on 31.12.53	As on 31.12.55	Change from 30.6.48 to 31.12.1955
Manufacturing	533.4	1,084.4	1,282.9	+ 759.5
Mining	97.8	79.8	93.1	- 4.7
Trading	490.0	694.0	735.9	+ 245.9
Plantations	522.5	715.0	862.3	+ 339.8
Financial	49.1	190.1	219.1	+ 170.0
Utilities and Transport	234.3	481.3	500.8	+ 266.5
Others	172.4	228.2	225.8	+ 53.4
	2,099.5	3,472.8	3,919.9	+ 1,820.4

The vast market, the low production cost and cheap labour tended to attract the British investment in manufacturing and plantation industries. The manufacturing industries centered around cigarette, tobacco, food products, jute, coir goods, electrical goods, medicines and pharmaceuticals.

By the end of March 1970, branches of foreign companies and subsidiaries of foreign controlled companies held a direct foreign investment of Rs.735 crores.[29] (The "direct

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29 RBI Report, "Survey of Foreign Financial and Technical Collaboration in Indian Industry - 1964-70 - Main Findings", June 1974, p. 1.

foreign investment" is different from the total assets belonging to the companies).

By the end of 1972-73, there were 740 foreign companies operating in India, of which 538 operated as branches and 202 as subsidiaries of multinationals. Of these, companies belonging to the UK had 320 branches and 140 subsidiaries, closely followed by US with 88 branches and 28 subsidiaries. Switzerland, Japan, West Germany and Sweden had 21, 18, 17 and 14 affiliates i.e. both branches and subsidiaries. The total assets of these branches and subsidiaries of multinationals aggregated to Rs.2,921.8 crores of which UK companies (subsidiaries and branches) accounted for Rs.1,818.2 crores and that of US Rs.542.7 crores.[30] It would thus be seen that the dominant position held by British capital has continued right up to the present day though the American companies are making a steady headway. The increase in the total assets of UK companies (subsidiaries) over the period 1967-69 to 1972-73 was of the order of Rs.20 crores whereas for the USA the corresponding figure is Rs.15 crores. If this increase is taken as percentage of the total assets, the increase of USA is significant and would point out to a direction that not in the distant future it will overtake the British capital.

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30 D.K. Ghosh, "Multinational Corporations in Indian Economy", Company News and Notes, vol. 13, no. 1, January 1975.

As regards the branches, the assets of 351 branches in 1969-70 was Rs.823 crores which increased to Rs.1,084 crores in 1972-73, despite a fall in the number of branches from 351 to 320. For USA the branches had increased from 84 in 1969-70 to 88 in 1972-73, and the total assets rose from Rs.237 crores to Rs.350 crores. Here again, the lead of USA is significant. As regards distribution of investment in industry, a factor which is relevant to judge whether the foreign capital has been operating in sectors needing development and fitting in with the national objective, it is seen that the maximum investment is still in processing and manufacturing (1,348.2 crores) of which cigarettes, petroleum refineries, medical and pharmaceutical preparations take the lead. Next is trade and finance accounting for Rs.1,158 crores, of which wholesale trade and insurance company account for Rs.183 crores.[31]

It may be seen that investment of foreign capital is in those sectors where little capital is needed and exploitation of local labour and availability of skills and raw materials is facilitated.

A peculiar feature of the multinational enterprise operations in India is under what is known as the Managing Agency System, a device created by British business, and a system of getting control over the industries without risking capital. The managing agency system gives to the managing

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31 Company News and Notes, January 1975, Tables 2 and 6.

agents - a private limited company or a firm or a group of individuals - a complete grip over a large number of companies and concerns by offering managerial and administrative control and financial assistance without in any way suffering the business risk of the enterprises they control, a risk which falls on the shareholders. Vera Anstey in his book, The Economic Development of India, writes about the managing agency system as follows:

> ...in practice, the managing agents direct the directors, administer all the concerns of the company and in some cases they have been actually known to take power in the Articles of Association, to dispense with the Directors altogether. 32

According to a survey conducted in 1952, there were 701 companies under the control of British managing agents and 32 companies under a joint British-Indian managing agency. Some of the most prominent of the British managing agents were:

1. Andrew Yule and Co.
2. Mcleoid &Co.
3. Martin & Co.
4. Burn & Co.
5. Duncan Brothers & Co.
6. Octavious Steel & Co.
7. Gillanders Arbuthnot & Co. Ltd.

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32 Vera Anstey, The Economic Development of India (London, 1957)

8. Shaw Wallace & Co. Ltd.

Of these, Andrew Yule & Co. Ltd was and remains the largest. It was established as an 'unincorporated trading company' by Andrew and George in 1853 and was converted into a joint stock company in 1919 when one Catto joined it. Till the mid-1940s, Andrew Yule had the largest number of companies, about 55, under a single managing agency and the group remains one of the largest though it has lost or given up control over several companies since then.[33]

Till the Second World War, owing to the British dominance, the impact of US companies in India was not substantial. On the eve of the War, the American investment in India, which then included Burma and Ceylon, was of the order of $ 40 million. However, after the War, the American investment increased at first in the traditional pattern viz., import and export operations, the most important of these operations being in oil products by Standard Vacuum and Caltex. After the Second World War, American investment in India came in the automobile field, with General Motors and Ford taking the lead and some investments were made in jute, and manufacture of tyres. Firestone started a tyre factory in Bombay, and in the office equipment field, Remington set up a typewriter factory in Calcutta. Some of the American monopolies entered India through

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33 R.K. Hazaria, <u>The Corporate Private Sector</u> (Bombay, 1966), p. 121.

their Canadian subsidiaries. The Mellon controlled Aluminium Co. of Canada owned half of the capital of the Indian Aluminium Co. This was actually an Indo-American company.

Since 1951, when the new policy was announced inviting foreign capital in the industrial development of India, American monopoly first showed keen interest and Standard Vacuum Oil Co. entered into an agreement with the Government of India on 30 November 1951, for the construction of an oil refinery in Bombay. A similar agreement was also entered by Caltex for a refinery in Vizag. The Cyanamid Company established a factory to manufacture sulpha, and Parke-Davies opened a factory in Bombay for the manufacture of chloromycitin.

The present policy of the Government of India in regard to foreign enterprises in India can be traced to the Industrial Policy Resolution of 6 April 1948, explained later by the late Prime Minister Jawaharlal Nehru in his statement in Indian Parliament on 6 April 1949. The statement welcomed foreign capital, supplementing national savings, and also in making available to the country the scientific and technical knowledge. The conditions under which the foreign capital would be welcome were:

1. All undertakings had to conform to the general requirements of the Government of India's Industrial Policy.

2. Foreign enterprises would be treated on par with the Indian enterprises.

3. Foreign enterprises would have freedom for remittance of profits and repatriation of capital, subject to foreign exchange considerations.

4. If foreign enterprises were compulsorily acquired, compensation would be paid on a fair and equitable basis.

5. As a rule, the major interest, ownership and effective control of all undertakings should be in Indian hands.[34]

The first Five Year Plan mooted the idea of joint enterprise between foreign and Indian capital.[35] Thence forward, foreign collaborations were encouraged and as a result of the recommendations of the Mudaliar Committee of 1966, the Government issued guidelines in 1969 listing industries where:

(a) foreign investment might be permitted;

(b) only foreign technical collaboration might be permitted but not foreign investment;

(c) no foreign collaboration, either technical or financial was considered necessary.

In respect of industries not included in any of the above three, foreign collaboration would be considered on merits.

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34 India Investment Centre, "Seminar on World Partnership in the Second Development Decade", December 1961, p. 64.

35 Planning Commission, First Five Year Plan, p. 438.

Between 1951 and 1974, 4,810 foreign collaborations have been approved by the Government of India, of which 1,274 are accounted for by UK, 929 by USA, 799 by West Germany, 438 by Japan and 11 by USSR. The details of the collaborations approved, as given in the Handbook Foreign Collaboration issued by the Directorate General of Technical Development, would raise questions in one's mind whether the collaborations have conformed to the real industrial needs of the country.

CHAPTER III

CHAPTER III

STAGES OF EVOLUTION OF MULTINATIONALS AND THEIR CHARACTERISTICS

Stages of Evolution

From a study of the history of some of the leading multinational corporations it can be gathered that multinational enterprises proceed to unfold their activities through the following stages:

* export of products manufactured in the home country to the foreign country through national distributing agency;
* in the case of raw materials import, procuring such raw materials (or components) through local exporters;
* establishing sales organizations abroad for marketing exports or in the case of imports or purchase of raw materials maintaining purchase establishments abroad;
* licensing use of its patent and know-how to national firms;
* making investments in overseas operations by starting manufacturing operations by first establishing assembly plants and later on converting them into a full-fledged manufacturing concern. The organization

for this purpose will take the form of a branch (in which case it does not become legal entity in the host country) or as a subsidiary (in which case it will be a separate legal entity). The choice of a branch or subsidiary would depend upon the overall global strategy and the investment and tax laws of the home and host countries;

* establishing joint ventures with Government or private agencies as partners in the manufacture of products;
* increasing foreign investment and tightening control through management over the branch or subsidiary or in the case of a joint venture by acquiring powers of decision on control over investment and production and marketing; and
* carrying out vertical or horizontal integration with other companies dealing with the same or similar product line or, where permitted by the host country, to diversify the activities, as in the case of the Indian Tobacco Company going into establishment of high hotels in India, and the Union Carbide entering the fishing industry.[1]

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1 See also William A. Dymsza, Multinational Business Strategy (New York, 1972), p. 7.

The Tariff Commission of the US Senate has listed certain factors as motivational for the growth of multinational business. They are: (a) need for command over vital resources; (b) need for foreign market access; (c) scarcity of production factors in home country; (d) home market saturation and drive for growth; (e) incentives thrown up by different treatment under different sets of national law i.e. tax and other incentives; (f) complex locational factors and external economies; (g) currency "under and over" valuation.[2]

The above noted evolution through which the multinationals emerge either by vertical or horizontal integration, either in the home country, in the host country, or in both, adds to the strength of the corporation and alters significantly the economic patterns.

> ...in this process a new structure of economic relations is emerged where trade between national firm 'Z' of country 'A' and national firm 'Y' of country 'B' is replaced by the internal transfer of 'Z' to countries 'A' and 'B', while firm 'Y' vanished from the picture.... 3

As a consequence, free market forces or national policies are gradually superseded by the multinational firms' plans.

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2 Tariff Commissions, Impact of Multinational Firms: Summary of Recommendations.

3 Tariff Commissions, Impact of Multinational Firms, February 1973, pp. 106-27.

Characteristics

There are firms, big and small, which have grown in the way described above and therefore it is necessary for the purpose of proper identification of the real multinational giants, to set out their chief characteristics. The foremost characteristic of a multinational corporation is the largeness of its size. The UN document on Multinational Corporations in World Development has taken total annual sales of more than $ 1 billion as a criterion for being classified as multinational corporation.[4] According to John McDonald and Hugh Parker,[5] a company becomes multinational when 20 per cent of its assets are overseas. The US Tariff Commission's report points out that an enterprise is thought to qualify itself as a multinational if it has at least a 25 per cent participation in the share of the foreign enterprise but the publications of US Department of Commerce data are based on equity holding as low as 10 per cent.[6] Because of its sheer size, these big enterprises are in a position to determine the world's demand.[7]

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4 UN Doc. ST/ECA/190, p. 6.

5 In Creating a Strategy for International Growth - International Enterprises (New York, 1962), pp. 17-19.

6 Tariff Commission Report, n. 3, p. 81.

(Those who think that equity participation of 50 per cent or less for a foreign concern in a joint venture would safeguard the national interest may have to give a second thought on the basis of this information.)

7 Quoted by Raymond Vernon in his lecture on "Multinational Enterprise Performance and Accountability", Multinational Corporations Trade and Dollars (New York, 1974).

Closely related to its large size is the predominantly oligopolistic character of these corporations. The markets in which they operate are dominated by a few sellers or buyers. Frequently they are also characterized by the importance of new technologies or of special skills or of product differentiation and heavy advertising which sustains or reinforces their oligopolistic nature.[8] A fourth characteristic is "their tendency to have a sizeable clusters of foreign branches and affiliates. Although almost half of some 7,300 multinational corporations have affiliates in one country only, nearly 200 multinational corporations among the largest in the world have affiliates in 20 or more countries."[9] A typical instance is IBM which operates in 105 countries.[10]

A multinational corporation is usually a product of a developed country and this fact in itself reflects the high degree of concentration of the location of the parent company in the developed countries. Out of 15 largest multinational corporations in the world, 10 have their homes in the US. If we take the first 50 largest corporations in the world, except the National Iranian Oil Co., Montedison of Italy and Petrobras of Brazille, the rest of the multinationals

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8 UN Doc. ST/ECA/190, p. 6.

9 UN Doc. ST/ECA/190, p. 7.

10 William Rodgers, Think (London, 1971), p. 9.

have their home countries in the USA, UK, France, Japan, Switzerland and Germany.[11]

The multinational enterprises dominate the fields where high technological skill and integrated financial or managerial operations are involved. Thus the 50 multinationals listed in the Fortune of August 1975 are dealers in oil, electronics, automobile, pharmaceutical and steel industries. The bulk of the activities of the multinational corporation is not in developing countries but in developed market economies, where two-thirds of the book value of foreign investment is located and where the advanced economic level and similarities in institutional and social structures have facilitated the spread of the multinational corporate system.[12] However, even though the developing countries have received only a third of the estimated stock of foreign direct investment, the presence of these corporations in the developing countries is generally of greater relative significance since their economies account for much less than half of that of developed market economies.[13] Among the developing countries, the Latin American countries has attracted the highest investment i.e. 18 per cent of the total stock of direct foreign investment. Africa, Asia and Middle East together have

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11 Fortune, August 1975.

12 UN Doc. ST/ECA/190, p. 8.

13 Ibid., p. 9.

received 6 per cent, 5 per cent and 3 per cent respectively.[14]

The multinational corporations generally belong to countries which enjoyed a colonial domination such as UK, France and the Netherlands, apart from US, which for reasons enumerated earlier, had certain singular advantages. The corporations of the European countries with no colonial experience, like Australia and Switzerland have a comparatively limited spread in the developing world. Though, historically the multinationals entered originally in the extractive and public utility areas, the present position is that there is a major shift to the manufacturing sector which accounts for more than 40 per cent of the total estimated stock of foreign direct investment of the main developed market economies. In developing economies the manufacturing sector accounts for 26.9 per cent and the lead is taken by petroleum industry with 39.7 per cent.[15]

Having noticed the main characteristics of the growth of multinational enterprises, it may be of interest to know a few facts relating to two leading multinational corporations which operate on a global scale.

<u>The IBM</u>

The history, policy and the organization of IBM was explained by Vice President and General Manager of the

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14 UN Doc. ST/ECA/190, p. 9.

15 Ibid.

Company in an article he wrote in 1957 for the International Management Association Inc.[16] This has since been supplimented by a well documented narrative <u>Think</u> by William Rodgers.[17] Tracing the origin, he has pointed out that IBM first entered the international market through a licence agreement between an IBM predecessor and certain business groups in the United Kingdom and Germany. It was Thomas J. Watson who in 1914, conceived the idea of entering the international field when he became the head of three business machine organizations than known as the "Computing Tabulating Recording Company".[18] The company entered Canada in 1917 with the name of "International Business Machines Company Ltd" after which "IBM" became so widely known all over the world today. IBM moved to Europe in 1919, in the beginning setting up agencies in the various European countries and later on it was found that the foreign business was just a fraction of what it could have been, and "international business was not developing in proportion to the possibilities of the market". Import restrictions and dollar shortages in the European countries gave the solution to IBM that it would be far better to have expanding manufacturing operations outside the US instead of importing

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16 IMF Inc., <u>Case Studies in Foreign Operations</u> (Special Report) (1957).

17 <u>Panther</u> (London), 1971.

18 Ironically, the inventor of the Punch Card with which IBM "changed the entire world" Horlith was a stockholder of CTR, was forced out by Watson later.

machines manufactured in the US. To take over the manufacturing operations outside US a subsidiary of IBM was floated known as the IBM World Trade Corporation "with the aim of sales, service, and production throughout the world". In 1944, the Automatic Global Computer was invented. In 1950, IBM was doing business in 65 countries, including Canada, France, Italy and Germany. It was assembling and rebuilding machines and started some manufacturing in Germany but rapid strides were taken since 1950 when IBM expanded its activities into 19 additional countries, having 18 manufacturing locations and concentrating major production operation in Canada, France, Germany, Italy, the Netherlands and the United Kingdom. The sourcing for market did not end there. IBM soon found itself operating in Argentina, Australia, Belgium, Brazil, Japan, Norway, Sweden and Switzerland. Laboratories were built in Germany and France, and smaller laboratories were also started in United Kingdom and the Netherlands. All these laboratories were co-ordinated with headquarters' laboratories in the United States. These laboratories had to follow closely the programme laid down by the IBM headquarters in the US which meant that they could concentrate on product development and production modification in harmony with the overall product development programme in the US. The next stage was the international division of manufacturing operation under what is called the Inter-change plan. Under

this plan, they divided the manufacture of a product of a machine in several countries. For example, in the case of the electrical typewriter, the manufacture of the various components of the typewriter is divided among nine countries--the United Kingdom, Sweden, Switzerland, the Netherlands, Belgium, France, Germany, Italy and Canada. Each country makes the total overall requirements for certain parts and supplies them to all countries, getting in return the parts made by the other countries. For example, Netherlands make the platens which is sent out to other countries and in return, receives parts required to assemble a complete electric typewriter in Netherlands. It is this inter-linking manufacturing operation which enables IBM to make maximum advantage of transfer pricing thereby minimising tax burden, overcoming exchange restrictions and maximising profits. The present position as revealed in the Annual Report for 1974 issued to IBM's shareholders is that the total gross income from sales and rental machines exceeds 12.67 billion dollars, of which 5.94 billion dollars comes from sales and rentals and services in foreign countries. The total net assets at the end of 1974 of this company was 14 billion dollars.

In these days of high sophisticated technology in the communication system, IBM with its power and strength and initiative it has gained in high pressure salesmanship in almost all the countries of the world this multinational

corporation has been able to beat down all its rivals, and has practically sapped the ability of the countries where they operate to develop indiginously an effective and cheaper computer system suited for local needs and requirements. So much so, even President de Gaulle's favourite "The Machines Bull", which he wanted to be the pride of France, knuckled under the pressure of competition from IBM and had to rely on American financial participation of GEC for its survival.[19] In India, IBM's grip over the Government agencies and educational institutions has been the subject matter of investigation by the Union Government and the Public Accounts Committee of the Indian Parliament, and it is reported that the IBM has refused to comply with the Central Government's request to take Indian participation in its equity as prescribed under the Indian Foreign Exchange Regulation Act!

No wonder, William Rodgers makes the following claims in his book <u>Think</u>:[20]

(1) In all the world, one corporation dominates the shape of the future.

(2) It has an annual budget greater than of many nations.

(3) It has a share value worth far more than all the gold ever hoarded in the Fort Knox.

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19 Rodgers, n. 17, p. 272.

20 Ibid.

The Unilever

The second case is not a US multinational but an English and Dutch combine viz., the Unilever, which has dominated and is still dominating the market in detergents, ghee and vegetable oil products. About the operations of Unilever, its history and growth, Charles Weston has written two volumes published by Cassell. It would suffice for the purpose of this paper to trace briefly its entry into the Indian market and its present dominant position.

Till 1931, Unilever was exporting vegetable ghee to India. In 1931, it was decided that the time had arrived to erect a factory in India and in the following year, the Bombay plant began to operate. It swiftly acted to beat down competition from locally produced ghee. It began to increase the output and by 1937 a total output of one lakh ton of ghee was produced. Unilever found that "if the native has more money, he buys ghee".[21] As regards soaps division, until 1934 India's need of soaps was met by exports from England, though a small factory producing soaps by an Indian company was acquired by Lever in 1952. Manufacturing in India was found advantageous, having regard to increasing national consciousness. So in 1934 a soap factory was built near the gheee factory in Bombay. The sales of 1934 and the

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21 Carles Weston Cassell, The History of the Unilever (

plant capacity of production increased by leaps and bound, displacing all local competition, so much so that Unilever acquired the dominant role in soap and vegetable ghee production in India. Lux, Sunlight are household names in India; so too "DALDA" - a result brought about by aggressive salesmanship, publicity and propaganda backed by an excellent world-wide organizational thrust.

After independence, the Unilever changed colour to suit local atmosphere and called itself Hindustan Lever. According to the statistics quoted by the Economic and Science Research Foundation of New Delhi, Unilever occupied the fourth place among the top 200 companies in India in 1964 and retained that lead in 1968 with a sale exceeding Rs.550 million. Among the first 100 companies which topped making profits in India during 1973-74, Hindustan Lever occupies the tenth place.[22]

Here is a typical instance of a foreign multinational entering a consumer industry, where the local market is vast, and displacing local competition, a process which appears to give a proof to the theory of "Dependencia" outlined by Oswaldo Sunkel. For other instances, one might refer to the Hathi Committee Report which reveals the stronghold the foreign chemical and pharmaceutical companies have in the Indian market.

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22 Statement laid on the table of Rajya Sabha in reply to starred question no. 3, dated 24 February 1975.

It will be of interest to note that out of the first top ten multinationals operating in India during 1973-74, five are foreign multinationals. They are:[23] The Union Carbide India Ltd., (2) Indian Tobacco Co. Ltd., (3) Guest, Keen & Williams, (4) Philips, and (5) Hindustan Lever Ltd. The rank No. 1 company is Oil India Ltd. in which Burmah Shell, a foreign multinational had 50 per cent shares.[24]

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23 Ibid.

24 Recently a bill has been introduced in the Parliament to take over Burmah Shell's interests.

CHAPTER IV

CHAPTER IV

THE POLITICAL AND ECONOMIC EFFECTS OF THE ACTIVITIES OF MULTINATIONAL CORPORATIONS

The group of eminent persons who inquired into the impact of the multinational corporations on development and on international relations have described the multinational corporations as "important actors on the world stage".[1]

In an ever expanding world market, including the Soviet bloc and perhaps China, the existence of these options gives the multinational corporations a measure of economic control so large as to concern most countries and to raise legal and political questions. It may be asked, for instance, by what rights the multinational corporations make decisions affecting economy of the host country.[2]

Viewed from the heights of a multinational firm, the host country is very often just a railway station or a port of call through which foreign trains or ships owned by the central system pass, stopping or bypassing a particular point, loading or unloading passengers, staying over for repairs or refuelling, according to the decisions of the centre.[3]

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1 UN Doc. E/550/Rev.1, ST/ESA/6, p. 27.

2 Proceedings of 66th Annual Meeting of The American Society of International Law (1972), p. 14.

3 M.S. Wionczek, "Rules for Multinationals : The Latin American Context", World Review, vol. 18, October 1975.

It is not a fact of faith, but a fact of life, that multinationals do interfere in the internal affairs of the host country if they can get away with it, particularly if the host countries attempt to change long established rules of the game governing foreign economic activities within the area of their jurisdiction.[4]

Keiser, in his article on "Transnational Relations and the Democratic Profess", remarks: "Transnational organizations, particularly multinational corporations often conduct their own foreign policy and are a second force that encroaches on the foreign minister's role as sole regulators of external affairs."[5] For example, the activities of petroleum countries can take place without much supervision from the home country although the consequences of their behaviour and the ensuing effects on the supplies and prices of petroleum, have to be borne by the home country. The autonomy enjoyed by those who sit on the board of multinational corporations and the officials who work in these corporations, has enabled them to operate on lines parallel to home country's Government because in regard to the external operation they cannot be asked to testify before the legislature nor can their records could be requested or their specific programmes and policies cont-

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4 Ibid.

5 Keiser, "Transnational Relations and the Democratic Process", International Organization, vol. 25, 1971, p. 106.

rolled. In fact, paucity of information in regard to the activities of these multinational corporation has made home countries as well as host countries ineffective (even if they try to) in exercising any control.

With the growing predominance of multinational corporations, increasing number of poor countries' economic actors become responsible to directors and stockholders who are citizens of other countries. If a similar chain of command existed in public organizations, the poor country would be deemed a colony because multinational corporations are private economic organizations. Chains of command leading outside the State may multiply without ostensible loss of political sovereignty. Yet national autonomy, the ability of a nation State to make decisions which shape its political and economic future has been diminished.[6]

Christopher Tugendhat compares these multinational corporations to the Catholic Church of the past.[7] Kings and Emperors felt their positions to be overshadowed by its international organizations, its influence on national policies and its immense buildings and tracts and lands. Eventually the tensions were overcome either by breaking away with Rome altogether and setting up independent churches of their own

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6 Peter B. Evans, "National Autonomy and Economic Development : Critical Perspective of MNC in poor Countries", <u>International Organization</u>, vol. 25, 1971, p. 675.

7 Christopher Tugendhat, <u>The Multinationals</u> (New York, 1972), p. 221.

or negotiating concordats with the Pope defining their respective spheres and establishing a framework within which they could work together in harmony.

It is argued that no advanced industrial country can cut itself off completely from the multinational and international corporations and those that try will suffer for it by losing the advantages that the corporations can confer. The extracts from the eminent authors quoted above do reflect the anxiety of all nations, developed and developing, in regard to the power of multinational corporation to kick around the nation states and cause political and economic damage in the wake of their activities. At this stage it would be unrealistic to ignore also the claims made by those who advocate the importance of multinational corporations to the world economy as a means of development and growth and harnessing the powers that the new technology has placed in the hands of man.

For instance, Orville Freeman, former US Secretary of Agriculture, stated before the Sub-committee on International Trade as follows:

> ...by definition a multinational company is one that looks at the entire world as an area of operation and acts that way. It searches everywhere in the world for new technology, talented people, new processes, raw materials, ideas and capital. It thinks of the entire world as its market and it tries to serve customers everywhere. It produces goods or renders services wherever they can be economically produced or rendered to serve one or more

> markets at a profit...these international companies have demonstrated great dynamism and adaptive power in responding to what might be described as an emerging world economy--the product of modern communication and transportation which has shrunk the world from the size of a baloon to the size of a grape.... 8

Neil H. Jackoby states:

> ... the instrumentality of multinational business is man's best hope for achieving political unity on this shrinking planet....9

Herbert C. Knortz, the Executive Vice-President of the ITT declares:

> ... in my opinion the multinational corporations represent the best hope at the present time for the advancement of the world community which will yield most for the greater benefit to the people of all the countries. An unbiased look at the multinational corporation indicates that its problems lie in the fact that its assets are claimed by many nations but becomes an orphan when it is under attack....Suspected of as conserving a bias, having no vote or constituency, being foreign and being successful but being denied the right to use the power of money, the multinational corporation appears to be a fair game for those who seek to achieve notriety by accusation....10

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8 Statement prepared by the staff on 26 February 1973, "Hearings before the Subcommittee on International Trade of the Committee of Finance", US Senate, Congress 93, 1973, p. 398.

9 Neil H. Jackoby, Corporate Power and Social Responsibility : A Blue-Print for the Future (London and New York, 1973), p. 122.

10 Vital Speeches of the Day (1974), pp. 535-40.

Fortunately there are very few even among corporate leaders who will agree with this over-pitched benefits of a multinational corporation. It is not without significance that in the Fourth Conference of Heads of State Governments of Non-aligned Countries held in Algiers in 1973, at the Conference of Commonwealth Heads of Government held in Ottawa in August 1973, at the Bagota Conference in 1973, Intra-American Meeting of Foreign Ministers held at Mexico in February 1974, the Commonwealth Parliamentarians Meet in New Delhi in 1975, and the Anti-Fascist Conference held at Patna in 1975, and the Anti-Fascist Conference held at Patna in 1975, concern was expressed at the threat posed to national sovereignty by these multi-national corporations.

Possibly the developing countries, having been hard hit by political subversions, as in Chile and other Latin American countries, being victims of economic ruin, actual or potential, and because of their utter helplessness in their bargaining power in negotiating with the giant corporations, condemn them most strongly. But it would be a misnomer to think that the political and economic consequences have visited only the developing countries. In fact, voices of despair have come from Canada, France, UK, and many other countries in Europe. In "Le defi Americin", J.J. Servan Schreiber has stated that 15 years from now (1967), it is possible that the world's third greatest industrial power, just after the

US and Russia, will not be Europe, but American industry in Europe. Already in the ninth year of the Common Market, this European market is basically American in organization. From Ottawa to Montevedio and Paris, statesmen have raised questions as to whether the activities of multinational corporations are not actually another form of economic imperialism. "Questions of national control over means of production go to the very heart of the political process, a fact which we may not fully appreciate in this country"(USA).[11]

Gaston Defferre, who once challenged de Gaulle for presidency in 1966, states:

> ... the economic invasion by the U.S. is a clear and present danger... the beginning of the colonisation of our economy.... 12

De Gaulle himself was chagrined when his pet Machines Bull, an independent computer system which was claimed to be the pride of France, was beaten down in economic competition by IBM finally to enter into a collaboration agreement with GEC.[13]

The foregoing statement would show that the world is not yet fully convinced that the multinational corporation is an unmixed blessing. As Wilfred Jenks summed up:

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11 US Senate, "Hearings of Multinational Corporations", Staff Paper submitted to the Committee on Finance.

12 Louis Turner, The Invisible Empire (London, 1970).

13 William Rodgers, Think (London, 1971), p. 272.

> ... for some the multinational corporations are an invaluable dynamic force and instruments for wider distribution of capital, technology and employment; for others, they are monsters which our present institution, national and international, cannot adequately control; a law unto themselves which no reasonable concept of public interest or social policy can accept.... 14

Arguments and statistics will always be found to support the rival views. Therefore the question has to be looked at from the point of view of effects of the presence of multinational corporations in real terms and from observed data and facts. In so doing, no generalized position can be taken sweeping in all countries developing and developed.[15] Peter F. Drucker in his article on "Multinationals and Developing Countries Mixed and Realities" in Foreign Affairs (1974) holds the view that it is a misnomer to call a country less-developed or under-developed on the basis of its per capita income or gross national product. He points out that all so-called low-developed countries have some potential as the developed countries, and some of them are endowed with natural resources more than the so-called developed countries. The difference lies in not being able to exploit these resources for full development and increase of national growth. He cites the example of Canada and Japan in this regard. Of

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14 Quoted by Chenchal Rao in his article in Seminar, October 1974.

15 Peter F. Drucker, "Multinationals and Developing Countries - Mixed and Realities", Foreign Affairs, October 1974.

course it should not be forgotten that this is a disguised argument for justifying invitation to multinational corporations for carrying out metamorphosis from under-developed to developed.

The problems of developing countries are not in many instances similar to those of developed countries because the developed industrial countries are both home and host countries for MNCs. They are in a position to bargain with the multinational corporations with headquarters in foreign countries, because of their ability to take retaliatory action in view of their own corporations having affiliates in the concerned foreign country. It is not asserted here that they have a full power of retaliation--otherwise France and Canada would not be loud in their criticism. But the measure for retaliation is much greater than in the case of developing countries.

Even amongst the developing countries, there are countries in different stages of development and therefore the needs and requirements for foreign investment and technical help varies from country to country. So also their economic strengths and bargaining powers are different. For example, there are four stages of development in the case of a developing country: (1) The pre-industrial stage where the emphasis is on agricultural and extractive industries; (2) Preparatory stage - where the basic and heavy industries are established and some consumer goods industries are developed; (3) The take-off stage - where the basic heavy industries are expanded and the consumer

goods industries are developed; and (4) The advanced stage - where sophistication of industrial economic development is introduced with appropriate technical know-how.[16]

It is not as if these stages are uniformly present in all the regions in a country. But an overall evaluation is possible on the basis of indicia given above, to judge the scope and activity of a multinational corporation. In India, in some areas we are in a pre-industrial stage whereas in other areas we are in a sophisticated and advanced stage e.g., space programmes and nuclear-based technology. But omitting these segments, if one takes the predominant characteristic of the Indian economy, it is still one of the poorest countries in the world with a per capita GNP of only US$ 110 against $ 5,590 of US, $ 4,440 of Canada, $ 1,290 of Argentina, £ 2,560 of New Zealand, $ 2,600 of U.K. and $ 3,620 of France. From the so-called poor States of Europe, like Greece and Portugal, have far higher per capita GNP than India.[17]

Assuming that development in the accepted western economic concept is the only panacea for solving our economic ills, India certainly needs massive foreign assistance in the fields of finance, technical know-how and technological skills. The Industries Minister of India, T.A. Pai, told a visiting mission of American visitors that foreign investment would

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16 K.P. Shrivastav, Foreign Collaboration - Its Significance in India's Progress (Agra, 1955).

17 World Bank Atlas, 1974.

always be welcome in the future within the broad framework of India's Industrial Policy.[18] One of the leading industrialists of India, S.S. Kanoria, in a speech delivered in New York in the Conference of Asia and Far East Council of Commerce and Industry, 1974 actively canvassed for more of multinational corporations coming to India's help.[19]

Even the Group of Eminent persons in their report on the impact of multinational corporations on development and on international relations have veered round to the view that multinational corporations are an inevitable phenomenon of the world economy and therefore recommend steps for living with it under some kind of national, regional and international regulations.

In this context it is necessary to analyse, to the extent information is available, the political and economic effects of the activities of multinational corporations in home and host countries to find out the areas where distinct advantages are gained and the cost a nation has to pay in terms of socio-economic and political terms to gain these advantages. In such an analysis, three jurisdictions are involved when a multinational corporation spreads itself to establish its operations in more than one country: (i) The jurisdiction of the

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18 Span, October 1975, pp. 42-43.

19 Text of speech delivered at the 1974 conference of Asia and Far East Council of Commerce and Industry. Eastern Economist, 18 October 1974.

State in which the multinational corporation is incorporated or has its central office of direction and control from home country; (ii) The jurisdiction of one or more States in which the multinational corporations' affiliates have link operations; and (iii) The jurisdiction of the State in which the multinational corporation has its affiliates in the form of a branch or subsidiary or a joint venture.

In these three jurisdictions, political, economic, social and cultural problems have been found to arise when the multinational acts to the dictates of its global strategy. The multinational corporation has only one objective viz., to maximise its profits, increasing the value of its stock to its shareholders of the home country and minimising the cost of operations. Obviously when the objectives of the national government, which are based on national interest, come in conflict with the goals pursued by the multinationals, tensions and conflicts arise. In its impatience to get over conflicts and tensions, the multinational corporations do not hesitate to employ political means and economic coersion, creating in this process conflicts as between the three jurisdictions mentioned above. The causes of tensions have been admirably summed up in the introductory portion of Chapter 3 of UN Document ST/ECA/190.

Home Country

Taking first the home country jurisdiction, a powerful multinational corporation can so act as to influence national

policies and objectives through powerful lobby backed by financial donations, overt or covert. A leading instance of a multinational corporation bending the administration to its knees and abandoning anti-trust prosecution proceedings was provided by the evidence given before the Subcommittee on Multinational Corporations, by Haberman and Mrs Svedberge.[20] Deposing before the Subcommittee, the two witnesses brought out how in the famous "Oil cartel" case, a Federal Trade Commission indicted the seven-company cartel which was alleged to have violated the anti-trust laws. However, the prosecution proceedings were withdrawn and superseded by a civil action which finally resulted in a consent decree after a period of 15 years! The following quotation from the evidence will bear ample testimony to the power and influence of these multinational oil companies:

> See from the vantage point of the Cartel Case, I think it will become abundantly clear as this investigation proceeds that the current international oil crisis did not just suddenly spring full blown when a few Middle East governments decided to impose their oil embargoes upon the consuming nations of the world. Rather, I suggest that you will find that Middle East government actions, and the world oil crises which they precipitated, represented but a logical extension, indeed the inevitable culmination, of a long, well defined historical process that was set in motion by these very oil companies at least 40 or 50 years ago. That process saw the evolution and exploitation of a most complex and extraordinary symbiotic

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20 "Hearings before the Subcommittee on Multinational Corporations" in Multinational Corporations and US Foreign Policy, Part VII, 1974.

> relationship between these seven major international oil companies on the one hand, and the several governments of the United States, Western Europe, and the Middle East on the other.
>
> The present world crisis represents a unique crossroad in history when that system lies suddenly exposed, its bare framework projected in bold relief for all the world to see, at least for those who will take the trouble to see.
>
> And I suggest that what will be seen upon closer analysis is a kind of private supranational government, an intricate system which has grown up through close to a half century of closely coordinated and cooperating joint ventures and arrangements around the world among these seven international companies.
>
> I have likened this system to a kind of supranational government, a private United Nations, if you will, because its members severally and collectively possess massive wealth and resources, including an exchequer, shipping fleets, production facilities, pipelines, refineries, etc. which exceed by far the resources available to many nations of the world. Furthermore, these companies have shared for many years a broad community of interest and a functional unity of policies and actions in the disposition of such wealth and resources. This has been facilitated by the highly developed technical and diplomatic capabilities which these companies have frequently and effectively exercised *en bloc* in sophisticated high-level dealings with the governments of the world. 21

It will be interesting to note that the famous columnist Jack Anderson who appeared on 28 January 1974 before

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21 Ibid., p. 42.

the Subcommittee pointed out in his evidence that the source of the present oil crises in the world really emanated from the desire of the Aramco Co. to have a price increase from the US Government in order to justify the cost of working the US oil fields. For this purpose they thought that the best way to accomplish this would be to get the overseas price raised. "...there is evidence in the memos that I have seen that early in 1973, meetings were held with Ahmed Zaki Yamani, the Saudi Arabian Oil Minister and with other figures in Saudi Arabia and they were encouraged to increase prices. The figure $ 6 is mentioned. They were looking for a figure of $ 6 a barrel...."[22]

Several other instances of interference of home country political affairs have been revealed.[23] It is pointed out that a depressingly large number of leading corporations have pleaded guilty to violating US election laws, and many of these have also confessed to shady acts abroad.

Another instance of the power and influence exerted by the multinational corporation to the detriment of the national interest of the home country is provided by the abandonment by the US Government of its resolution to abolish what was known as the American selling price on a range of chemical products. This American selling price was devised as

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22 Ibid., p. 3.

23 Fortune, August 1975, pp. 123-4.

a protectionist method to protect the American industry against rising level of imports from Japan and Hong Kong. Under this system, the import duties were levied not on the basis of the import price but on the much higher price that it would cost to manufacture it in the US. It may be recalled that as a step to lower the tariff barriers, negotiations were held under what was known as the Kennedy Round of Talks. It was then decided to abolish the American selling price but the US Government did not take steps in this direction and the reason was "the suddenly expressed hostility of the major American Chemical Corporations including the DuPont."

During 1970 the DuPont and other chemical corporations were prepared to do a political deal with the Nixon administration in order to get a still greater degree of domestic protection. They indicated that they would be willing to drop their lobbying in favour of retaining the American Selling Price system for benzenoid chemicals provided the man-made fibre part of their business was given proper protection from foreign imports either through voluntary agreements or through direct American legislation.[24]

It may be argued that lobbying with the home government is not a special prerogative of multinational corporations but even domestic concerns do them. However, the significant difference between a MNC lobbying and a purely domestic

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24 Hugh Stephenson, The Coming Clash (London, 1972), p. 92.

concern lobbying lies in that the power and influence and the money at the disposal of the multinational corporation is so vast and gigantic that it can get itself entwined in the administrative process and in the framing of legislative policy to an extent which a domestic corporation cannot hope to attain.

The multinational corporations' involvement in the political affairs of the home country, particularly in the foreign policy field, has also been quite significant, particularly in the case of US. The report of the Subcommittee on Multinational Corporation and US Foreign Policy (Congress 93, session 2) bears ample testimony to the fact that the present oil crises in the international arena was the result of the collapse of the system of oil allocation administered by the multinational oil corporations--a system which was erected with the assistance of the US Government premised upon two basic assumptions: "that the companies were instruments of U.S. foreign policy and that the interest of the companies were basically identical with the U.S. national interest."[25] (emphasis supplied)

These oil companies were used by US Government in 1950 to provide financial resources to the Arab Sheikhdoms in the Persian Gulf at no additional cost to themselves by means of the foreign tax credit provision of the US Internal Revenue

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25 US Government, "Report on Multinational Oil Corporation and U.S. Foreign Policy", Congress 93, session 2, 1975, p. 14.

Code. In 1954 the five major US companies were induced by the Department of State to participate in the Iranian Consortium so as to place the Iranian Oil Co. in world market, undermining the international oil price structure. Both the Persian Gulf Sheikhdoms and Iran were thus to be provided with the necessary financial resources to keep them out of the Soviet orbit. Use of the companies in this way also obviated the need for congressionally appropriated direct foreign aid funds, and as an indirect consequence in congressional oversight of this foreign policy decision.[26]

To the extent that these corporations had been utilized as agents of the foreign policy of the home country, they commanded a position equal to what can be attributed in commercial parlance as "Joint Ventures in Administration". The interference of the home country in the affairs of the countries in which the multinationals operate through affiliates, has led to widespread resentment and there appears to be ample justification for R. Thatcher to say about Canada that -

> ... they do not so much fear the political or economic domination by the U.S. government but what is feared as more likely is a gradual intrusion of American law and U.S. government control through the activities of the multinational enterprises.... 27

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26 Ibid., p. 15.

27 Jack N. Behrman, National Interests and Multinational Enterprise : Tension Among North Atlantic Countries (Englewood, Prentice Hall, 1970), p. 87.

Jack N. Behrman has listed 16 instances in Chapter 7 of his book National Interest and Multinational Enterprises where the US Government interfered in the internal affairs of countries in which US multinational corporations had operated under cover of the Trading with Enemy Act of 1917 and Export Control Act of 1949. Two of such instances are worth mentioning. In an attempt to induce the French Government to join in restraints on production of atomic weapons, the US Government prohibited export of sophisticated equipment to it that might be used in atomic or space programmes. It also prohibited, in 1964, a French subsidiary of IBM from selling computers to the French Government. For two years, the governments argued over the case with the United States stressing that France should join the Nuclear Test Ban Treaty, which the French considered too constraining. The dispute was finally resolved, with the French agreeing not to use the computers for their nuclear weapons programme, and the United States approving their sale for use in peaceful nuclear programmes. This case caused considerable friction between the governments across their whole range of diplomatic relations and reportedly affected France's attitude toward letting Britain in the Common Market.[28]

In 1968, the US Treasury refused to grant a license to an American-owned Belgian company to export farm equipment

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28 Ibid., p. 105.

to Cuba. This was one of the first acts of denial involving a Belgian company. The press and government's officials reacted. They considered that companies incorporated in Belgium and operating on Belgian soil should act in accord with the Belgian national interest - this national interest was considered harmed by the loss of $ 1.2 million order at a time when employment and incomes were sustaining a slow-down. These officials saw their interests harmed by a quarrel between the United States and Cuba, which was not their affair. One observer commented that "a few more instances of this kind could give rise to xenophobia with which Belgium has so far been less afflicted than several other industrial nations."[29]

Another area where the home country has been brought into political and legal conflict with the host country by the activities of the multinational corporations is the anti-trust measures taken by the home and the host countries in an effort to limit the growth of monopolistic tendencies. In this regard the US anti-trust policies have witnessed a growth in which the reach of the anti-trust acts through judicial interpretation cover the parties and acts outside the territory of the US. This development has permitted US courts to assume and exercise jurisdiction even over corporations domiciled overseas.[30]

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29 Ibid., p. 106.

30 US, Tariff Commission Report, February 1973, pp. 59 and 827.

A package of 4 statutes has enabled the US Government to have this reach of extra-territoriality which has caused great resentment among many countries. These statutes are: (i) The Sherman Anti-Trust Act (1890); (ii) The Clayton Act (1914); (iii) The Federal Trade Commission Act (1914), and (iv) The Webb-Pomerene Act (1918). Of these four, the Sherman and the Clayton Acts have generated greatest amount of litigation and controversy. A detailed analysis of some of the decisions under these Acts will be attempted later, but it is necessary to state here that in the early stages of interpretation of the provisions of the Sherman Act, the US courts applied the tests of "the rule of reason" under which only unreasonable restraints of trade were held illegal and "of *per se* test" under which some acts such as price fixing were held automatically illegal. The "Rule of Reason" was formulated by the courts to temper down the explicit extra-territorial language of Section 1 of the Sherman Act which is as follows:

> Every contract, combination in the form of trust or otherwise, or conspiracy in respect of trade or commerce among several States or with foreign nations, is hereby declared to be illegal....

Section 2 of the Act makes it a crime:

> .... to monopolise or attempt to monopolise, or combine or conspire with any other person or persons, to monopolise any part of the trade or commerce among the several States, or with foreign nations....

The rule of reason was applied by the Supreme Court of the US in the Standard Oil Case of 1911.[31]

In the American Tobacco Co. case[32] Supreme Court held that the Sherman Act supplied only to common law restraints including contracts of combinations which operate to the prejudice of the public by unduly restricting competition or which either because of their interest nature or effect or because of the evident purpose of the acts, injuriously restrained trade.

However, there was a shift in the jurisdictional approach of the Court after the Second World War when the doctrine of "Effects" on US domestic commerce was formulated. This doctrine was first laid down in the case of U.S. vs National Lead Co.[33] in which the majority held that the Sherman Act could reach even foreign corporations if it affected American commerce. Effects on US commerce, rather than acts, found to be within the physical confines of US borders came to be the test of the anti-trust enactment. The extreme form of application of this docrrine is to be found in the case of U.S. vs Aluminium Co. of America[34] in which the court held that

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31 Standard Oil Co. (New Jersey) vs. U.S., 221 U.S.1, 31 Supreme Court 502 (1911).

32 U.S. vs. American Tobacco Co., 221 U.S. 106, 31 Supreme Court 632 (1911).

33 332 U.S. 319 (1947).

34 148.F.2(d) 416.

the State could impose its laws upon persons not within its boundaries for conduct outside its borders which had a consequence within these boundaries. An actual conflict between two jurisdictions arose in the anti-trust arena in the case of U.S. vs Imperial Chemical Industries Ltd.[35] and in this case the Federal Court (US) in the southern district of New York ordered Imperial Chemical Co. to retransfer British patents to Du Pont for licensing. The British court refused to carry out the order.[36] Thus an American court ordered an act on British soil which conflicted with the British law and the British court accordingly refused to extend comity to the American decree. It should be recorded here that attempts have been made to get round the rigours of these judicial interpretations by entering into bilateral treaties and by formulating rules in this regard vide Section 18 of the American Law Institute Restatement of the foreign relations law of the US.

The organization for economic co-operation and development have also recommended resolution of an international level of these anti-trust conflicts.

Next to the Anti-trust law, the Security and Exchange Commission Act, 1934 adopted with an amendment in 1964, have

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35 100 F.Supp 504 (SDNY 1951).
105 F.Supp.215 (SDNY 1951).

36 British Nylon Spinners vs. I.C.I. Ltd.
All.ER.780 (1952)
All.ER. 88 (1954).

also had an extra-territorial reach, creating conflicting jurisdiction. P.A. Bator in his speech in the 64th Annual Meeting of the American Society of International Law, 1970, summed up the position as follows:

> ....It is clear that under this amendment, a foreign corporation with no U.S. assets, with no activities in the U.S., with only a few U.S. shareholders (who, of course, could have acquired their shares in foreign market without the participation or even the knowledge of the foreign corporation) could theoretically be subjected to the reporting and proxy requirements of the 1934 Act and even to the punitive provisions.... 37

It must be stated here that US is not the only sinner in this regard. Even the European Community has followed US example. In the recent <u>Continental Can</u> case of December 1971, the Commission found[38] that the Continental Can Co. of New York had "abused" dominant market position (in food packing products) by its acquisition through its subsidiary of controlling interest in a Dutch firm. The British Government had occasion to protest in connection with a decision given by the Commission in the ICI case. In a note submitted to the Commission on 20 October 1969, the UK Government stated that though it did not wish to take issues about the merits, "the more fundamental point is that concerned the reach and extent of jurisdiction exercisable by the Commission <u>vis-a-vis</u> an

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37 Annual <u>Proceedings of American Society of International Law</u> (1970), p. 142.

38 US, <u>Tariff Commission Report</u>, 1973, p. 845.

undertaking which is neither incorporated in the territory of the Member-State of the E.E.C. nor carrying on business, nor resident thereon."[39]

To sum up, the jurisdictional conflicts of apparently a legal nature, but substantially a politico-economic one, have dragged the home country and the host countries into confrontation by the multinationals.

Economic Consequence - Home State

Of late, a concern has been voiced mainly in the US of the diverse economic impact of multinational corporate activities on the home country, resulting in tensions between the multinational corporations and home country. Four charges are generally made in this regard:

(a) The multinational corporation, by establishing industries abroad (runaway plants), have actually exported jobs and created unemployment in the home country.

(b) By having the options to open subsidiaries abroad, the bargaining power of the domestic labour is weakened.

(c) They are also responsible for deficits in the home country's balance of payments, resulting from capital outflows and reduction in the rate of increase in exports.

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39 British Practice in International Law (1967), p. 58.

(d) Export of technology abroad built up with American taxpayers' funds has tended to weaken the American economy.[40]

Export of Jobs

In a testimony before the Subcommittee on International Trade of the Senate Finance Committee in May 1971, AFL-CIO President, George Meany, stated:

> Operations by American companies obviously displace United States produced goods in both American markets and world markets. These companies export American technology--some of it developed through the expenditure of Government funds paid by American taxpayers. Their biggest export, of course, is United States jobs.
>
> These multinational firms can juggle the production of parts and finished products from one subsidiary in one country to another. A multinational corporation can produce components in widely separated plants in Korea, Taiwan, and the United States, assemble the product in Mexico and sell the product in the United States at a U.S. price tag and frequently with a U.S. brand name. Or the goods produced in the multinational plants in a foreign country are sold in foreign markets, thus taking away the U.S.-made goods.
>
> The multinational firms can juggle their bookkeeping and their prices and their taxes. Their export and import transactions are within the corporation, determined by the executives of the corporation--all for the benefit and profit of the corporation. This is not foreign trade. Surely it is not foreign competition.

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40 UN Doc. No. ST/ECA/190, pp. 58 and 59.

> The complex operations of multinationals--with the aid of Madison Avenue advertising--have utterly confused the picture of the national origin of products. For example, Ford's Pinto has been heralded as the U.S. answer to imported small cars. But the engines are imported from England and Germany, and the standard transmission are imported from Europe. 41

The same view was voiced by Nathaniel Goldfinger, Director, Department of Research, American Federation of Labour and Congress and Industrial Organization, (AFL-CIO), when he gave evidence[42] before the group of eminent persons to study the impact of multinational corporations.

Senator Hartke expressed the view that during 1960s more than half a million jobs were lost to US economy as a result of the parent firms investing abroad.[43]

The Tariff Commission 1973 which went into this question gave three estimates of what would have happened if multinationals had not gone abroad. After analysing the various figures in this context, it came to the conclusion that the net effect of employment varied from industry to industry.[44]

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41 US Senate, "The Multinational Corporation", Hearings Before the Subcommittee on International Trade, 1973, p. 397.

42 UN Doc. ST/ESA/15, pp. 43-52.

43 USIS Byliner, May 1972.

44 Summary of Tariff Commission's Report, p. 57.

<u>Balance of Payments/Trade</u>

As regards the impact on the US balance of trade, it has been admitted that a lion's share of short term liquid assets, estimated at about $ 268 billions at the end of 1961, was under the control of private persons in a private market "virtually uncontrolled by any sort of official jurisdiction, amounting to more than twice the total of all international reserves held in all central banks and international monetary institutions in the world and almost the bulk of it was held by the multinational corporations". Only "a small amount of the assets which it measures needs to move in order for a genuine financial crisis to develop".[45]

In fact, the monetary crisis resulting in the two devaluations of the US dollar in 1971 and 1973 was attributed partly to large scale speculation by multinational firms.[46] In fact, a special study has been entrusted to the Subcommittee on Multinational corporations of the Committee on Foreign Relations of the US Senate to assess the part played by the multinational corporations in the dollar devaluation crisis.[47]

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45 Ibid., p. 45.

46 Kindle Berger, Charles P. "The Dollar History, Today and Tomorrow" <u>Multinational Corporation, Trade and Dollar</u> (New York, 1974).

47 In a staff report submitted to the Subcommittee, it has been stated that a sharp increase of $ 1.1 billion or 20% in accounts receivable through their subsidiaries abroad was reported by the sample U.S. patent companies for the close of March 1973. This shift may have helped set the stage for the so-called third devaluation which peaked at the end of 1973. See US, Congress 94, Session 1.

Tax Loss

The home countries are also concerned about forgoing taxation of corporate profits earned (a) by operation of law which stipulate non-liability till repatriation, (b) by a process of invoice manipulation and returning of low tax revenue.

Summing up the economic and social effects of the activities of multinational corporations as represents the home country, the UN Document on Multinational Corporation says:

> ....taking into account all the considerations, the governments and social groups of the home country, especially the U.S., are increasingly concerned with the implications of the activities of the multinational corporations... the key issue is not whether home country should hamstring or do away with multinational corporations but how their behaviour may be influenced so as to correspond more closely to a set of enlightened national and international objectives.... 48

Host Countries : Political Effects

The part played by one of the biggest multinational corporations viz., the ITT, has already been referred to in Chapter I and has been brilliantly set out by Anthony Sampson in his book The Sovereign States - The Secret History of ITT,[49] which details the activities of ITT not only in Chile, but in other countries of Latin America.

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48 UN Doc. ST/ECA/190, p. 59.

49 Anthony Sampson, "The Spy Masters" The Sovereign State - The Secret History of ITT (London, 1974), Chap. II.

In December 1972 when Allende came to address the UN General Assembly in New York, he stated that "the ITT had driven its tentacles deep into my country and proposed to manage our political life. I accuse the ITT of attempts to bring about civil war." He attacked not only the ITT but other big corporations[50] which, he said, "had been cunningly and terrifyingly effective in preventing us from exercising our rights as a sovereign state."

The ITT was not a solitary exception. The multinationals' political interference in the internal affairs of sovereign states could be traced to the United Fruit Co. in Latin America, the direct political influence of Firestone since 1926 in Liberia, the detailed involvement of Belgian Union Minere in Congolese politics, Shell's participation in the operations of the Nigerian Government during the closing stages of Civil War with Biafra and other.[51] The British Petroleum's interference in Abu Dhabi, for instance, was summed up in the following words by Hugh Stephenson:

> One of the neatest examples of combined commercial and political involvement, culled from the marginalia of declining British imperialism, concerned Abu Dhabi, the oil Sheikhdom where British Petroleum and the Compagnie Francaise des Petroles have substantial interests. In 1960, Abu Dhabi did not feature on most maps. By 1970 it had the highest per capita income in the world. This economic revolution,

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50 Ibid., p. 235.

51 Stephenson, n. 24, p. 59.

> understandably created some social strains in a tribal oasis and fishing village; not least for Sheikh Shakhbut, who had ruled since 1928. In 1966, therefore, he was removed in a palace revolution that had the active prior connivance of the British Government, who were anxious to help discard this individual block to progress and to the increased material well-being of the local people. 52

The Fortune of August 1975 gives many instances where multinational firms have bribed their way into political favours of their host countries. For instance, Exxon contributed $ 27 million for Italian election fund and allowed the Italian subsidiary to give away $ 19 million more in dubious ways and condoned falsification of its record. The United Brand bribed a Honduras' Cabinet minister to cut a crushing Banana tax to half. Gulf made a Pay Off of $ 350,000 in Bohemia and also gave a helicopter worth $ 110,000 to the President of Bohemia who was ironically killed when the helicopter crashed. The Gulf, which was the biggest investor in South Korea (having put in $ 350 million into fertilizer and petro-chemical partnership with the South Korean Government), contributed $ 1 million to President P. Cheng Hee's political party. In 1970 the party's fund raiser Kim demanded $ 10 million more. Bob R. Dorsey, the chief executive of Gulf, haggled Kim down to $ 3 million which, according to Dorsey's calculation, was adequate to run the 1971 election in that small country.

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52 Ibid., pp. 59-60.

Even in India, allegations have been made about how foreign firms were functioning in India. Vidya Prakash Dutt made the following statement on 14 May 1975 in the Rajya Sabha:

> I should like to draw the attention of the Government...to a series of disquieting articles that have appeared in the "New York Times" about the functioning of the U.S. firms abroad. And I am not concerned with all other countries except my own. I should like to read what a very responsible journal has said about how they function in India. "Forty American companies--widely believed that many of them are liaison offices, who in turn probably deal with Indian officials--made donations to political parties, spend money to maintain lobbies inside the Government and in the Parliament and provide other inducements such as liquor supplies, entertainment in luxury hotels and hospitality outside India when officials travel abroad." Sir, this is a serious newspaper and obviously the information has come from the companies themselves because, in the case of other countries, even names have been mentioned of contacts, agents and so on so forth. Sir, this has to be read along with another article that appeared on the 11th May in the "New York Times" about the wide CIA use of US firms overseas. The list reads like a Who's Who of business and includes such diverse fields as petroleum, rubber products, heavy manufacturing, banking, consumer products, travel, advertising, publishing, public relations and the import and export trade....I think it is a serious matter and the Government should institute an inquiry into it and find out which political parties are receiving funds from the foreign companies, what are those lobbies that they have mentioned in Parliament and in Government offices, and what machinery is the Government going to establish to keep a tract of the hospitality the officials and others who go abroad receive.... I am also worried about what they have said about the political financing and the lobbies in Parliament. So, I do not know how much truth is there....

It is significant that this allegation made by an honourable member was not contradicted in the Rajya Sabha. That there might be some truth in the allegation is borne out by the report of the Joint Committee on the Foreign Contribution (Regulation) Bill, 1973, in which the committee specifically brought in the multinational corporations in the bill whose activities in the political arena were examined in greater detail at the time of the evidences taken by the committee. Kalyanrai Chandrappan and J. Rai, members of the committee, observed in this connection:

> The closest ally of the CIA is multi-national companies which use various means to corrupt and subvert the independence and territorial integrity and economy of the countries where they operate. With tremendous financial power at their command and their firm grip over raw materials and minerals and other resources of the Third World countries, they are continuously trying to maintain their hold through massive financial support to anti-democratic elements and have become States within States. Under cover of trade and business, they attempt to infiltrate into every layer of society and resort to every possible means including financial assistance to influence the politics of the countries where they operate. They are the biggest single menace to independence and democratic forms of government which are trying to delink themselves from the stranglehold of colonial economy. 53

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53 Joint Committee, Rajya Sabha Committee 1-15, "The Foreign Contribution (Regulation) Bill, 1973, p. 17.

A general fear still exists that CIA agents are working through the multinational corporations covertly under what are known as commercial cover agreements.[54]

It may well be asked whether it would not really injure the interests of the big multinational corporations, which require political stability as a foundation for their successful operation, if they, by these political subversions and interference, endanger the very stability they require. The answer is that these political interferences are (apart from those carried out under instructions of the home government) intended mainly to bolster up regimes or political parties which defend their interests when there is any attempted injury to such interests. It is only where such attempts fail, that exposures, such as those listed above, come to light. It is instructive in this context to see what Walter Goldstein says in his article "Multinational Corporation - A Challenge to Contemporary Socialism":[55]

> Parliamentary regimes, apolitical trade unions and social democrats are extremely apprehensive about applying sanctions against the MNC distributors of industrial wealth. First of all, their sanctions might be counter-productive. If popular protest should ever intensify and if restrictive legislation should be called for, the MNCs could either relocate their component production and R & D to another country; or they

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54 Times of India (New Delhi), 15 May 1975.

55 Ralph Miliband and John Saville, ed., The Socialist Register 1974 (London, 1974), pp. 293-4.

> could deflect their new investments and short-term funds to a more hospital business climate. This could be done in a rapid and covert manner. By borrowing short and lending long, or by utilizing "leads and lags" in intra-affiliate payments, the MNC can evade capital export controls and import restrictions. By channelling cash reserves through tax havens and the $100 billion Euro-market the MNC can utilize transfer pricing strategies that could knock any uni-national or nationalized competitor out of its key international markets.

He adds that if parliamentary regimes were to abuse the MNC "as poor corporate citizens, sharper criticism might be directed against <u>all</u> corporations, indigenous or foreign. Were this to occur, a collectivist drive to regulate oligopoly activity might gain popularity and the resentment generated by the MNC might be turned against other forms of corporate capitalism. At this point the MNCs would be tempted to cast the economy out of the pale of the free market world, as they did to the Allende regime, or they might engineer a counter-revolutionary change in order to protect their affiliates' local investments.

These conflict potentials are not marginal to or easily removed by the capitalist state. Nor are they likely to disappear with the passage of time. The political imperative to defend its economic autonomy and legal sovereignty is vital to any state, no matter how left or right-leaning its government might be. On the other hand, the huge investment power, the technology imports and the employment opportunities brought by the MNC cannot be under-estimated or

ignored. As the asymmetry increases between the power of the MNC and the state, the latter will perceive that it can no longer compete in specialized and demanding markets without the assistance and the willing compliance of the MNC.

Economic Effects

Regarding the economic effects on the host country, the protogonists of MNC participation in the development of host country economy, like G.L. Reuber, take the view that foreign direct investment through multinational corporation leads to (a) a net addition to investible resources in the host country which correspondingly raises the rate of growth; and (b) bringing in benefits of new technology, better management, superior marketing techniques and better export earnings with beneficial effects on the foreign exchange position.[56]

The representatives of some of the multinational corporations who appeared before the Group of Eminent Persons also took the same view.[57]

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56 Reuber, Private Foreign Investment in Less Developed Countries (Paris, 1974), pp. 115-44.

57 See evidence of Collado, Executive Vice President, Exxon Corporation (pp. 34-42); Gilbert John, President of IBM World Trade Corporation (pp. 65-73); Thomas Murphy, Vice Chairman, General Motors Corporation (pp. 79-89). (Summary of Hearings before the Group of Eminent Persons. UN Doc. ST/ESA/15).

On the other hand, several others, who are opposed to the entry of multinational corporations in the less developed countries, have strongly urged that the benefits claimed are only a myth and far remote from reality. Even if real, the phenomenon completely makes the host State dependent and subservient to the multinational corporation. This fear has been voiced in very strong terms by most of the Latin American countries. Osvaldo Sunkel in his article "Big Business and Dependencia" states as follows:

> ....The development strategy of industrialization as a substitute for imports was supposed to free the economy from its heavy reliance on primary imports, foreign capital and technology. It has not only failed to achieve these ends, but in fact has aggregated the facts and nature of dependencia.... 58

Describing the role of multinational corporation in Latin American countries and the economic effects of these corporations, Sunkel states:

> ... in the initial period from 1930 to around 1955 the strategy stimulated the growth of a significant manufacturing industry and of the corresponding national entrepreneurial class. But subsequently, industry was taken over to a large extent by foreign subsidiaries with the result that much of the benefit expected from industrialisation has gone abroad in payments for capital equipment and in transfer

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58 Foreign Affairs, 1971-72, p. 518.

> of profits, royalties and financial payments. This has effectively denationalised and eroded the local entrepreneurial class. Although massive penetration of foreign firms have accelerated the growth rates, especially industrial, it has also accentuated the uneven nature of development on the one hand and a process of modernisation and expansion of capital intensive activities on the other, a process of disruption, contraction, and disorganization of traditionally labour intensive activities....

In India, almost a similar complaint has been voiced by the Estimates Committee in its 50th Report to the Fourth Lok Sabha in regard to the operations of foreign oil companies in India. The Estimates Committee found out that the pattern of production cost of crude imports, and outflow of funds from India in foreign currency have all been against national interest. When the Suez Canal was closed, the foreign companies reduced the production of fuel oil against national interest. The Estimates Committee reported:

> 7.23 It is unfortunate that the foreign oil companies reduced the production of fuel oil following the closure of Suez Canal which, as has been admitted, has caused some difficulties in the country, especially in meeting the requirements of the International Bunkers. While the Committee appreciate the role of IOC which rose to the occasion in meeting the demand for fuel oil in the country, they feel that Government should not have allowed the oil companies to change their production pattern to suit their own business interests to the detriment of the Nations. The Committee recommended that Government should not hesitate to use their powers regarding determination of the production pattern of the oil companies in the larger public interests in future.

As regards remittance of profits, there were heavy remittances totalling Rs.319 crores over the five year period 1962-66 and the Committee observed that not even a detailed break-up of this amount was made available to it. However, the Committee noted that Burmah Shell Refineries alone remitted profits to the tune of Rs. 30 crores up to 1966 while their capital investment in India was stated to be only Rs.14.53 crores. Significantly, the Committee also observed that needed information regarding retained profits, and break-up of remittances had not been made available to the Government.

Commenting further, the Committee pointed out that there had been a heavy out-go on account of imports of not only crude but also Kerosene Oil, owing to the policies pursued by these oil companies which intended more on maximizing their profits than on serving national interest.

In April 1975, the report of the Committee on Drugs and Pharmaceutical Industry, familiarly known as Hathi Committee's Report, Ministry of Petroleum and Chemicals, Government of India, also pointed out the harmful activities of the multinational corporations in the most vital sector of relieving human suffering. The following observations of the Committee are apposite:

> ... pattern of production of domineering units in the private sector which consist predominantly of minor subsidiaries or their branches or their equity partners in India indicates

> that the primary objective of these units is trade-based, almost entirely in the economically preferable area of formulations from bulk drugs, largely imported from their principals rather than on production of bulk drug themselves.... 59
>
> ....It is not therefore surprising that for the past many years, foreign or foreign equity holding companies have objected governmental suggestions to enter the basic drug production in a big way... experience has shown that even when these units undertake the manufacture of bulk drugs, they tend to linger long at the very initial phase of manufacturing of bulk drugs from penultimate or near penultimate intermediaries imported often at high cost, essentially from their principals abroad.... 60
>
> ... the multinational units of the drugs and pharmaceutical industry have dominated in this country in the field of synthetic drugs and by far the largest component of their formulation activities lies in this area. Most of these multinational units, both in the small and large sector, have concentrated their activities on the products marketed by their overseas parent organisation and have almost completely cornered the Indian market for their respective products ... even where purely Indian units in the medium and small scale sectors produce equivalent formulations, they face the greatest difficulty in obtaining relevant bulk drugs from the multinationals.... 61

After India became independent, most of the leading multinational drug companies established themselves as trading concerns. Their initial investments were insignificant compared

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59 Hathi Committee's Report, Chap. III, p. 6.

60 Ibid., p. 15.

61 Ibid., para 58.

> to the turn-over. They started by importing the finished drug formulations and marketing them. Subsequently they imported the formulations in bulk and got them re-packed in this country. Under pressure from Government, as a next stage they imported the bulk drugs and got them processed into formulations on a job-work basis by Indian companies. All these activities were carried on without investing in factories or employing technical personnel. Thus the foreign companies could remit substantial profits and build up large reserves and assets within the country for subsequent use or investment.... 62

The present position has been summed up in paragraph 13 as follows:

> (1) About 70% of the total sales turn-over of the drugs in the country viz., Rs.370 crores belongs to foreign sector.
>
> (2) Twenty-seven years after independence, 10 firms with 100% foreign equity are operating in the country; six of these are engaged in the manufacture of pure drug formulation. There are six branches of foreign companies operating in India that are engaged in the manufacture of bulk drugs and/or formulations. A particular foreign company (M/s. C.E. Fulford) (63) has been operating even without securing an industrial licence or a c.o.b. licence.

The total outflow of foreign exchange towards payment of royalties, technical fees and dividends between 1969 and 1973 is Rs.26 crores. This figure does not include foreign

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62 Ibid., Chap. V, para 3.

63 Ibid., para 13.

exchange remittances implicit in purchase of bulk drugs, intermediates etc.

The United Kingdom had to face similar economic difficulties when Chrysler UK subsidy of US firm, awarded an 18% wage settlement to its workers at a moment when the Government was trying to discourage private sector industry from conceding high wage settlements.[64]

The French Minister of Industry said in this connection:

> ... indifference to the imperatives of the national order; creation of economic disequilibrium through concentration of foreign ownership in industries of the highest returns; over investment in equipment and resulting over-capacity; disturbance to the labour market; and deficits in the commercial balance of payments as the direct causes to the multinational corporations' operations....65

The activities of the big multinational corporations with their centrally controlled financial operations result in a broad movement of funds around the world, knocking the national economies in the course of such movements. Between January and March 1970, there was a massive inflow of $ 22 million into UK, of which a very substantial part related to inter-company accounts in the form of import credit from

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64 Stephenson, n. 24, p. 97.

65 Quoted in Behrman, n. 27, pp. 72-73.

foreign parent companies. A movement of $ 6 million[66] in MNC funds from New York to Frankfurht or Zuritch in early 1973 helped to spread inflation across the Atlantic, forcing Europe to pay for the last remaining costs of the war against Vietnam. As a result, unemployment began to increase, welfare and public sector expenditure were cut and tariff protections were raised.[67]

An executive of an international oil company did not exaggerate when he remarked: "...when I write a cheque, it is the bank that bounces...."[68]

It is argued that direct foreign investment has helped development in many poor countries and further helped them in getting export earnings. The following figures given in Table 42 of the UN Document on Multinational Corporations speak for themselves:

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66 Stephenson, n. 24, p. 129.

67 Miliband and John Saville, n. 55, p. 218.

68 Seminar, October 1974, p. 16.

Region	1965	1966	1967	1968	1969	1970
			(in million dollars)			
Africa: Total						
A. Inflow	182.2	163.7	241.5	201.6	235.5	270.7
B. Outflow	380.8	718.8	708.6	963.7	924.3	996.2
C. Balance	- 198.6	- 555.1	- 467.1	- 762.1	- 688.8	- 724.5
Asia & West Asia Total						
A. Inflow	436.9	271.2	185.0	159.0	189.5	200.1
B. Outflow	1367.4	1592.4	1744.2	1997.5	2138.5	2401.9
C. Balance	- 930.5	-1321.2	-1559.2	-1838.5	-1949.0	-2201.8
Western Hemisphere Total						
A. Inflow	723.3	780.5	647.5	1011.4	1088.6	1141.9
B. Outflow	1437.9	1752.7	1793.4	2021.4	2093.0	1943.7
C. Balance	- 714.6	- 972.2	-1145.9	-1010.0	-1004.4	- 801.8

Clearly the multinationals have taken out of these countries more money than what they have put in as capital investment.

Raymond Vernon also points out that direct foreign investment flow to less developed countries during 1960 came to less than $ 1 billion annually, an insignificant fraction

of gross capital formation.[69]

A study of 159 foreign companies operating in six developing countries (study made by Paul Streeten and S. Lall) revealed that the balance of payment benefit was in the negative in the case of 91% of the companies. In respect of India, of the 53 companies examined, 48 had negative impact on balance of payments. This is the result of (a) low inflow of capital, and (b) sizeable outflow on account of imports, royalties, dividends and other payments for overheads of Head Office expenses.

Transfer Pricing

Of the economic effects of the operation of multinationals the more serious are those brought about by what is known as transfer-pricing, a device adopted by these inter-corporate companies to evade taxation, increase foreign remittances and maximise earnings in strong currency areas. In fact this transfer-pricing is on such a vast scale that the world trade figures given in conventional statistics would even appear to be misleading. Transfer-pricing has been defined as:

> ... pricing of transactions both of commodities and intangibles such as technological services and brand names, between different branches of multinational corporations.... 70

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69 Raymond Vernon, Sovereignty At Bay (New York, 1971), p. 61.

70 S. Lall, "Transfer-Pricing and Multinational Corporations", Monthly Review, December 1974, p. 36.

The advantages with this form of transfer-pricing accruing to the multinational corporations are:

(a) It is a device to save taxes;

(b) It is a device to get around any ceiling on profit remittances prescribed by the host state;

(c) It enables the corporation to reduce its liabilities in the country whose currency is weakening;

(d) It enables them to beat down the labour union demand for high wages;

(e) Depresses, in case of joint ventures, the profits due to shareholders of the host country with corresponding increase of the profits of home country shareholders.

Correspondingly, the harmful effects to the host country on account of the transfer-pricing are:

(a) Loss of legitimate tax revenue;

(b) Loss of higher export earnings;

(c) Loss of profits and taxation thereon in regard to income of local shareholders and, where the Government is the shareholder, loss of profits due to it;

(d) Hastening the devaluation of a currency if there is a continued adverse balance of payment.

Usually, transfer pricing is resorted to by showing low profits where the income-tax is high and high profits where the income-tax is low. This is done by invoice manipulation of exports between two countries where the multinational

corporations' affiliates operate. If the import customs duty is high in one country and is based on ad valorem principle, under-invoicing of imports is resorted to and a corresponding adjustments are made while exporting the finished products. Further, where the profits are shown in a consolidated world balance sheet, the branch or affiliate accounts is loaded with ficticious charges, such as 'For Head Office Expenses, Administrative Overheads', which are not in fact incurred, or even if incurred, are not referable to the product sold in the host country. The Public Accounts Committee of India in its 176th report has brought to the notice of Parliament a case of transfer-pricing through loading it with H.O. expenses which amounted nearly to Rs.36.2 crores on one year alone, 1971-72.[71]

Another instance was also reported by the Public Accounts Committee in the case of International Business Machine (IBM), where as a sequel to the investigations, the IBM itself came forward with disclosure statement admitting that it had over-billed the Indian subsidiaries to the extent of Rs. U.S. dollars 450 thousands.[71A] lakhs. One of the reputed manufacturers of drugs and chemicals (Roche), a Swiss company, was found to have remitted through transfer pricing £ 24 million out of its real profits earned in UK during the period 1966 and 1972. The UK Monopoly Commission, after investigations, found that

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71 Report of PAC on "National and Grindlays Bank Ltd", Report 176, Lok Sabha 5, p. 16.

71A. Report of P.A.C. [1975-76: Fifth Lok Sabha] 187th Report [p. 50 para 3.30]

the parent company had asked the subsidiary in UK to prepare inflated invoices for the ingredients "Librium" and "Valium (tranquilizers)" at £ 407 and £ 1,014 per kg when the actual prices were £ 9 and £ 20 respectively.[72]

The same company, Roche, was also found by the Indian authorities to have charged Librium a landed price of Rs.13,246 per kg when the actual price, as found by the Drug Controller, was Rs.380 per kg. Similarly, Roche was importing Valium at a cost of Rs.27,890 per kg when the actual price, as found by the Drug Controller, was Rs.462 per kg.

The Tariff Commission set up by the US Senate made the following observation regarding transfer-price manipulation of multinational corporations:

> The chief strategy of tax minimization by multinational companies is manipulation of transfer prices. Subsidiaries can be instructed to set high prices on intra-corporate shipments to high-tax countries, and low prices on those to low-tax countries. Custom officials are not without recourse, when they suspect that transfer prices are unrealistic, and are rigged to give parent or subsidiary a special benefit. A five to ten percent or higher increment may be added to the invoiced price for customs valuation in intra-corporate purchases. The complexities of pricing as it relates to customs duties, taxation, earnings distribution, and employee compensation are exemplified by problems recently encountered by Ford of England. Auto components manufactured by the firm had no open market price but were exported to the United States and used in the manufacture and assembly of Pinto automobiles. Since there was no specific export price available,

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72 UK Monopoly Commission Report, HMS Office, 1973.

an administered price had to be constructed by Ford that was both satisfactory to U.S. customs for duty purposes, and satisfactory to the U.S. Internal Revenue Service for varifying the profits of the U.S. Ford Motor Company. The administratively determined price which Ford of England received for the components was a major factor affecting the profits of the subsidiary, the dividends to joint owners in England, corporation taxes to be paid in England, and wages to be paid to the firm's British employees.

The prevalence of administered or arbitrary intra-corporate pricing is a principal reason why multinational companies prefer 100% ownership of foreign subsidiaries. Minority stockholders of a subsidiary in a high-tax country like the U.K. for example, would be deprived of their fair share of total profits if shipments came in at prices which were set to minimise the world-wide tax liability of the U.S. parent corporation. Those minority stockholders might then have grounds to sue the parent company in a British or a U.S. court--nasty situation which the U.S. part obviously would rather avoid by having no local minority stockholders to please.

In countries like India which have been known to impose special excess-profits taxes on a single company, it has been possible for the parent company to buy the plant equipment for one price, transfer it to the subsidiary at, say, a 50% price premium on a 50:50 debt-equity basis, and remit some profit home in the guise of interest. Transfer-price manipulation can be used for purposes other than tax optimization. When a country prohibits remittance of dividends, the transfer prices can be raised and the dividends taken out that way. 73

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73 US, Tariff Commission, February 1973, pp. 133-5.

The heavy drain on the foreign exchange reserves of a host country is also brought about by multinational companies when they take out large parts of profits on account of technical fees, know-how, royalties for patents. Unfortunately, in the imitative craze to have western patterns of development, the developing countries do not even pause to consider (a) whether the particular technology and know-how is really required or needed in the country; (b) whether it is not indigenously available; (c) whether the price demanded is not too high, and (d) whether there has been a repetitive acquisition of the same technology.

An instance, where the Public Accounts Committee of India regarded as "unnecessary payment on account of technical know-how", is provided in the following paragraph extracted from 106th report relating to the National and Grindlays Bank. The issue related to the payment of more than Rs.120 lakhs by the National and Grindlays Bank to the First National City Bank.

> 9.16 The committee find that Rs.21.60 lakhs in 1969; Rs.38.35 lakhs in 1970; Rs.59.29 lakhs in 1971, Rs. 27.95 lakhs in 1972 have been paid by the National and Grindlays Bank to the First National City Bank under this agreement. Considering the fact that the services rendered by the First National City Bank related only to training programmes, operating practices, credit policy administration, development and expansion of the National and Grindlays Bank's office and business, the Committee, are not satisfied whether such

services can be treated as technical know-how. Banking practices and banking traditions have been long established in this country. It is also not clear whether the services rendered by the First National City Bank were in fact related to the Indian business of National and Grindlays Bank. The Bank has also not been in a position to furnish details to establish that this expenditure, was related to its Indian business. The Committee, therefore, desire that the agreement between the two banks should be examined in detail, in all its aspects immediately with a view to ensuring that this has not been resorted to as a means of evading tax. Such an examination is, in the opinion of the Committee, important in view of the substantial financial interest of the First National City Bank in the affairs of the National and Grindlays Bank. In case it is found after the proposed examination that the agreement is only a 'facade' to facilitate tax evasion, appropriate action should be taken against both the banks.

Technology and Skills

As regards technology and skills the general impression created is that the multinational corporations have a package of technological, managerial and other skills, such as marketing and advertising, which they introduce into the host country and thereby enable the host country to develop these skills. The first problem here is whether the technology that is transferred or hired is the right technology suited to the needs and requirements of the host country. It has been shown in the preceding paragraph that the multinational corporations do not undertake any major innovative

research in the host countries.[74] The UN Document on "Multinational Corporations in World Development" notes that multinational corporations generally do not undertake major innovative research feasibility prospects of a substantial market unless they are subsidized and, although a large part of commercialized technology is in the hands of multinationals, the basic knowledge often originates in Government financed research and training centres. Secondly the R&D expenditure undertaken by such corporations are centered in the hands of a few firms. In 1964, in the US, of more than 2,000 firms which reported R&D activities, 28 accounted for about 63% of the total. And these R&D being centered in the home country by the parent corporation, the host country has to pay a high price for hiring this technology under the licensing procedure. This is well illustrated by the fact that payment by the developing countries for patents, licenses, know-how and trademarks etc. amounts to 7% of their combined exports and the total cost for such payments for 13 developing countries, representing 65% of the world population, is estimated at $ 1.5 billion, which amounts to more than half of the flow of direct foreign private investment to developing countries.[75]

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74 Vide observations extracted from "Hathi Committee Report".

75 UN Doc. ST/ECA/190, pp. 49-50.

It has been admitted that the technology that is transferred to the host country is not the first line technology. The US Tariff Commission states:

> ....There are grounds for an inference that, as a matter of strategy, the multinational corporations do not, on balance, export their first line technology either to their own affiliates or to un-related foreigners. Rather, this first line technology tends to be retained in plants at home to generate new exports and compete effectively with imports in the same class.... 76

The Hathi Committee in India has noted as follows:

> ... in regard to research, barring a few, other multinational corporations have been taking the line that basic innovational research for new drugs involving coordination between multi-disciplinary teams of scientific workers requires giant outlays and top grade research scientists. According to them, research should be centered in the parent organization functioning abroad rather than be dissipated in many countries.... Foreign firms are not interested in the research on drugs or tropical diseases as a global demand for such drugs, in their view, will not be sufficiently economical....77

Labour

The consequences as regards the labour relations in the host country on account of capital intensive operations of multinational corporations also poses challenge to national sovereignty. By shifting its production plans to suit global

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76 US, Tariff Commission Report, Congress 93, Session 1.

77 Hathi Committee Report, Chap. V, p. 13.

strategy of the multinational corporation, sudden unemployment problems might be created and this would create problems to the nation-State. This was illustrated[78] when negotiations took place between the subsidiary of International Nickel, a Canadian corporation at Swansea in Wales, and the workers represented by the British Transport and General Workers Union. In the middle of the negotiation, there was a strike in Canada and the company broke off negotiations and the production in Wales was shut down. The company was able to sit it out because of its economic strength. The labour had to yield. In early 1971, Henry Ford threatened British industry manufacturing Ford motors that he would shut down the plant and shift it if there was a strike.

When the multinational corporations have an integrated world-wide economic system, the labour union being divided nation-wise, are not in a position to challenge the gigantic bargaining power possessed by the global corporations. Further different levels of wages and skills and high technology and development process adopted by multinational corporations weaken the labour position in the host country and they in turn resort to strikes, involving local host governments. The host governments in such a situation is hopeless beause if the host government seeks to interfere, the multinational will show its displeasure by moving the industry from the

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78 Stephenson, n. 24, p. 158.

country to another country. The weakening of the labour position has been forcefully brought by a resolution of the General Conference of the International Labour Organization at its 56th Session.

Lastly, the impact of multinational corporation in social and cultural environment of the host country has also to be taken note of because it creates new loyalties and a new elite with an extra-territorial allegiance as the corporation's citizens rather than of the nation citizens.

Raymond Vernon has pointed out in his book Sovereignty at Bay that presence of foreign investment in any local economy helps to boost up the strength of certain local groups and push down others. The new foreign companies coming on the scene offering new salary structures and expenses accounts for a particular style of living, the real strength of various elite groups have predictably changed. This has happened in Latin America and is happening in other Asian countries. It is not without significance that elite groups in most of the countries, where foreign multinational corporation has taken roots, are saying that foreign investment is good thing and helpful to them and helpful to the country concerned and thus these companies develop a state of loyalty which draws them closer to the company than to the country. When during the Second World War, Paris was invaded by Nazi army, a German climbed out of a tank which was thundering its way through

the street leading to the fort of Champs Elyoes saluted the French who was the local manager of National Cash Register and introducing himself as the Manager of National Cash Register of the Berlin office offered to extend any service the Frenchman needed. Therefore, loyalty to the company has overtaken even the fact that these two countries were on war.[79]

The UN Document on "Multinational Corporations in World Development"[80] sums up the whole issue as follows:

> The ostentatious living styles of foreign personnel as compared with those of domestic employees are a source of both of envy and resentment. Styles of management directed towards efficiency but insensitive to local cultural values may appear to people in the host country as arrogant and dehumanizing. Even the local people who receive a good technical training through working with the multinational corporations may be regarded as unduly influenced by alien values. Although these reactions may change with the change in attitudes on both sides, the intensity of the feelings that have been aroused should not be under-estimated.

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79 The Escaping Corporation by Edward A. McCreaz, "International Business" (New Jersey, 1972).

80 UN Doc. ST/ECA/190.

CHAPTER V

CHAPTER V

CONCLUSIONS

The conclusion that emerges from the facts detailed in the preceding pages is that multinational corporations are the off-shoots of the Technological Revolution of the twentieth century in the same manner as the joint stock company was devised in the eighteenth century to harness the fruits of the Industrial Revolution. These multinationals have acquired control and command over the resources needed for world economic development. They thus possess a power of economic domination over the States to which their activities spread. In a world of uneven development, where a majority of countries, with more than two-thirds of the world population, are poor and under-developed, misery and poverty stalking across their lands, a sad scramble for development, resources among these has enabled the multinational corporations to go into the less developed countries with capital and second rate technology, weakening in effect the economy of these countries, and even draining their capacity to plan for themselves. National plans, national objectives, and national interests are of no concern to these multinationals. If any nation-state tries to come in the way of their operations by regulatory controls or by total or partial nationalization, the multinational corporation shows its displeasure by moving out

to another country, thereby unsettling the economic structure of the host country. The result, therefore, is more often than not that these multinationals are in a position to dictate to the nation State and, as Tinberg remarks, these commercial combines have "to a large extent wrested the substance of the sovereignty from the so called sovereign state".[1] We have also seen how political destabilization has also been practised wherever it is in the interest of the multinationals to do so for perpetuation of their dominance.

To meet the challenge, retaliatory action has come from several quarters but all of them have not been successful. For example, Mexico expropriated alien property in 1917, followed by a declaration that no rule of international law required the payment of compensation where expropriation was of general and impersonal character affecting the property of the citizens and alien alike. Schwarzenberger in Chapter 7 of his book Foreign Investment and International Law,[2] gives several cases of challenges to the activities of alien multinational companies from Argentina, Burma, Ceylon, India, Indonesia, Iraq, El Salvador, Somali Republic, Tanzania, UAR, Venezuela and S Zambia. In the international field, the doctrine of self-

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1 Tinberg, "International Combines and National Sovereigns", Law Review (Pennsylvania, Pa), no. 587 (1947), p. 95.

2 George Schwarzenberger, Foreign Investment and International Law (London, 1969).

determination was invoked by the less developed countries in 1955 when, against the opposition of the Western States, the General Assembly adopted a resolution for inclusion in Part I of the Draft of Convention of Human Rights. In several[3] UN resolutions emphasis was repeatedly laid on the rights of states over their national resources and to adopt the economic and social system which they deemed most favourable for their development and their permanent sovereignty. The General Assembly passed Resolution No. 3281 (XXIX), declaring a Charter of Economic Rights and Duties of States, in which Article 2 gave a clear mandate to transnational corporations against interference in the internal affairs of a host state. But these pious resolutions, though valuable in forming a body of international legal norms, may not be of any assistance unless there are effective means for their enforcement. This unfortunately is not the position. The multinational corporations today operate in a field free from international regulation and in what may be termed as "no-law land".]

Traditional international law confined itself to the nation States, to problems of war and peace, aggression and collective defence. The indirect challenge to national sovereignty, as Wolfgang Friedmann calls it in his <u>The Changing</u>

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3 GAR:1803 (XVII), 14 December 1962; 2159 (XXI) 25 November 1966; 2386 (XXII) 18 November 1968; 2625 (XXV) 24 October 1970; 2692 (XXV) 11 December 1970; and 3016 (XXVI) 28 December 1972; and Security Council Res. 330 (1973), 21 March 1973.

Structure of International Law, through destabilizing the economies of the nation State, has yet to find recognition for appropriate treatment in international law. Attempts hitherto made to bring the transnational companies within the jurisdiction of international law have been in respect of protection of the property of these foreign companies, settlement and disputes arising from expropriation or nationalization, and the amount of compensation payable. /Thus the Abs Shaw Cross Draft Convention (April 1959); IBRD Draft Convention (1966); and the OECD Draft Convention (1967) - all related to protection of foreign property. The problem, it is submitted, of eliminating tensions and conflicts among the nations where these corporations operate and ways to resolve these tensions and conflicts have not so far been examined in all its aspects. The Group of Eminent persons, in their Report submitted to the United Nations,[4] have made several recommendations for national and international action for controlling the acitivities of these corporations. One of the essential recommendations in this regard is the setting up of a commission on multinational corporations to function under the Economic and Social Council of the United Nations, to assist the Council for evolving a Code of Conduct for Governments and multinational corporations, and to explore the possibility of concluding a general agreement on multinational corporations enforceable by an appropriate

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4 UN Doc. ST/ESA/6.

machinery to be set up under an international treaty. A second recommendation relates to setting up of an Information and Research Centre to collect and analyse and disseminate information regarding multinational corporation's activities and help to develop a model investment code and model tax agreement. The Commission, as suggested by the Group, has started functioning under the Economic and Social Council and is now holding its second meeting in Lima for considering the question of a code of conduct for the multinational corporations. The question that is being debated there is whether this code of conduct should be obligatory or voluntary. In this connection, the International Chamber of Commerce has also come forward with a "Voluntary Code of Conduct" which, it believes, would answer the problems posed by the multinational corporations.[5] The Non-aligned nations also, in their recent Lima Conference (August 1975), set up a Working Group for drawing up a code of conduct. The Latin American countries have already drawn up a pact known as the Andean Pact to deal with problems arising from the domination of their economies by multinational enterprises.[6] National legislations have been enacted in Yugoslavia, Nigeria, Ghana, Mexico and India, regulating the entry and the operation of multinational corporations.

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5 Guidelines for International Investment summarized on pp. 289-7, UN Doc. STE/EA/15.

6 International Legal Materials, vol. 8 (1969), p. 910.

The multiplicity of unrelated action to contain the activities of the multinational corporation would, it is submitted, be ineffective unless the problem is tackled realistically by the developing nations in Asia, Africa and Latin America which today are the chief victims of the multinational enterprises exploitation. Most of the harmful effects arising from the operation of the multinationals could be traced to the competition among the developing nations to attract the capital and technology of these international combines. This competition manifests itself in offering import incentives, subsidies, concessional tax treatment, facilities for repatriation of profits, technical fees and fees for know-how and exemptions given to technicians from abroad to come and operate multinational enterprises within these countries. If the developing countries can adopt a uniform policy in this regard, harmonize their approach towards foreign investment and control in regard to these matters, there will be very little scope for the multinationals to juggle economies of these countries by shifting capital and many acting operations from one country to another, or gaining from transfer prices and draining the local economy by huge foreign remittances. The Andian pact attempts such a solution. But lack of co-ordination among the States which are parties to it has not yet made it fully effective. It is high time that pacts similar to this are entered into by the various

regional groups of nations in Asia and Africa, and made effective use of.

Simultaneously with regional harmonization, there should be serious attempts at international level for considering the question of internationalism these corporations by providing for a convention under which corporations, operating on a global scale in extractive and manufacturing industries and in industries involving heavy capital outlay or sophisticated technology, can be chartered and set up only under international regulation to be administered by an international machinery supervized by the Economic and Social Council. In such a situation there will be no home State and host State conflict since the corporation will have no nationality, no seat, domicile, or residence in the municipal law. The details in this regard must be examined in great depth which would require a wider review of the subject with reference to national jurisdictions and international law.

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ANNEXURE I

ANNEXURE I

SELECTED DEFINITIONS

Multinational Corporation

"A multinational company is any firm which performs its main operations, either manufacture or the provision of service, in at least two countries."[a]

"The concept of the international or multinational producing enterprise (MPE) ... [is defined] simply as an enterprise which owns or controls producing facilities (i.e. factories, mines, oil refineries, distribution outlets, offices etc.) in more than one country."[b]

A "multinational enterprise" is "a parent company that controls a large cluster of corporations of various nationalities. The corporations that make up each cluster appear to have access to a common pool of human and financial resources and seem responsive to elements of a common strategy. Size is important as well; a cluster of this sort with less than $100 million in sales rarely merits much attention. Moreover, the nature of the group's activities outside its home country is relevant; mere exporters, even exporters with

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(a) Michael Z. Brooke, and H. Lee Rimmers, The Strategy of Multinational Enterprise : Organization and Finance (London, 1970), p. 5.

(b) John H. Dunning, ed., The Multinational Enterprise (London, 1971), p. 16.

well-established sales subsidiaries abroad, are unlikely to draw much attention, and mere licensers of technology as just as rarely mentioned. Finally, the enterprises involved generally have a certain amount of geographical spread; a parent with a stake in only a country or two outside its home base is not often found on the list [of multinational enterprises]."[c]

In "multinational firms", "international interest and expertise are located throughout the firm, but top corporate managers are still home country nationals and initially lack international experience and expertise. There is, nonetheless, an effort to make decisions less nationally biased. Associated foreign firms are increasingly managed by local managers, and a loss of control is experienced by headquarters, particularly if local equity participation is permitted. As the firm grows locally, political pressures develop to compel greater control and, hence, subsidiary autonomy. But over time, with the growth of international competence in corporate headquarters, the advantages inherent in world-wide integration are seen and the decentralization policy is reversed. This reversal causes instability within the firm; either the firm becomes transnational or it is forced back to a decentralized system."[d]

(c) Raymond Vernon, Sovereignty at Bay (New York, 1971), p. 4.

(d) Richard D. Robinson, "Beyond the Multinational Corporation" (unpublished manuscript, 1973), p. 27.

"The multinational enterprise will be defined as the embodiment of foreign direct investment by a single business enterprise which straddles several economies (a minimum of four or five) and divides its global activities between different countries with a view to realizing over-all corporate objectives."[e]

A "multinational enterprise" can have orientations which "may be described as ethnocentric (or home country oriented) polycentric (or host country oriented) and geocentric (or world oriented). While they never appear in pure form they are clearly distinguishable."[f]

"The first criterion /for a multinational company/ is that it should operate in many countries. The second one is that it should carry on research and development and manufacturing in those countries - so that it contributes to the GNP of the foreign country in which it operates. The third one is that management must be multinational. And the fourth one is that the stock ownership must be multinationa."[g]

"The multinational enterprise is not acting like an agglomeration of domestic companies, loosely held by equity

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(e) Government of Canada, Foreign Direct Investment in Canada (Ottawa, 1972), p. 51.

(f) Howard V. Perlmutter, "The Tortuous Evolution of the Multinational Corporation", Columbia Journal of World Business, vol. 4, 1969, p. 11.

(g) Jacques Maisonrouge, "Proceedings of the Conference on the Multinational Corporation in the State Department", Washington, D.C., Department of State, 14 February 1969. Mimeograph, pp. 17-18.

shares, but like a closely-controlled single enterprise, located in markets separated by national boundaries and operating under several national governments. Its essential feature is "unity in diversity"."[h]

"Multinational corporations (MNC) - The worldwide organizations consisting of the U.S. reporters, on a fully consolidated domestic enterprise basis, and all their foreign affiliates.... Foreign affiliate - Any direct investment entity abroad, no matter what its legal form (corporation, branch, partnership, sole proprietorship, joint venture, etc.) owned by a United States person."[i]

International Corporation

In "international firms", "interest and expertise are in an international division, but with functional expertise remaining in the domestic divisions and domestically-oriented staff departments. Decisions are less biased in terms of the type of foreign market entry strategy that will be considered, but are still heavily biased nationally. Highly centralized control is maintained and key positions overseas are filled with home country nationals."[j]

(h) J.N. Behrman, Some Patterns in the Rise of the Multinational Enterprise (Chapel Hill, 1969), p. 62.

(i) United States Department of Commerce, Special Survey of United States Multinational Companies, 1970 (Springfield, 1972), pp. 15-16.

(j) Richard D. Robinson, op. cit., p. 27.

"A national corporation operating extra-nationality, insisting on the primacy of the methods it uses at home, and even of the laws of the home country."[k]

"The national firm with foreign operations knows where it belongs. First and foremost it is a citizen of a particular country. Foreign operations are small in the total volume of things. There may be an international division, rather than foreign operations in every division. The company is not speculating when it holds the currency of the nation claiming sovereignty over the parent corporation. Assuming it is an American corporation, its securities are issued in dollars, and its accounts kept in that currency. It may have substantial foreign ownership interests, but it feels at home only in one country, and substantially alien everywhere else."[l]

"An international company ... /is/ a large (domestic) corporation which has a substantial overseas investment in operating subsidiaries or affiliates - sometimes including licensees. A sizeable export volume out of total sales would _not_ indicate that a company was 'international'. Nor does _size_ make a company 'international'."[m]

(k) Task Force on the Structure of Canadian Industry, _Foreign Ownership and the Structure of Canadian Industry_ (Ottawa, 1968), p. 33.

(l) Charles P. Kindleberger, _American Business Abroad_ (New Haven, 1969), p. 180.

(m) J.N. Behrman, "Multinational Corporations, Transnational Interests and National Sovereignty", _Columbia Journal of World Business_, vol. 4 (March, 1969), p. 2.

"An 'international company' may be defined as one, with foreign content of 25 per cent or more; 'foreign content' is defined as the proportion of sales, investment, production or employment abroad."[n]

"The international corporation has no country to which it owes more loyalty than any other, nor any country where it feels completely at home. It equalizes the returns on its invested capital in every country, after adjustment for risk."[o]

<u>Transnational Corporation</u>

In "transnational firms", "which are owned and managed multinationally, decision-making is centralized but free of national bias except as legally imposed. The firm loses loyalty to a single nation. Growth is hence unimpeded by non-economic considerations except those legally imposed."[p]

"An internationally owned and/or (financially) controlled enterprise [is a firm] the capital of which is owned or controlled by economic agents of more than one nationality."[q]

(n) Sidney E.Rolfe, "The International Corporation in Perspective" in Sidney E.Rolfe and Walter Damm, eds., <u>The Multinational Corporation in the World Economy</u> (New York, 1970), p. 17.

(o) Kindleberger, <u>op. cit</u>., p. 182.

(p) Robinson, <u>op. cit</u>., p. 27.

(q) Dunning, <u>op. cit</u>., p. 17.

"Multinational corporations see the world as their oyster and judge their performance on a world-wide basis. They look to their global market position."[r]

Supranational Firms

In "supranational firms", "decision-making is free structurally, psychologically and legally to allocate resources on a global basis in conformance with corporate goals insofar as they do not conflict with the international political regime controlling the corporation."[s]

Global Corporation

A corporation "may be global, with such pervasive operations that it is beyond the effective reach of the national policies of any country and, in the absence of supranational policy, free to some extend to make decisions in the interest of corporate efficiency alone."[t]

Cosmocorp

"... world corporations [which] should become quite

(r) S. Hymer and R. Rowthorn, "Multinational Corporations and International Oligopoly" in C.P. Kindleberger, ed., The International Corporation (Cambridge, 1970), p. 58.

(s) Robinson, op. cit., p. 27.

(t) Task Force, on the Structure of Canadian Industry, op. cit., p. 33.

literally citizens of the world. What this implies is the establishment by treaty of an international companies law, administered by a supranational body, including representatives drawn from various countries, who would not only exercise normal domiciliary supervision but would also enforce antimonopoly laws and administer guarantees with regard to uncompensated expropriation."[u]

(u) George W. Ball, "Cosmocorp : The Importance of Being Stateless", in Courtney C. Brown, ed., World Business (New York, 1970), p. 337.

Source: Department of Economic and Social Affairs, Multinational Corporations in World Development (New York, 1973), Annex II, pp. 118-21; also UN Doc. ST/ECA/190.

ANNEXURE II

ANNEXURE II

FIGURES OF 50 LARGEST INDUSTRIAL COMPANIES OF THE WORLD BY SALES

Rank	Company	Headquarters	Sales ($000)	Net Income ($000)
1	2	3	4	5
1	Exxon	New York	42,061,336	13,142,192
2	Royal Dutch Shell Group	London/ The Hague	33,037,116	2,715,242
3	General Motors	Detroit	31,549,546	950,069
4	Ford Motors	Dearborn, Mich	23,620,600	360,900
5	Texaco	New York	23,255,497	1,586,441
6	Mobil Oil	New York	18,929,033	1,047,446
7	British Petroleum	London	18,269,240	1,140,117
8	Standard Oil of California	San Francisco	17,191,186	970,018
9	National Iranian Oil	Tehran	16,802,000	N.A.
10	Gulf Oil	Pittsburgh	16,458,000	1,065,000
11	Unilever	London	13,666,667	362,807
12	General Electric	Fairfield, Conn.	13,413,100	609,100
13	I.B.M.	Armonk, N.Y.	12,675,292	1,837,639
14	International Tel & Tel	New York	11,154,401	451,070
15	Chrysler	Highland Park, Mich	10,971,416	(52,094)
16	Philips Gloeilampen Fabrieken	Eindhoven (Netherlands)	9,422,336	273,493

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1	2	3	4	5
17	U.S. Steel	Pittsburgh	9,186,403	634,585
18	Standard Oil (Ind.)	Chicago	9,085,415	970,266
19	Cie Fransaise Des Petroles	Paris	8,908,563	294,457
20	Nippon Steel	Tokyo	8,843,550	113,099
21	August Thyssen-Hutte	Duisburg (Germany)	8,664,021	130,025
22	Basf	Ludwigshafen on Rhine	8,497,038	201,026
23	Hoest	Frankfurt on Main	7,821,054	205,196
24	Shell Oil	Houston	7,633,455	620,539
25	Western Electric	New York	7,381,728	310,633
26	ENI	Rome	7,172,831	(91,256)
27	Continental Oil	Stanford, Conn	7,041,423	327,609
28	ICI (Imperial Chemical Industries)	London	6,911,813	567,953
29	El Du Pont De Nemoors	Willington, Del	6,910,100	403,500
30	Atlantic Richfield	Los Angeles	6,739,682	474,600
31	Siemens	Munich	6,701,681	189,149
32	Volkswagen Work	Wolfsburg (Germany)	6,568,717	(312,585)
33	Westing House Elec	Pittsburgh	6,466,112	28,132
34	Bayer	Leverkusen (Germany)	6,300,940	189,388
35	Daimler-Benz	Stuttgart	6,288,668	100,496

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1	2	3	4	5
36	Montedison	Milan	6,189,753	173,602
37	Hitachi	Tokyo	6,188,309	120,197
38	Toyota Motor	Toyoda City (Japan)	5,948,335	99,997
39	ELF Group	Paris	5,900,381	238,229
40	Occidental Petroleum	Los Angeles	5,719,369	280,677
41	Mitsubishi Heavy Industries	Tokyo	5,664,799	50,134
42	Nestle	Vevey (Switzerland)	5,603,155	250,093
43	Bethlehem Steel	Bethlehem, Pa	5,380,963	342,034
44	Renault	Boulougne-Billan Court (France)	5,341,739	7,261
45	British Steel	London	5,340,909	170,455
46	Union Carbide	New York	5,320,123	530,058
47	Good Year Tyre & Rubber	Arkon, Ohio	5,256,247	157,461
48	British-American Tobacco	London	5,152,363	275,735
49	Tinneco	Houston	5,001,474	321,468
50	Petrobra's (Petroleo Brasileiro)	Rio De Janeiro	4,989,740	540,598
	Total	...	538,592,669	25,373,524

Source: Fortune, August 1975, p. 163.

ANNEXURE III

ANNEXURE III

GNP AT THE MARKET RATES OF SOME OF THE MAJOR STATES IN ASIA, AFRICA AND EUROPE

	Population (millions)	GNP (US$000 millions)	GNP per capita (US $)
Developing Countries	1,845	509	280
Petroleum Exporters	275	73	270
Higher Income	356	263	740
Middle Income	272	72	260
Lower Income	942	101	110
Industrial Countries	662	2,247	3,670
Centrally Planned Economies	1,187	686	580

	GNP per capita (US $)	GNP (US$000 millions)	Population (millions)
North America	5,480	1,265	231
Japan	2,320	248	107
Oceania	2,290	48	21
Europe, excluding USSR	2,190	1,104	504
USSR	1,530	378	247
Central and South America	660	194	296
Africa	240	89	377
Asia*, including Middle East, but excluding Japan	170	326	1,965

* ASIA: Population (mid-1972), GNP at Market Prices (1972), GNP Per Capita (1972); and Average Annual Growth Rates (1960-1972) and 1965-1972).

GNP at Market Prices

No.	Country	Population (ooo)	Amount(US $ millions)	Per capita (US $)
1	China, People's Republic of	786,440	133,700	170
2	India	563,490	61,940	110
3	Bangladesh	72,500	4,750	70
4	Pakistan	66,720	8,800	130
5	Philippines	39,040	8,620	220
6	Thailand	38,498	8,340	220
7	Korea, Republic of	32,360	9,880	310
8	Iran	31,169	15,220	490
9	Burma	28,874	2,580	90
10	Afghanistan	14,878	1,220	80
11	Korea, Dem. Rep. of,	14,680	4,730	320
12	Sri Lanka	13,198	1,390	110
13	Nepal	11,470	950	80
14	Malaysia	11,450	4,930	430
15	Yemen Arab Republic	6,060	550	90
16	Laos	3,110	400	130
17	Israel	3,080	8,050	2,610
18	Lebanon	2,891	2,030	700
19	United Arab Emirates	257	830	3,220

AFRICA GNP at Market Prices

No.	Country	Population (000)	Amount (US $ millions)	Per Capita (US $)
1	2	3	4	5
1	Nigeria	69,524	9,350	130
2	Egypt, Arab Rep.of,	34,840	8,340	240
3	Ethiopia	25,930	2,140	80
4	South Africa	23,650	20,050	850
5	Zaire	19,091	1,920	100
6	Morocco	15,840	4,260	270
7	Algeria	14,260	6,120	430
8	Tanzania	13,606	1,580	120
9	Kenya	12,070	2,050	170
10	Uganda	10,479	1,560	150
11	Ghana	9,086	2,700	300
12	Mozambique	7,962	2,400	300
13	Rhodesia	5,690	1,920	340
14	Tunisia	5,340	2,040	380
15	Malawi	4,711	460	100
16	Niger	4,250	400	90
17	Somalia	2,964	240	80

EUROPE

GNP at Market Prices

No.	Country	Population (000)	Amount (US $ millions)	Per Capita (US $)
1	USSR	247,460	377,700	1,530
2	Germany, Fed.Red.of,	61,670	208,970	3,390
3	United Kingdom	55,800	144,900	2,600
4	Italy	54,350	106,660	1,960
5	France	51,720	187,360	3,620
6	Turkey	37,010	13,650	370
7	Spain	34,369	41,470	1,210
8	Poland	33,068	49,640	1,500
9	Yugoslavia	20,772	16,790	810
10	German Dem. Rep.	17,043	35,740	2,100
11	Czechoslovakia	14,481	31,580	2,180
12	The Netherlands	13,330	37,910	2,840
13	Portugal	9,803	7,610	780
14	Belgium	9,710	31,200	3,210
15	Greece	8,940	13,020	1,460
16	Bulgaria	8,579	12,190	1,420
17	Sweden	8,120	36,350	4,480
18	Austria	7,490	18,000	2,410
19	Switzerland	6,280	24,720	3,940
20	Denmark	4,990	18,330	3,670
21	Luxembourg	350	1,120	3,190

GNP at Market Prices

No.	Country	Population (000)	Amount (US $ millions)	Per Capita (US $)
NORTH AND CENTRAL AMERICA				
1	United States	208,840	1,167,420	5,590
2	Mexico	54,152	40,340	750
3	Canada	21,850	97,080	4,440
4	Cuba	8,750	3,970	450
5	Guatemala	5,623	2,340	420
6	Haiti	4,377	560	130
7	El Salvador	3,665	1,250	340
8	Puerto Rice	2,860	5,860	2,050
9	Jamaica	1,931	1,560	810
10	Panama	1,524	1,340	630
11	Trinidad and Tobago	1,048	1,020	970
SOUTH AMERICA				
1	Brazil	98,203	52,010	530
2	Argentina	23,946	30,970	1,290
3	Colombia	23,039	9,270	400
4	Peru	14,122	7,380	520
5	Venezuela	11,108	13,820	1,240
OCEANIA AND INDONESIA				
1	New Zealand	2,900	7,420	2,560

Source: World Book Atlas, 1974.

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