The United Nations and transnational corporations: a review and a perspective*

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The UN and Transnational Corporations: From Code of Conduct to Global Compact

Tagi Sagafi-Nejad, in collaboration with John H. Dunning

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1. Introduction

The volume, *The UN and Transnational Corporations: From Code of Conduct to Global Compact*, by Tagi Sagafi-Nejad (in collaboration with John H. Dunning), originates in an extraordinarily important endeavour – the creation of an intellectual history of the role of the United Nations in helping to shape global governance in the second half of the twentieth century and the beginning of the current millennium. The work of the United Nations can be divided into two broad categories: promoting economic and social development, and enhancing regional and international security. Within the former sphere, this book presents the record of the United Nations Commission on Transnational Corporations, the United Nations Centre on Transnational Corporations (UNCTC), and the ultimate shift of TNC-related activities within the United Nations system from New York to United Nations Conference on Trade and Development (UNCTAD) in Geneva.

This study celebrates – but, as I shall argue below, significantly understates! – the importance of these TNC-related endeavours at the United Nations, and the individuals who led them, staffed them and advised them, in shaping our understanding of the relationship between foreign direct investment (FDI) and broad-based sustainable development.

* The author would like to dedicate this article to the memory of Edward M. "Monty" Graham, tireless participant in the debates chronicled here.

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2. The early period (1972–1992): an era of misdirection?

The entry of the United Nations into exploration of what this volume calls the TNC *problématique* came in the midst of severe turbulence. In 1972, Jack Anderson, an investigative reporter in the United States, asserted that the International Telephone and Telegraph Company (ITT) had plotted with the United States Central Intelligence Agency in 1970 to block the election of Salvador Allende – who had threatened to nationalize ITT's 60 per cent share of the national phone company – in Chile. These allegations prompted the United States Senate Foreign Relations Committee to establish the Subcommittee on Multinational Corporations, which held highly publicized hearings critical of TNCs in the developing world under Senator Frank Church from 1973 to 1976. On another front, critics accused the Swiss giant Nestlé of dressing its sales personnel to look like doctors and nurses to discourage breastfeeding of babies and to substitute what the sales people claimed to be medically superior baby formula. At the United Nations, Philippe de Seynes, United Nations Under-Secretary-General, crafted a resolution in 1972 calling for the formation of a Group of Eminent Persons "to study the impact of multinational corporations on economic development and international relations" (Sagafi-Nejad, 2008, p. 52). The goal was to create a "focal point" within the United Nations to develop the "institutions needed for a new international economic order". The Group's hearings and report led to the establishment of the United Nations Commission on TNCs and the UNCTC in New York in 1974. The UNCTC's terms of reference included providing information, analyzing policy, and offering advisory services, technical assistance and capacity-building.

The Group of Eminent Persons launched many important and controversial initiatives, such as urging TNCs to refuse to comply with apartheid in South Africa, and to threaten divestment if the apartheid system was not abolished. A central recommendation of the Group, however, and "almost certainly the most significant and contentious policy issue at the UNCTC" was work on drafting a code on TNCs, a task that "took center stage" (Sagafi-Nejad, 2008, p. 108). The Group of 77 developing countries, supported by the socialist bloc, demanded a legally binding international instrument of rules to govern the activities of TNCs. The representatives of the developed market economies insisted on a voluntary code of principles. The debate represented a clash between those who believed in government-directed development and those who preferred the primacy of the market mechanism. To simplify the terms of the conflict, the former tended to see TNC–host relations as a zero-sum struggle, in which developing countries lacked bargaining power. The latter tended to view foreign investment as yielding positive-sum gains for all participants.

For almost two decades, from 1975 to 1992, the UNCTC struggled over the code. Three important executive directors presided over the UNCTC during this period, Klaus Sahlgren, Sidney Dell and Peter Hansen. The perspectives on the code quoted in this volume represent a spectrum of often fiercely held views. Oswaldo Sunkel, a prominent Latin American intellectual, warned that TNCs possessed "sufficient power and influence to try to set the rules of the game" (Sagafi-Nejad, 2008, p. 75). Jose Campillo Sians, an undersecretary in the Government of Mexico, declared. "If we have lost any foreign investment as a result of our policies, it has been well lost" (Sagafi-Nejad, 2008, p. 74). Edith Penrose, Professor at the School of Oriental and African Studies at the University of London, argued that creating an agency that simply gathered and analyzed data about TNCs would be "the most effective type of action that an international organization could take" (Sagafi-Nejad, 2008, p. 72). G. A. Waagner, president of the Royal Dutch Petroleum Company, asserted that "multinational enterprises have been major contributors to the development process… and engines of growth" (Sagafi-Nejad, 2008, p. 67). For 73 pages – the longest single component of the volume – the book presents a mausoleum of charges and counter-charges about TNC behaviour (pro and con) from this period, easily remembered by those *emeriti* who witnessed the interaction as if they were exchanged yesterday.

By 1992, the volume concludes that the efforts to fashion a code framework for TNC activities "failed"; the negotiations "came to naught" (Sagafi-Nejad, 2008, p. 122). In his report to the General Assembly, Secretary-General Boutros Boutros-Ghali declared that "no consensus was possible", and thereby "the final nail was driven into the code's coffin".

What emerged from two decades of struggle, concludes the volume, was "the promotion of FDI through incentives and the Washington Consensus. Jeanne Kirkpatrick and like-minded conservatives must have felt exonerated by the swing" (Sagafi-Nejad, 2008, p. 124).

But should this 20–year inability to negotiate a code to govern the behaviour of TNCs be labelled as failure? Did this outcome in 1992, on the eve of the United Nations moving TNC-related operations to

Geneva, simply represent a victory for one ideological point of view over another?

From today's vantage point, it is difficult to recall how little was understood about the dynamics of FDI when this United Nations initiative was launched – let alone the most appropriate policy responses to capture benefits and avoid damage – and how slowly evidence and reliable analysis built up over the early era from 1972 to 1992.

The period from 1950 to 1970 had seen the beginnings of an explosive growth in the magnitude and importance of FDI. Accumulating raw data on FDI that was anywhere near reliable, complete and comparable became one of the early significant accomplishments of the United Nations. The number of foreign affiliates of United States-based TNCs alone – "transnational corporations" was the term of art preferred by UN agencies, rather than "multinational corporations" or "multinational enterprises" – grew from approximately 7,400 in 1950 to 23,000 in 1966, with the rate of expansion averaging nearly 10 per cent. Worldwide FDI flows equalled some $3 billion in 1960 – when a billion dollars still represented a considerable sum – almost tripling to $8.5 billion by 1970.

But what motivates FDI? What hinders FDI? What is the impact of FDI on the welfare and growth of developing countries? These were subjects of perplexity and confusion. The international economics community in developed and developing countries alike was trained to think in terms of trade analysis. The movement of firms across borders to set up operations was something of a puzzle, not because there were no explanations, but because the most commonsense explanations were clearly wrong. A common question-answer sequence was: What motivates FDI? – FDI represents a movement of investment from a region of capital abundance to a region of capital scarcity. But most FDI was moving from one region of capital abundance (the United States) to another region of capital abundance (Europe), and even more baffling was the phenomenon of cross-investment among capital-abundant regions (United States FDI into Germany, and vice versa). A second question-answer sequence was: What motivates FDI?–FDI represents a flow of business operations from a region of high wages to a region of low wages. But most FDI was moving from one region of high wages to other regions of high wages, with cross-investment among high-wage areas again adding to the puzzle.

What was the attraction of FDI to be drawn to the developing world? Transnational corporate investment in oil, copper, bauxite, or gold seemed straight fowardly determined by geology. TNC investment in Latin American utility monopolies was not hard to fathom. TNC investment in Asian or African rubber and banana plantations adhered closely to comparative advantage in trade theory.

But what about the burgeoning FDI in manufacturing and services? The answer to this question emerged from a small group of insightful researchers, which included Stephen Hymer, Charles Kindleberger and Raymond Vernon, and centrally featured John H. Dunning, a collaborator in the production of this volume and a recurrent participant in the evolution of United Nations dealings with TNCs.[1] These breakthough intellectual figures, and their collaborators and students, began to understand FDI flows as the awkwardly phrased but analytically brilliant internalization of intangible assets. Functioning as an alternative to exporting or licensing, FDI was a strategy to maintain or extend a firm's ability to extract oligopoly rents via controlling and integrating operations across borders. Within this framework, there were two parallel motivations for manufacturing (and service) FDI in the developing world – the contemporary business school jargon is "market-seeking" FDI versus "efficiency-seeking" FDI. But these buzzwords obscure the principal distinction. One motivation was for TNCs to set up plants behind trade barriers in protected host country markets, designed as cash cows to fund external TNC worldwide endeavours. The alternative motivation was for TNCs to build plants fully integrated into the firms' global sourcing network, designed to help reinforce the firms' competitive position in international markets directly.

In the 1970s, there was legitimate ideological debate about which of these two forms of TNC entry might best contribute to host country development, without sufficient empirical evidence to settle the issue one way or another. Perhaps a protected host country market could be used to induce TNCs to accept weighty performance requirements like domestic content, joint venture, and technology-sharing mandates, creating the setting for the successful emergence of infant industries. Perhaps export-oriented TNCs that typically insisted on whole or majority ownership, and freedom from domestic content requirements, would limit their activities to screw driver operations of little benefit to the host economy. In fact, over the course of the 1980s and 1990s, empirical reality turned out to be the opposite. TNCs operating in protected host markets regulated by performance requirements built sub-scale plants and used technology well behind the industry frontier, often assembling

[1] One of the best surveys of the emergence of the theory of FDI remains Dunning (1993).

knocked-down "kits" of previous-generation products. TNCs oriented toward external global markets built full-scale plants with cutting-edge technology, and in their own self-interest – under some conditions – created supplier-networks of component producers that stretched deep into the host economy.[2]

The use of TNCs for infant industry development in India – or the use of TNCs for informatics sector development in Brazil and Mexico – did not bring industry-frontier practices into the host economy or create internationally competitive national champions, as policy advocates had wished. Instead, the dynamics of industrial success in South-East Asia and the creation of auto plant poles in Brazil and Mexico became a "contract-manufacturing" or original-equipment-manufacturing (OEM) phenomenon associated with outward-looking TNC operations. Even the Korean electronics industry – often considered an "alternative model" – grew up through OEM contracts to United States, Japanese and European TNCs, only very gradually moving up a learning curve from OEM guidance to Original Design Manufacturing to (in a few cases) Own Brand Manufacture.[3]

It took painstaking investigation – often using firm-level micro-data, industry case studies, and cost-benefit analyses of specific FDI projects – to figure out the impact of TNC operations in a way that could be used to inform host-country policy. Evidence about backward linkages from manufacturing FDI was initially worrisome but – in local business-friendly settings, with access to indigenous skilled labour, engineers, managers, unimpeded imports and finance, as the *World Investment Report 2001* showed – became more promising as TNCs settled into host economies. Evidence about counterproductive results from simply imposing joint venture or technology transfer requirements on FDI emerged gradually, but have been consistent with recent data (e.g. from China).[4] Confirmation that formation of infant industries via FDI usually did not offer the scale economies and the dynamic learning needed to launch competitive "adult" firms took time to accumulate.

From 1972 to 1992, unravelling how various forms of FDI might affect development and what the most useful host policies might be was a work in progress. Gradually it became clear that heavy-handed and overly legalistic binding-code regulation was probably not a suitable or even desirable approach for developin-country authorities. But neither

[2] For what these conditions were, see the discussion of the *World Investment Report 2001*.

[3] Hobday (1995, 2000).

[4] Long (2005).

was the "laissez-faire, hands-off, and just let international markets work" approach. As discussed in more detail later, there were subtle market failures (and poor policy design) that prevented TNCs from contributing as much as they might, and from generating positive externalities as they operated. There were market failures (and poor policy design) that allowed TNC investment to distort development and leave a legacy of negative externalities as they went. There was a crying need for standards to ensure good governance and sustainable operations on the part of TNCs, a form of international public good that the market would not supply on its own.

After Secretary-General Boutros Boutros-Ghali dismantled the UNCTC (Sagafi-Nejad, 2008, p. 131) and gave the staff the option of remaining in New York or moving to continue their work on TNCs in Geneva, the field was not merely ceded to a simple-minded characterization of the Washington Consensus – that TNC investment is good, and the more the better! Quite to the contrary, the work of the United Nations after the shift of TNC affairs to UNCTAD in Geneva did much (along with other research endeavours and advisory initiatives elsewhere) to ensure a much more complex and practical treatment of the challenges of harnessing investment by TNCs to development.

3. The later period (1992–2008): helping to guide a paradigm shift

In retrospect, it has become clear that FDI comes in at least three – or four – distinct forms: FDI in extractive industries, FDI in utilities, FDI in manufacturing, and (perhaps separately) FDI in services. Each type of FDI poses specific and singular policy challenges that determine how extensively TNC operations can potentially contribute to host-country development, or – conversely – detract from host-country welfare, slow host-country growth, and undermine host-country governance and stewardship of the environment.[5] Athwart all categories are important cross-cutting policy themes: investment promotion; technology transfer and the generation of backward linkages; transparency and anti-corruption; competition policy; environmental policy and enforcement; and capacity-building for civil servants, parliamentarians and civil society.

While not generally sponsoring original policy research, UNCTAD kept in close touch with the evidence on the ground about

[5] For an effort to separate out the evidence and address the policy challenges for each of these categories of FDI, see Moran (2009).

the impact of FDI in each category, and the reality of the policy space of host governments for each type of FDI (arranging meetings of experts, offering courses, and providing advice to host officials and negotiators). Along the way, UNCTAD became a major contributor – in some respects, the most important contributor around the world – in assembling basic statistics on TNC investment flows and stocks, and gradually upgrading the accuracy and comparability of the TNC investment data base. At the same time, however, UNCTAD did not fall into the trap of running regressions of undifferentiated FDI flows on host-country growth, productivity (total factor productivity or labour productivity), or other development indicators that hadsnared analytic assessment elsewhere.[6] Instead, UNCTAD research summaries and policy discussions showed sensitivity to the distinctive features of each major kind of FDI.

Throughout the period 1993–2008 (the TNC unit did not arrive in Geneva until 1993), UNCTAD provided on-the-ground policy analysis and capacity-building services throughout the developing world. Many individuals contributed, but the key figure in guiding the evolution of the Division and building its stature was Karl P. Sauvant, who had joined the United Nations in 1973 (shortly prior to the establishment of the UNCTC) and became acting Officer-in-Charge and later Director of the Investment Division until his retirement in 2005.

Perhaps the clearest record of the contribution to empirical analysis and policy debate during the UNCTAD years emerges from the annual *World Investment Report* (*WIR*). This history volume provides

[6] In Moran (2009), I go so far as to argue – and show – that the work of researchers who run regressions using data that mix FDI in the extractive sector with FDI in utilities, with FDI in manufacturing, with FDI in services to produce a single measure of "the impact" of FDI on the host economy simply has to be, well, discarded and redone. It is analytically absurd to jumble evidence from FDI in Nigeria's oil industry (where the outcome varies as a function of policies related to the resource curse and Dutch disease), with FDI in Argentine utilities (where the outcome varies as a function of polices related to foreign currency obligations/local revenues mismatch), with FDI in Malaysian electronics (where the outcome varies as a function of policies related to backward linkages and vertical spillovers), with FDI in Singaporean services (where the outcome varies as a function of policies related to competition policy) and find a single "contribution" that some generic FDI brings to some generic host economy. This critique touches even the most distinguished investigators, such as V. N. Balasubramanyam, M. Salisu, and David Sapsford; E. Borensztein, J. De Gregorio and J. W. Lee; Maria Carkovic and Ross Levine; Bruce Blonigan and Miao Grace Wang. Attempts to model FDI flows as a single phenomenon, with a common motivation and dynamic, then tested with undifferentiated FDI data, is likewise misdirected. This includes the basic writings of superstars that include Elhanan Helpman, James Markusen, David Carr, Keith Maskus, Tony Venables and Rob Feenstra, all of whom appear to be characterizing TNC activities solely as engaging in multi-plant manufacturing FDI.

a useful once-over review of each of the UNCTAD *WIR*s, but does not go far enough in highlighting the conceptual breakthroughs or policy audacity that occasionally emerge. In addition, the UNCTAD effort devoted to the straightforward dissemination of the *WIR*s around the world, accompanied by appropriate elaboration of themes and on-the-spot publicity, constituted – and continues to provide – an important public service, especially in developing-country capitals.

In the *WIR 2007* on TNC investment in extractive industries, for example – this *WIR* appeared too late for full treatment in the volume – there is sophisticated and nuanced discussion of the resource curse and Dutch disease phenomena, repeated stress on the necessity for transparency about revenue flows to prevent corruption, and appropriate emphasis on the need to strengthen environmental enforcement capabilities rather than mere enactment of environmental laws. There is honest assessment that prospects for the spread of backward linkages, or the building of extractive industry "clusters", are limited in comparison to FDI in manufacturing. There is frank acknowledgement that TNC investors from non-OECD states must join in exercising good governance standards: "the 'new players', whether State-owned or not, should derive long-term operational benefits from complying with basic human rights standards as part of wider policies for responsible investment. Attention to human rights compliance may be needed to defend themselves against accusations of complicity with various abuses" (*WIR 2007*, p. 178). Finally, *WIR 2007* marches up close to the daring recommendation that TNC investment be delayed or denied when host countries are manifestly ill-ruled: "When mineral deposits are found in weakly governed or authoritarian states, foreign companies need to decide whether to invest there or not, since they may end up – directly or indirectly, or even unwittingly – supporting or strengthening the existing order" (*WIR 2007*, p. 184).

WIR 2008 on TNC investment in infrastructure also appeared after this history was drafted. FDI in infrastructure raises issues that overlap with TNC involvement in extractive industries as relate to transparency and anti-corruption. *WIR 2008* provides a carefully documented assessment of pros and cons of privatization, especially TNC-led privatization, with regard to provision of services and implications for universal access (treating electricity, telecommunications, transport, water and sanitation separately). The document offers cutting-edge criticisms of relying on dispute settlement provisions in international investment agreements, especially bilateral investment treaties (BITs) for settling disputes with multinational investors, in light of the consequent reduction in the host government's regulatory flexibility. The text draws attention to instances where the TNC "does not carry out due diligence in assessing the feasibility of the project, or is negligent in the implementation of the investments but then blames the commercial loss on government action" (*WIR 2008*, p. 168). *WIR 2008* lays the groundwork for forthcoming investigation of dispute settlement mechanisms that seek an amicable solution via mediation and conciliation in contrast to contemporary arbitration (*WIR 2008*, p. 169).

As far back as 1993 – with treatment of TNCs and integrated international production systems – many *WIR*s focused on issues surrounding FDI in manufacturing and assembly. *WIR 1994* on employment and the workplace, for example, acknowledged that TNCs' use of capital-deepening and labour-saving technologies might appear to limit the number of TNC-generated jobs. But *WIR 1994* introduced widespread evidence that TNCs paid more than their domestic counterparts, and tended to create qualitatively better employment, both in terms of working conditions and human resource development.

WIR 1994 was published too early to record data that were beginning to emerge from the UNCTAD TNC database itself – namely, that far from being primarily a lowest-skilled, lowest-wage phenomenon, the flow of TNC manufacturing investment to medium-skilled activities such as electronics and electrical products, transportation equipment, industrial machinery, chemicals, rubber, and plastic products is nearly ten times larger each year than to investments in garments, footwear, toys and the like – and the differential is speeding up over time.[7] While complete evidence is not available, ILO survey data indicate that TNCs with these higher-skilled plants pay their workers two to three times as much for production-line jobs, and perhaps ten times as much for technical and supervisory positions than in plants devoted to lower-skilled labour-intensive operations.

WIR 1996, appearing shortly after the ratification of the Uruguay Round and the establishment of WTO, emphasized the complementarity between trade liberalization and the ability to realize the full potential from FDI in manufacturing. After all, TNCs accounted for two thirds of world trade, about half of which was between affiliates of the same parent. Already in 1996, there was abundant evidence that higher levels of trade and more rapid rates of growth go together, but there was also spirited debate about the direction of causation (do higher levels of trade cause more rapid rates of growth, or do more rapid rates of

[7] For data, see chapter III-3. table 2 and annexes I and II in Moran (2009).

growth lead to higher levels of trade?) Research subsequent to 1996 provides the important new finding that when trade liberalization and FDI liberalization go together, there is a causal link to higher rates of host-country economic growth.[8] *WIR 1998*, published after the onset of the Asian financial crisis, noted that FDI proved to be more stable and less subject to the swings in financial markets than other types of private capital flows.

Of particular importance is *WIR 2001* on TNCs and backward linkages. Developing-country host authorities need to recognize, *WIR 2001* argued, that vibrant backward linkages depend upon a supportive business-friendly environment for local firms no less than for TNCs; that indigenous companies need a setting with contract enforcement, regulatory reliability, and access to imported inputs, capital, and dependable services no less than foreign investors, in order to become participants in deep multi-tiered supplier networks.

Conscientiously drawing on empirical studies from *World Development*, *Journal of Development Economics*, *Journal of Development Studies, Transnational Corporations, Oxford Bulletin of Economics and Statistics* and *Cambridge Journal of Economics*, and the international political economy series published by Princeton, Stanford, Cornell, Cambridge, and Oxford University Press, *WIR 2001* catalogued the growing array of micro-level evidence of TNCs providing production assistance, recommendations on machinery purchases, and advance payments to indigenous firms to help them become competitive suppliers. *WIR 2001* provided detailed investigation of TNC talent-scout and vendor-development programmes in Singapore and Malaysia (and Wales), as host authorities sought to expand local TNC supplier chains. These indigenous suppliers did not remain captive producers, but used the expertise acquired from foreign TNCs to become independent market players. In some cases, TNCs introduced local suppliers in a given host country to sister affiliates in other countries in the region, whereupon the suppliers began to operate in international markets on their own. In short, these were backward linkages that included externalities from FDI conferred upon the host economy – productivity externalities and export externalities – rigorously defined.

As noted earlier, UNCTAD did not generally aspire to undertake independent research on the relationship between FDI and development, but nonetheless remained in closer touch with reality on the ground than other organizations and individuals who did. To illustrate the contrast,

[8] Melitz (2005).

a reader of the principal publications of the United States economic community – including some of the leading academic investigators such as Robert Lipsey, Dani Rodrik or Gordon Hanson, for example – would have found near-unanimous affirmation well into the twenty-first century that "an abundance of evidence that FDI generates positive spillovers does not exist" (Hanson, 2005, p. 178). The common referents for this conclusion were two ill-designed econometric studies that looked at FDI in the heavily protected import-substitution regimes in the Bolivarian Republic of Venezuela and pre-1995 Morocco and failed to find substantial benefits from FDI in these highly distorted markets.[9] These studies did not separate export-oriented FDI from FDI oriented towards protected domestic markets, did not control for wholly-owned versus minority-owned FDI, did not distinguish FDI required to meet domestic content requirements from FDI free to source from wherever the TNC wished. Without such controls, it is impossible to arrive at reasonable conclusions about the impact of FDI on host economies throughout the world. Yet these two econometric studies led the economic academic community to generalize that FDI around the globe fails to generate positive spillovers, provide externalities or offer any distinctive contribution to development.

The findings from these analyses of FDI in heavily regulated import-substitution regimes continue to be ritually repeated in the foremost economics journals long after the generalizability of the original studies has been discredited. This is analogous to finding that contemporary submissions to *The Astrophysical Journal* begin by showing deference to the geocentric arguments of Ptolemy.

A new "second generation" of econometric research is now beginning to provide the basis for judging when, how, and why horizontal and vertical total factor productivity externalities, export externalities, and labour market externalities do accompany FDI, or do not – alternative outcomes where, as noted in *WIR 2001*, the openness, competitiveness, and business-friendly setting for indigenous as well as foreign firms is crucial.[10] More recent research highlights the importance of access to finance as a key determinant of successful indigenous supply-chain formation (Javorcik and Spatareanu, 2009).

[9] For detailed dissection of these two studies, see Moran (2008).

[10] This "second generation" of econometric research includes (for horizontal and vertical TFP externalities) Garrick Blalock and Paul J. Gertler, Beata Smarzyska Javorcik, Sourafel Girma and Yundan Gong; (for export externalities) Brian Aitken, Gordon H. Hanson and Ann E. Harrison, Deborah Swenson; (for labour market externalities) Robert Lipsey and Fredrik Sjoholm, Alexander Hijsen.

As a kind of ideological carry over from the earlier period 1972–1992, UNCTAD publications on TNCs were perpetually in conflict about the merits of imposing performance requirements on manufacturing TNCs. Over time, the push of those who favoured the use of domestic content and joint-venture mandates to force TNCs to build the host-country industrial base and compel technology transfer to indigenous firms performed an unintended service by insisting on periodic assessments of the use of TRIMS (Trade Related Investment Measures). The WTO negotiations specified that TRIMS in the form of domestic content and trade-balancing requirements be phased out, but advocates of performance requirements fought for extension of their use.

UNCTAD studies on TNCs noted that export performance requirements had been useful in Mexico and Thailand because they had induced the major auto TNCs to build full-scale world-class export plants. Export performance requirements that merely used trade-rents from TNC operations in protected markets to subsidize external shipments from sub-scale host plants, in contrast, did not lead to internationally competitive results. Domestic content requirements and technology-sharing requirements repeatedly showed themselves to be counterproductive, detracting from the competitive performance of the firms subjected to them. The legacy of UNCTAD surveys of the use of TRIMS – the most recent in 2007, covering Argentina, Ethiopia, Pakistan, the Philippines and Viet Nam – has been to affirm, and reaffirm, how meagre is the evidence that imposing performance requirements on TNCs can be a useful policy tool to promote development.[11]

WIR 2004, subtitled "The Shift Toward Services", noted that the share of services in the national product of most countries has risen rapidly, to reach 72 per cent of developed, 52 per cent of developing and 57% of former socialist-bloc countries in 2001. Services FDI has grown more rapidly than FDI in other sectors, quadrupling between 1990 and 2002 from an estimated $950 billion to over $4 trillion (based on 61 countries accounting for over four fifths of the world's stock of FDI, extrapolated to the world), with communications, finance, electricity, gas, water, tourism, trade, and business activities being the largest concentrations of FDI for developing economies.

WIR 2004 acknowledged that services provide crucial inputs into products that compete in domestic and international markets. The text appropriately notes that "services" includes diverse industries,

[11] UNCTAD (2007a).

some of which have natural monopoly characteristics, and need careful regulatory attention. The policy analysis, however, reflects something of a schizophrenic oscillation between appreciation of increased competition from service FDI and wariness of "crowding out" less efficient indigenous service providers.[12] *WIR 2004* appeared too early to pick up more recent econometric research showing that liberalization of service sectors – including increased access for service FDI – has a strong independent effect on the productivity of domestic manufacturing firms.[13] In India, for example, most explanations for the post-1991 expansion of the country's manufacturing sector focus on the liberalization of imports of goods and on industrial de-licensing. But the evidence indicates that banking, telecommunications and transport reforms all had significant positive effects on manufacturing productivity too – a one-standard-deviation in the index of services liberalization resulted in a productivity increase of 6 per cent for domestic Indian firms and 7.5 per cent for TNCs operating within India.[14]

WIR 2006, subtitled "FDI from Developing and Transition Economies: Implications for Development", pointed out that the stock of outward FDI from developing and transition countries in 2005 reached $1.4 trillion, up from $335 billion ten years earlier. The sources of such FDI moreover multiplied, to include such countries as Argentina, Chile, India, Malaysia, Nigeria, South Africa, Thailand, Turkey, the Russian Federation and the Bolivarian Republic of Venezuela, alongside China, Singapore, Brazil and Mexico. The study celebrated potential advantages that TNCs from developing states might bring as part of South–South investment, including technology, marketing, and product design especially suited to less affluent economies. Survey materials showed that many developing countries were actively soliciting FDI from developing and transition economies, most especially African states looking for investors from China. *WIR 2006* noted the importance of corporate social responsibility (CSR) for such TNCs, and identified some – including Cemex (Mexico) and Petrobras (Brazil) – that were among the leaders in their respective industries in adopting CSR principles. The text acknowledged that "some TNCs are based in home countries that lack a civil society that can freely voice its opinion….The practices of TNCs in such situations are not subjected to the same level of public scrutiny that has raised the level of awareness of CSR issues elsewhere …. A significant number of large TNCs from developing and transition

[12] For an iconoclastic reappraisal of evidence surrounding FDI and the crowding-in/crowding-out debate, see Moran (2009).

[13] Arnold, Javorcik, and Matoo (2008).

[14] Arnold et al. (2009).

economies are state-owned and active in extractive industries….which raises potential issues related to corporate governance and transparency" (*WIR 2006*, p. 233). The text refrained, however, from showing the rather sharp edge that was to appear in *WIR 2007* about TNCs from developing and transition economies undermining industry-accepted governance standards and even being complicit in various abuses.

At the end of the day, the empirical conclusions and analytic results that emerge from the UNCTAD TNC legacy are a far cry from simple "promotion of FDI though incentives and the Washington Consensus". The paradigm shift that the United Nations system helped foster – along with the efforts of many other researchers and institutions – showed clearly that each of the principal categories of FDI (FDI in extractive industries, FDI in infrastructure, FDI in manufacturing, and FDI in services) can be a force for improvement in host country welfare, productivity, growth, and sustainable development within carefully designed policy constraints, or a force for damage and harm when those policy constraints are mis-designed or absent.

4. The future

Looking to the future, what is the most vital and effective role the United Nationsmight be able to play in enhancing the contributions of TNCs to development while avoiding harmful or negative impacts?

From beginning to end, this volume exudes a fascination with ever-higher High Level Meetings, with ever more eminent Eminent Persons, to endorse ever more towering Charters and Principles. The culminating endeavour treated in the text is the United Nations Global Compact, an initiative of Secretary-General Kofi Annan, first proposed at the World Economic Forum in Davos in 1999. The goal, as enunciated in the volume, is to promote "responsible" global capitalism; that is, to promote the idea, through an ongoing process of dialogue and discourse, that TNCs "can do well by doing good" (Sagafi-Nejad, 2008, p. 195).

The Global Compact asks companies to embrace, support, and promote a set of ten principles relating to human rights, labour, the environment, and anti-corruption. This lofty undertaking should not be dismissed out of hand. There is clearly a role for the United Nations in standard-setting on international corporate governance as a much-needed public good. By 2008, over 4,700 businesses in 120 countries around the world had signed up to the principles. The volume endorses proposals that the Global Compact office undertake increasingly intensive reporting on what exactly signatories are – or are not – doing to comply with the terms of the ompact (Sagafi-Nejad, 2008, p. 212).

This volume is forthright in acknowledging some of the drawbacks of working within the United Nations apparatus: "There is little doubt that there is duplication, redundancy, and waste within the United Nations system. (...) Dignitaries gather, make declarations, and leave chronic problems unresolved" (Sagafi-Nejad, 2008, p. 213).

Looking to the future, this volume provides acknowledgement and well-deserved praise for the expansion of CSR codes and endeavours over the past 40 years. One of the principal recommendations is that: "the United Nations should rededicate itself to creating a special focal point on TNCs within the United Nations (like the UNCTC in New York) to interface with TNCs about their relations with home and host countries on matters of good corporate citizenship and their impact on the developmental process" (Sagafi-Nejad, 2008, p. 215).

All well and good, but such an undertaking should not divert attention from the fundamental finding that pervades the United Nations' TNC analysis: the real transformational contributions that TNCs can make to broad-based sustainable development come when extractive investors, infrastructure investors, manufacturing and service investors operate their main line activities within well-designed host-country policy frameworks – generating revenues in a transparent fashion, providing reliable power and transport, creating backward linkages and vibrant supplier networks, diversifying exports and moving into middle-skilled and higher-skilled endeavours; not – merely – when they build clinics, giving grants to regional micro-finance institutions, providing an audio-visual record of "the intangible cultural heritage" of a tribe or people, or supporting local charities (valuable as these may be). The principal input – good or bad – that TNCs can provide to host countries comes from their core operations, not from their philanthropy. The magnitude of the latter, moreover, cannot be allowed to substitute for the meagreness of the former. The endorsement of CSR themes throughout this volume should not obscure the contribution that UNCTAD TNC analysis and policy support has provided – and can continue to provide – to ensure these mainline activities are appropriately structured and allowed to expand with vigour.

It is important to reiterate that there is a vital role for public actors to play in ensuring positive TNC contributions to development. This volume may be right in showing some weary scepticism toward the never-ending United Nations TNC debates over more than decades; it quotes Rubens Ricupero, a former UNCTAD Secretary General, as saying "a typical creature of the 1960s, UNCTAD…gave impetus to a project with which it became indissolubly linked: the dynamic movement towards the creation of a New International Economic Order, in capital letters as the phrase was written then….Today, all this sounds unbelievable and absurd" (Sagafi-Nejad, 2008, pp. 124–125). But the "swing of the pendulum", to use the volume's analogy, has not settled at what the text sometimes morosely characterizes as a Jeanne Kirkpatrick/ Ronald Reagan end point, today.

It is not necessary to invoke Jeanne Kirkpatrick and Ronald Reagan to observe that the strongest force to reduce poverty, improve infant mortality and raise broad living standards is to improve the productivity and growth of developing-country economies, or that the key to achieving this is to provide conditions for a vibrant and competitive private sector (domestic and international). To achieve progress here, the record of United Nations TNC analysis – like analysis from other sources – demonstrates clearly that left on their own, international markets do not necessarily produce optimal outcomes for broad-based improvement in living standards. To be sure, poor countries should improve their business climate – undertake micro, macro and institutional reform – but while the mantra of "reform, reform", in the words of Ricardo Hausmann and Dani Rodrik, may be a necessary condition for success, it is not a sufficient condition.[15]

The contribution of TNCs to sustainable development, in particular, is beset with multiple market failures that require public sector institutional action to correct. There are *information asymmetries* – TNCs are not all-knowing; the search for investment opportunities is costly; and would-be hosts have to capture the attention and interest of potential investors. There are *coordination externalities* – infrastructure services, vocational training, healthy workers have to be meshed with the needs of investors in catalytic fashion. There are problems with making *credible commitments* – contract enforcement and regulatory stability have to be strengthened. There are *appropriability problems and first-mover disadvantages* – pioneer investors in novel or chaotic situations may need special incentives or guarantees. There are *international standards* that have to be set, and enforced, as a worldwide public good.

Here United Nations TNC activities – like the World Bank Group (International Finance Corporation, Investment Climate

[15] Hausmann and Rodrik (2003).

Advisory Service, Multilateral Investment Guarantee Agency), regional development banks, OECD, bilateral aid donors – can be crucial. My hope, therefore, is that the work the United Nations has done in offering host country policy diagnostics regarding TNC investment, and providing on-the-ground capacity-building, will not be lost in the pursuit of more soaring CSR-related aspirations.

The question as to how the United Nations can position its TNC-related undertakings will require some creative thinking, parallel to alternative approaches being debated within the World Bank Group, within regional development banks, and within leading aid donor institutions (public and private).

There is a growing appreciation, for example, that even the most insightful analytic studies of policy toward TNCs – by IFC, OECD, or the United Nations – that are conducted in drive-by fashion, and then handed over with an impressive-looking cover to host authorities have very limited usefulness.

The emerging alternative view is that what is needed is more sustained external help with creating a mesh – a web, an arrangement – of policy recommendations and advocacy structures. Once host authorities set their goals and request assistance, the international community needs to provide not just customized policy prescriptions, but also a sustained on-the-ground external presence, surrounded by carefully identified indigenous policy champions, with external supporting financial assistance on call. Under imprimatur of the highest levels of host leadership, this places external supporters in the tricky position of not simply offering policy advice but helping shape the political economy of the reform process. In most cases, UNCTAD or other United Nations agencies would probably not be the leader – that role would more likely fall to the World Bank and regional lending agencies – but United Nations participants could be integral players and legitimators. UNCTAD's current initiative to investigate best practices in a given FDI arena, combine the results with ongoing Investment Policy Reviews, and join forces with OECD and other institutions to serve developing-country needs might be a step in the right direction.[16]

Along one dimension, UNCTAD TNC operatives as organized in the Division on Investment and Enterprise (DIAE) could help in developing a rapid-reaction capacity, to respond to opportunities and crises:

[16] G8 Summit, Helligendamm, Germany, 6-8 June 2008.

– A promising new government comes to power in a country (think Liberia in 2005) that needs a prompt overhaul of mining legislation, expert assistance in renegotiating treatment of transfer pricing in FDI contracts, capacity-building of civil servants, parliamentarians, and civil society on monitoring tax and environmental issues.

– A country just opening up to trade and investment practically for the first time (think Mongolia in 2004) needs a multilateral on-the-ground presence to help with TNC policy design and advocacy.

– A country (think Morocco in 2006) completes preferential trade arrangements with Europe and the United States, needs customized advice and assistance to improve investment promotion and vocational training programmes to upgrade its export processing zones and industrial parks from low-skilled to higher-skilled TNC activities with expanding linkages into the local economy.[17]

– States and provinces are undergoing rapid economic growth linked to TNC-led globalization (think China, India), necessitating external advice and assistance to deal with concomitant negative externalities in the form of internal migration and environmental pollution.[18]

– Post-conflict economies need special packages of capital, guarantees and insurance to attract investment (and reverse flight capital), to restore services, and to rebuild basic economic activities.[19]

The examples could go on.

Along another dimension, UNCTAD's DIAE could help in pursuing ongoing vital multilateral initiatives:

– UNCTAD has played the role of midwife in the creation of the World Association of Investment Promotion Agencies (WAIPA), whose membership reached a total of 220 members by early 2009 (some countries have multiple subnational member agencies). Yet a large majority of these IPAs do not have adequate professional staffing, or up-to-date websites with current information about appropriate ministries and officials, or active links to existing foreign

[17] In fact, UNCTAD's IPRs have looked at the issue of EPZs' upgrading and linkages for a number of countries. The IPR of Kenya has an entire section on the diversification of FDI in EPZs (UNCTAD, 2005). The IPR of the Dominican Republic also looks at the issue, focusing on the institutional structure of investment promotion (UNCTAD, 2007b). The forthcoming IPR of El Salvador looks at the issue of EPZs from a regulatory and tax perspective (including compliance with WTO rules).

[18] Environmental regulations is an issue that we analyse in all IPRs.

[19] IPRs have looked at the potential contribution of FDI in several post-conflict countries, including Burundi and Sierra Leone (forthcoming).

and indigenous businesses. Working with the World Bank's Doing Business Reform Unit, and other donors and NGOs, UNCTAD could help assist on-the-ground efforts to upgrade these agencies and spread best practices in investment promotion.[20]

– There is broad recognition that the competition in offering incentives, tax giveaways and subsidies to TNC investors among alternative sites in developed and developing countries needs to be capped and brought under regional or international control. Surely there is a role for UNCTAD's DIAE, as well as other United Nations agencies, in helping to launch a multilateral initiative here.

– The discovery of loopholes in the OECD Anti-Bribery Convention (and in corresponding national legislation, including the United States Foreign Corrupt Practices Act) requires new interpretative statements that exclude gifts and beneficial partnerships awarded to family members and associates of host country leaders.[21] While the prime actor here must be the OECD, there is a legitimating and implementing role for UNCTAD's DIAE and for other United Nations agencies (along with a revised Global Compact).[22]

– UNCTAD TNC publications have led the way in recognizing the growing importance of TNC investors that originate in developing countries. UNCTAD's DIAE could help lead multilateral efforts to ensure these new TNCs adopt best practices in corporate governance and on-the-ground performance.

– United Nations agencies have played a key role in helping developing countries with the design of environmental policies and adoption of green technologies. UNCTAD's DIAE office would be a central player in helping with capacity-building for enforcement vis-à-vis TNC operations.

– United Nations agencies could also play a role with regard to the renewed interest in finding multilateral solutions to investment regulations. (See the G20 "Leaders' Statement: The Pittsburgh Summit", as well as the outcomes of the 2009 L'Aquila G8 Summit, the "G8 Leaders Declaration: Responsible Leadership for a

[20] This effort would be a follow-on to UNCTAD's publications, *Investment Advisory Series* A and B.

[21] Center for Global Development (2007).

[22] The well-publicized anti-bribery cases brought against Siemens in 2008–2009 illustrate that old-fashioned corrupt techniques are also still alive in securing international business contracts.

Sustainable Future" and the "Concluding Report of the Heiligendamm Process".)

The list could easily be expanded.

Across the broad realm of issues relating to TNC operations around the world, it is clear that there is much critical, essential, and exciting work still to be done. Herein the UN will continue to be (as it has been in the past) a valuable – in many ways, indispensable – player in helping to analyze, advise and support the potential for TNCs to contribute to broad-based sustainable development.

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