

Legal aspects of transnational scale corporations' activity in terms of sustainable development

by *Anatoliy Kostruba**

Abstract

This paper discusses the legal aspects of the activities of transnational corporations. The relevance of the subject matter is determined by the significant impact exerted by transnational corporations on the world economy in general and on the economic situation of the country in which such corporations are registered as a subject of legal form of ownership in particular. Quality functioning of transnational corporations is an effective factor for the formation of sustainable development. This study reveals and determines the relationship between the scale of activity of transnational corporations and their legal status within the framework of both single countries and entire economic communities, the individual subjects of law of which are transnational corporations. The practical significance of this study lies in the possibility of identifying and stating key aspects that play a significant role in assessing the practical activities of transnational corporations in the context of existing legal law with the ability to use the identified patterns in specific legal practice. The results of this study can be of significant practical importance for employees in the field of legal support for the activities of transnational-scale corporations, who are faced with the need to deeply analyse the legal aspects of the activities of these organisations and provide management of such structures with timely, high-quality legal recommendations regarding the correction of the activities of these organisations in the context of the existing legal field.

Key words: International organisations, Legal field, Transnational activity, Transnational corporations.

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Introduction

Globalisation today is the key factor determining the main trends of the world economy development. In recent years, there has been a steady trend towards integration and mutual penetration of the economies of leading world powers, which contributes to the formation of a single economic field. The situation is aggravated by the urgent need for the rapid exchange of information, acceleration of the introduction of the latest technological solutions, and the expansion of the geography of new production capacities from the standpoint of changes in the global market situation (Antonova and Makarevich, 2017; Oklander et al., 2018). System approach and modern information technologies form the optimal model of sustainable development. This in turn ensures the realization of the strategic goal of sustainable development – guaranteeing the well-being of society without harming the interests of future generations. In order to properly consider the main legal aspects of the activities of corporations of a transnational scale, it is necessary to determine the very concept of such a corporation and give it the correct definition.

Transnational corporation is a corporation with production facilities in various countries, which are managed from one center. Some sources define this structure as a corporation which international business is significant (Mikhaylushkin and Shimko, 2005). It should be emphasised that modern legal and juridical literature does not contain a clear definition of the concept of a transnational corporation (TNC). This applies both to the nature of the activities of these organisations and to the form of ownership used in their structural organisation (Shulga et al., 2021).

Describing transnational corporations, first of all, it should be pointed out that they organise a series of production operations abroad on a scale capable of significantly affecting the entire structure of economic activity, including export issues, pricing criteria, and the labor market of a country in which the corporation locates its production capacity. A feature of a transnational corporation as a kind of interstate monopoly is the nationalisation of capital and control over its activities, but at the same time, activities of an international scale, which, as a rule, are controlled from one center (Yakovlev, 2012). Moreover, the assessment of the activities of such organisations from a legal and juridical point of view is carried out in accordance with international legal standards governing the activities of transnational-scale corporations and the legislative base of the state where the corporation was registered and where its activities are managed from. Particularly widely international legal norms are used in international private and civil law, which, in turn, causes a series of inconsistencies that require

regulation within the framework of normative acts of international law (Lukianov et al., 2021). Most often, such issues are resolved by concluding contractual relations between states whose legal systems enter into such legal discrepancy. In this regard, the existing international law is becoming increasingly independent and acquires the characteristic features of a separate legal system (Antonova and Makarevich, 2017).

Today, corporations of transnational-scale occupy leading positions in the global economy, both in terms of the scope of their operations and the nature of their investments. A similar state of affairs is facilitated by current trends in the internationalisation of business, the transnationalisation of capital and productive resources (Golikova, 2010; Fitzgerald, 2019). Corporations of a transnational scale are firms that are essentially national, but have foreign assets. All their main activities go far beyond the territorial and legal borders of the state in which the legal registration of such structures took place. For example, in the United States, the concept of a corporation is generally referred to as a joint-stock company, while, since “the bulk of TNCs operating today have developed as a result of expansion into the international market of American companies, this is the term that has firmly entered the name” (Golikova, 2010). From a legal point of view, transnational corporations are characterised by high business activity, expressed in the opening of branches and subsidiaries of these organisations in various countries of the world. TNCs have relatively independent production services responsible for the production and marketing of finished products, as well as research and development sectors designed to satisfy consumer needs as efficiently as possible. In general, this is a single production conglomerate, with ownership over the joint-stock company, which is owned exclusively by representatives of the country where the corporation was formally established (Golikova, 2010; Feigerlová, 2020). The legal status of such organisations is determined directly by the laws of the country where the corporation was established and where its registered capital is officially fixed.

All issues of changing the legal status of transnational-scale corporations and assessments from the point of view of the legal component of their activities should be carried out in strict accordance with the norms of legislation governing all matters of registration of corporations and their functioning.

Literature review

Issues related to the legal aspects of the activities of transnational corporations are widely reflected in modern economic and legal literature. Researchers have expressed many opinions reflecting the diversity of views on this issue. Discussions concern both the status of transnational corporations in the context of their core business, and the consideration of the features of their functioning within the existing legal framework. For example, a researcher of the activities of transnational corporations V.M. Shumilov (2002), considering the legal aspects of the activities of corporations of a transnational scale, notes that entities participating in international corporate legal relations develop standards of behavior within corporations independently, and these norms are outside the scope of domestic law and they can be regulated neither by domestic rights, nor international. Researchers of the activities of transnational corporations also note the growing influence of transnational corporations on the global economy. P.A. Antonova and M.L. Makarevich (2017) in their studies note that the influence of corporations of a transnational scale on the development of the world economy is increasing, despite attempts to contain it. This has a significant impact on the regulation of legal relations in the world market, contributes to the transformation of the existing approach to the interpretation of legal relationships. There is an increasing saturation of national law with international legal norms.

Yu.A. Golikova (2010), notes that transnational corporations are divided into large and small by the scale of their activity. Moreover, in this division, the conditional criterion is the value of the annual turnover. The author indicates that small transnational corporations, as a rule, have 3-4 foreign branches, while the number of divisions of large transnational corporations is tens or even hundreds. Further, the author draws attention to the fact that both types of corporations can conditionally be called international corporations. Moreover, she notes that such joint-stock companies are often divided into three large groups:

1. Horisontally integrated TNCs. Manage branches located in different countries producing similar products.
2. Vertically integrated TNCs. Having one owner and uniting under a single management and control, managing branches in a single country, producing goods shipped to other countries.
3. Separate TNCs. The branches of which are located in different countries and at the same time do not have vertical and horisontal associations.

Further, the author describes the transnational corporation as an active participant in the formation and development of the world economy, the processes of division of labor and capital. For such corporations, there is no

direct dependence on the movement of capital on the processes occurring within the borders of a single state, the operations they carry out pursue the task of obtaining the highest possible profit (Golikova, 2010).

Researchers note the crucial role that transnational corporations play in the economies of developing countries. So, E. Oshionebo (2020) notes “Transnational corporations (TNCs) are the engines of economic growth in developing countries. TNCs are the main drivers of foreign direct investment in developing countries; TNCs are job creators and also create side effects in developing countries through the procurement of domestic goods and services”. But at the same time, the author draws attention to the other side of the economic activity of transnational-scale corporations. “Relations between TNCs and developing countries are mainly exploitative in nature due to the financial and technological power of TNCs, considered in the context of poverty, incapability of labour and poor governance in most developing countries. Investment contracts between TNCs and developing countries are often one-sided in favor of TNCs. TNCs are also involved in tax evasion due to unethical methods of doing business” (Oshionebo, 2020; Samsin et al., 2021). In turn, D.G. Mihret, S. Mirshekary, A. Yaftian (Mihret *et al.*, 2020) conducting research on the impact of globalisation processes in the world economy on the professional legal and accounting system adopted in Iran, note that “transnational standards have significantly changed the national accounting system, but at the same time the state has maintained a distance from “neoliberalism in shaping the adaptation of regulatory institutions to meet transnational norms”.

In general, issues related to the legal aspects of the activities of transnational corporations are complex, multifaceted, and therefore cause contradictions in the opinions of researchers. Further study of the legal aspects of the activities of transnational-scale corporations will significantly enrich and expand the existing notions of the activities of transnational corporations within the framework of the legislative legal field.

Materials and methods

The methodology of this study is based on a combination of quantitative and logical methods of research of the selected problem of assessing the legal aspects of the activities of transnational corporations in the context that these structures exert an influence on the processes taking place in the global economy. A significant amount of data for analysis was taken from studies of domestic and foreign authors who conducted scientific research in the selected topics: journal and book publications related to issues of the legal

aspects of the activities of transnational corporations, studies of the legal aspects of their activities and the impact that corporations of transnational scale have exerted and continue to exert on the economic situation worldwide. An objective assessment of the activities of transnational corporate associations, whose branches operate in developing countries and countries with developed economies, an assessment to the changes in the legal status of these organisations in different periods of their activity and with various trends in the global economy is also given. The main body of information was taken from publications in foreign sources of the last few years, which allows us to summarise the accumulated experience of researching the issues under consideration by foreign authors. In order to facilitate the perception and create maximum conditions for an objective, high-quality perception of the studied information, the materials of the mentioned publications were translated into English. A thorough analysis of the entire array of collected and properly summarised data contributes to the creation of an objective picture of the study and the formation of appropriate conditions for logical and objective, independent conclusions. Based on a quantitative analysis of the data, a logical analysis of the materials selected for study is performed, the results of the study and conclusions on the work done are formed. The main factors characterising transnational corporations and affecting their activities in the context of existing international law are identified and analysed. An objective, logical analysis of the legal aspects of the activities of corporations of a transnational scale based on the collected materials and their objective analysis is given.

In general, the methodology of this study is aimed at obtaining the most objective assessment of the activities of transnational corporations in the context of existing norms of legal international law, both at the scale of the country where such corporate associations were officially registered and the scale of the activities carried out by them taking into account all available branches in different countries of the world. A logical generalisation of the data obtained during the study helps to obtain the most objective assessment of the legal aspects of the activities of corporations that take place in international law systems and legal systems of countries where such corporations have passed the stage of registration of their activities. The results of the study can be of significant importance for subsequent scientific developments in the field of corporate law, which have the task of studying various aspects of the life of multinational companies in the context of existing and changing regulatory legal acts. In addition, the practical results obtained during the study will add understanding to the legal aspects of the activities of transnational corporations, corporate relations, as well as the peculiarities of changing the legal framework of transnational corporations

in the context of their impact on the economic situation in the world and the development of the world economy as a whole.

Results and discussion

The part of transnational corporations in the development of the global economy is extremely large. The current pace of globalisation of the economy allows transnational corporations in the United States and other leading world powers to use open borders in order to develop the production of goods in regions where the level of associated production costs is lower and sell them where the expected rates of profit are much higher (Yakovlev, 2012). Transnational corporations contribute to the evolution of production around the world, due to one of the main directions of our own activities – investment. This allows to withdraw the capital of transnational corporations outside of individual states, which generally meets the basic provisions of market entities. The parent companies of multinational corporations allocate financial investments to open branches in other countries, usually in the form of the purchase of a controlling stake in a particular branch. Branches of multinational corporations functioning outside the borders of their legal registration states are very diverse: from traditional technologies to high-tech technological solutions. In general, transnational corporations can be called the main driving force in the economy of both developing countries and the world as a whole (Yakovlev, 2012).

The legal basis for the activities of corporations of a transnational scale can be considered incomplete due to the imperfection of the legal systems of most world powers regarding issues of corporations and the determination of their legal status. There are various legal theories that recognise transnational corporations as subjects of existing international law. At the same time, in practice, it is the legal systems of the states in which transnational corporations have passed the state registration of their activities and where the corporate governance and financing bodies are located that are decisive in relation to the legal aspects of the activities of these organisations. In other words, the activities of corporations of a transnational scale are primarily subject to the laws of the state in which these corporations were registered and where their activities are managed from. It is the legislative acts of individual states that regulate all issues related to receiving investment injections into their activities and developing conditions for the distribution of investment funds in the economic conditions of the states in which the branches of these corporate associations are registered. All disputes related to the activities of the considered transnational corporate associations are

also resolved according to the laws of the state where the corporations were registered and where their branches and subsidiaries operate.

In this regard, it is worthwhile to pay attention to the essence of the activities of transnational corporations in modern economic conditions. Some Western researchers distinguish the following classification features of transnational corporations: the ability to sell their products in more than one country, the bulk of their products is sold abroad, the distribution of ownership and management rights of the corporation among residents of several states, as well as the multinational staff of this corporation. It is noted that in order to be included in the category of transnational corporations, it is necessary to comply in practice with at least one of the listed criteria, while almost all well-known corporations of a transnational scale have all of the above (Golikova, 2010; Hughes-Jennett, 2019). Transnational corporations, as a rule, are firms integrated with foreign financial assets and characterised by pronounced dominance in one economic sphere or simultaneously in several at once. At the same time, their economic influence begins directly in the country of registration and base of the parent management organisation, and extends far beyond the borders of this country.

The legal aspects of the activity of each individual transnational corporation should be considered both from the point of view of the main activities of these organisations, and from the point of view of the nature of the products and the volume of their output. Legislative acts of a single state can both allow the release and distribution of a certain type of product, and prohibit it. For example, the American corporation “Philip Morris International” does not have representative offices in Norway, where the world's most severe laws regarding smoking, as well as the production and distribution of tobacco products. Accordingly, the activities of corporations in countries where it has subsidiaries or manufacturing enterprises should be considered in terms of compliance with the laws of these countries (Mehrpuoya and Salles-Djelic, 2019; Greenhalgh-Cook, 2020).

Consideration of the legal aspects of the activities of transnational corporations should also be carried out based on current changes both in the activities of such organisations themselves and on changes in regulatory legal acts of the countries of official registration of the head company of the corporation and the states where its subsidiaries are located. In general, the current legislation is designed to regulate both the legal status of the corporation and the nature of its investment infusions and the activities of this organisation. In practice, national legislation often cannot provide clear regulation of both the legal status of the corporation itself and various aspects of its activities. This situation causes numerous discrepancies in matters of legal assessment of the activities of transnational corporations and their

impact on the economic situation of individual countries and regions. Issues of the legal and juridical status of corporate, international associations, assessment of the results of their activities from the standpoint of the norms of existing legal law, requires the development of additional regulations governing these issues, and further research development within the framework of the indicated topics.

The debatability of issues of assessing the legal aspects of the activities of transnational corporations is largely determined by the absence of clear criteria for assessing the concept of a corporation as such and its legal status in the laws of most states, and by the significant difference in research approaches to assessing the activities of transnational corporations in the context of existing norms of international and national law. As a rule, researchers pay much more attention to the research of various aspects of the impact exerted by transnational corporations on the global economy rather than to the research and assessment of the legal aspects of their activities.

Basically, researchers agree on the importance of the role of transnational corporations in the international market, where they operate simultaneously in several countries. As noted by P.A. Antonova and M.L. Makarevich (2017), "corporations of a transnational scale have ample opportunity to select and place the most important nodes and production facilities around the world". At the same time, the authors draw attention to the ambiguous nature of hiring employees and working conditions in multinational corporations. They attribute this to the fact that "the activities of transnational corporations are primarily focused on making a profit, in other words, on achieving their own well-being, and not bringing public benefit. In the pursuit of profit, TNCs neglect the labor standards enshrined in the relevant acts of national and international law, and when the general economic situation changes, they often reduce their workforce or transfer production capacities to other countries" (Antonova and Makarevich, 2017).

In turn, S.L. Natapov (2010) notes, "international legal standards in relation to the activities of transnational corporations cover a very broad branch of human rights, including environmental, humanitarian and other rights. In terms of human rights, transnational corporations are obliged to ensure the rights to equal opportunities and non-discrimination, the right to personal security, the prohibition on the use of compulsory or forced labor, and to ensure working conditions that meet safety and hygiene standards". Further, in their research, scientists noted that "the existence of legislative norms in the field of human rights will serve as a guideline for developing countries and will contribute to the creation of minimum standards that are mandatory for transnational corporations and other big business structures,

and to respect and protect human rights by business structures” (Natapov, 2010).

Foreign researchers also pay attention to the essential role of transnational corporations in modern business. In particular, M. Kordos and S. Vojtovic (2016) write “Transnational corporations are one of the most important subjects of the international economy. They directly affect new trends in international business, global competitiveness in international markets, as well as the economies of states and nations”. At the same time, foreign scientists pay attention to other aspects of the activities of transnational corporations related to the deployment of their units in different countries. S. Lessenichd, L. Graen, M. Schreudersb and M. Mlinarića (Lessenichd *et al.*, 020) draw attention to the fact that “Externalisation theory assumes that risks and costs are systematically transferred from high-income (HIC) countries to low- and middle-income countries (LMIC)”. Using the activities of large tobacco companies as an example, the authors clearly demonstrate that “there is a significant impact on the local conditions of LMIC, which trigger externalisation mechanisms, which leads to tobacco-related risk consequences” (Tarasova, 2013; Sharon and Gharawi, 2018; Szablowski, 2019). In other words, it is clearly demonstrated that the location of branches of transnational corporations in countries with lower economic development and living standards is beneficial in terms of minimising costs and making higher profits. Moreover, the observance of human rights in relation to branch employees and the legal justification of the peculiarities of the relationship between the management of such enterprises and hired personnel, as a rule, are fading into the background (Hutsaliuk et al., 2020).

Considering the issues of the activities of transnational corporations in the context of their influence on the world economy and evaluating some aspects of their activities from a legal point of view, Yu.A. Golikova (2010) notes “... mutually beneficial integration into the global economy involves continuous improvement of the transport infrastructure, targeted training of qualified engineering and working personnel of corporations, as well as the development of appropriate legal criteria for evaluating the performance of these organisations encouraged by the state”. Thus, the need for further efforts on the part of the state to develop appropriate legal criteria for assessing the activities of transnational corporations in the context of changing economic conditions in order to create opportunities for a comprehensive, objective assessment of their activities in the context of regulatory acts of national and international law is ascertained.

In general, questions of the legal aspects of the activities of transnational-scale corporations in scientific research remain largely controversial. Further research in this area will contribute to the development of clear criteria for

evaluating the activities of the organisations from a legal point of view and will significantly complement and expand existing scientific views in this industry.

Conclusions

Transnational corporations operate in several countries at the same time and the legal issues governing their activities are in the plane of the legislation of the country in which the corporation is headquartered and at the same time in the plane of the legislation of those countries where official representative offices and branches of the transnational corporation are open. This state of affairs significantly complicates the objective analysis of the activities of these organisations from the position of existing regulations in view of the significant discrepancy between the laws of different countries. In addition, most states do not have in their legislation a clear definition of the concept of a corporation as such, not to mention a corporate union of an international, transnational scale.

The current situation has inconsistencies in the legal issues of the activities of these organisations and has the potential to carry out additional developments within the framework of the existing laws of modern states, in order to avoid further inconsistencies in the issues under study to create the appropriate conditions for an objective assessment of both the concept of the corporation and corporate affairs in general in the conditions of the often changing economic situation in the world. The study established the desire for profit as the main activity of corporations in general and transnational corporate associations in particular. As a rule, this is indicated by the regulatory documents that govern the activities of these corporate associations. At the same time, much less attention is paid to ensuring adequate working conditions in corporate branches, which are often located in countries with underdeveloped economies and low living standards. This situation significantly violates the rights of the corporation's working staff, recruited directly at the locations of subsidiaries and affiliates in underdeveloped and developing countries, and from a legal point of view, corporate personnel are often unprotected in their rights, due to the lack of proper legal acts.

Due to the practical focus of the set of principles of sustainable development it will be possible to achieve positive results in the activities of transnational scale corporations. The influence of transnational corporations on the economy of individual countries and the global economy as a whole is well known and is widely covered in various scientific studies. At the same

time, numerous studies note difficulties in the legal assessment of such an impact in the context of the lack of appropriate regulatory and legislative documents determining the degree of this influence and its effectiveness for the economy of a single state and the global economy.

In general, questions of the legal aspects of the activity of corporations of a transnational scale are not fully clarified due to their diversity and significant differences in the views of scientists on this issue. Further research in this direction will help to significantly complement the existing picture and enrich the current understanding of transnational corporations in society, their impact on the global economy and the assessment of their activities within the framework of existing international and national law.

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