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WORK RELATED TO THE FORMULATION OF A CODE OF CONDUCT

Report of the Intergovernmental Working Group on a Code of Conduct
on its fourteenth session

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INTRODUCTION

1. The Intergovernmental Working Group on a Code of Conduct, established by the Commission on Transnational Corporations at its second session, held at Lima from 1 to 12 March 1976, ^{1/} in a recommendation that was approved by the Economic and Social Council in decision 180 (LXI) of 5 August 1976, commenced its work in 1977. Reports describing the Working Group's progress at its first and second sessions (E/C.10/31), third and fourth (E/C.10/36) and fifth, sixth and seventh sessions (E/C.10/46), were submitted to the Commission on Transnational Corporations at its third, fourth and fifth sessions, respectively. A report describing in detail the discussions of the Working Group at its eighth, ninth and tenth sessions (E/C.10/62), to which the concluded provisions were included in the annex, was submitted to the Commission at its sixth session in 1980. On the basis of that report, the Commission, at its sixth session:

"(a) Took note of the report of the Intergovernmental Working Group on a Code of Conduct on the work of its eighth, ninth and tenth sessions (E/C.10/62);

"(b) Noted that the Working Group had made progress in the last three sessions with regard to the drafting of the code of conduct;

* E/C.10/76.

^{1/} Official Records of the Economic and Social Council, Sixty-first Session, Supplement No. 5 (E/5782), paras. 10-17.

"(c) Reconfirmed that it attached the highest priority to the formulation of the code of conduct;

"(d) Requested the Economic and Social Council to authorize the Intergovernmental Working Group on a Code of Conduct to hold three sessions before the seventh session of the Commission, the first to take place before the end of 1980." 2/

2. Accordingly, the eleventh session of the Intergovernmental Working Group on a Code of Conduct was held from 13 to 24 October 1980 at Geneva. 3/ The twelfth session was held from 5 to 23 January 1981 and the thirteenth session from 6 to 17 April 1981 at United Nations Headquarters. 4/ Following a decision of the Economic and Social Council, 5/ the Working Group held an additional session, the fourteenth, at United Nations Headquarters from 18 to 29 May 1981. A description of the progress of work at that session is set forth below.

I. ORGANIZATIONAL MATTERS

3. The Working Group held its fourteenth session at United Nations Headquarters from 18 to 29 May 1981. The following members of the Commission on Transnational Corporations attended the session: Algeria, Argentina, Brazil, Canada, China, Costa Rica, Cuba, Egypt, France, German Democratic Republic, Germany, Federal Republic of, Guatemala, India, Iran, Italy, Jamaica, Japan, Kenya, Mexico, Netherlands, Nigeria, Panama, Peru, Poland, Romania, Swaziland, Sweden, Switzerland, Thailand, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zaire. Australia, Denmark, Madagascar, Norway and Spain were represented by observers.

4. During the session, representatives of the United Nations Secretariat, the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Industrial Development Organization (UNIDO) were present.

5. The following specialized agencies were represented: International Labour Organisation (ILO); International Monetary Fund (IMF).

6. The following intergovernmental organizations also attended the session: Organisation for Economic Co-operation and Development; European Economic Community; Latin American Economic System.

2/ Ibid., 1980, Supplement No. 10 (E/1980/40/Rev.1), para 34.

3/ See the report of the Intergovernmental Working Group on a Code of Conduct on its eleventh session (Working Paper No. 14).

4/ See the report of the Intergovernmental Working Group on a Code of Conduct on its twelfth and thirteenth sessions (Working Paper No. 18).

5/ Economic and Social Council decision 1981/103 of 6 February 1981.

7. Among the non-governmental organizations represented were the International Chamber of Commerce, the International Confederation of Free Trade Unions, the International Federation of Women Lawyers, the International Organization of Consumers Unions, the International Organization of Employers and the Sierra Club International.

8. During the session, the Working Group held 15 meetings. It adopted the provisional agenda (E/C.10/AC.2/19).

9. The Working Group had before it the following documents:

(a) "Work related to the formulation of a code of conduct: report of the Intergovernmental Working Group on a Code of Conduct on its eighth, ninth and tenth sessions" (E/C.10/62);

(b) "Transnational corporations: certain modalities for implementation of a code of conduct in relation to its possible legal nature; report of the Secretariat" (E/C.10/AC.2/9);

(c) "Transnational corporations: a code of conduct; formulations by the Chairman on the implementation of the code of conduct" (E/C.10/AC.2/14).

10. The Working Group also had before it the following working papers:

(a) "Transnational corporations: a code of conduct; a composite text of the formulations by the Chairman and elements prepared by the United Nations Centre on Transnational Corporations" (Working Paper No. 10);

(b) "Work related to the formulation of a code of conduct: report of the Intergovernmental Working Group on a Code of Conduct on its eleventh session" (Working Paper No. 14);

(c) "Chairman's formulation regarding restrictive business practices" (Working Paper No. 15);

(d) "Transnational corporations: a code of conduct: Chairman's formulations on the preamble, objectives and definitions and scope of application" (Working Paper No. 16);

(e) "Transnational corporations: a code of conduct; new formulations by the Chairman on treatment and other selected paragraphs" (Working Paper No. 17);

(f) "Work related to the formulation of a code of conduct: report of the Intergovernmental Working Group on a Code of Conduct on its twelfth and thirteenth sessions" (Working Paper No. 18);

(g) "Transnational corporations: a code of conduct; Chairman's formulation of integrated provision, including reference to the ILO Tripartite Declaration" (Working Paper No. 19);

/...

(h) "Transnational corporations: a code of conduct; concluded provisions" (Working Paper No. 20).

11. The Working Group also had before it Conference Room Paper No. 41 containing a statement made by the Permanent Representative of Uganda to the United Nations on behalf of the African Group on the question of transnational corporation activities in South Africa, and Conference Room Paper No. 44, entitled "Draft provisions of the code of conduct for transnational corporations prepared by Venezuela on behalf of the Group of 77", and Conference Room Paper No. 43, entitled "Proposal of France, Germany, Federal Republic of, Italy and Switzerland - Article 51b". The delegation of Switzerland requested that a proposal submitted informally be issued as Conference Room Paper No. 47. The States Members of the United Nations which are members of the Group of 77 asked that a working paper be issued presenting in a consolidated manner its proposals on the provisions of the Code.

II. PREPARATION OF A CODE OF CONDUCT

12. The Working Group, as mentioned in paragraph 23 of its report on its eighth, ninth and tenth sessions (E/C.10/52), entered the last stage of negotiations at the eighth session when it began concluding provisions of the Code. It was understood that agreement relating to the concluded provisions was provisional, pending the completion of the draft of the Code in its entirety. The results achieved since then appear in the reports of the Group on its eighth, ninth and tenth sessions, on its eleventh session (Working Paper No. 14) and on its twelfth and thirteenth sessions (Working Paper No. 18). The provisions concluded at each of these sessions are contained in the annex to the respective reports. The present report contains, in annex I, a comprehensive listing of all the provisions so far concluded. This includes those provisions contained in the previous reports of the Intergovernmental Working Group, as subsequently revised in the light of further developments in the Group. It also includes newly concluded provisions arrived at in the Group during its most recent session. Furthermore, the Chairman's formulations on the parts of the Code not yet concluded are set forth in annex II. As has been noted, the Group drafted its provisions on the basis of the Chairman's formulations and had before it proposals of the Group of 77 contained in Conference Room Paper Nos. 20, 26 and Add.1, and 44, as well as proposals put forward by other delegations in Conference Room Papers 43 and 47.

13. The Working Group discussed a number of paragraphs contained in the section on activities of transnational corporations, on general treatment, nationalization and compensation and jurisdiction and on intergovernmental co-operation.

14. The Working Group drafted paragraph 9, dealing with the activities of transnational corporations in southern Africa. It decided to adopt as a concluded provision the text of paragraph 9 which had been annexed in the report on its thirteenth session as a tentative formulation agreed ad referendum.

15. The Group discussed the paragraphs dealing with intergovernmental affairs and decided to delete paragraph 13 and expand accordingly the scope of paragraph 12.

/...

The Group drafted paragraph 12 and decided to continue discussion on paragraphs 14 and 15. The Group reached agreement on paragraph 19 by amalgamating paragraphs 19 and 20, dealing with local equity participation and exercise of control by local partners.

16. Discussions were held regarding reference to "The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (see A/C.2/35/6, annex) and alternative formulations were drafted in this regard for future consideration.

17. The Group also drafted a provision referring to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (E/C.10/AC.2/3, annex II) adopted by the Governing Body of the International Labour Office, to be placed in one of the introductory substantive parts of the Code.

18. The Group agreed on paragraph 44a dealing with disclosure of information to trade unions or other representatives of employees, which had been prepared as tentative formulations at its thirteenth session.

19. The Group held discussions on paragraph 52 dealing with nationalization and compensation and developed a formulation for future consideration. The Group decided to continue its discussion on provisions regarding jurisdiction.

20. The Working Group also drafted paragraphs 57 to 63, inclusive, dealing with intergovernmental co-operation and decided to continue discussion on paragraph 64 (ex-50 in Working Paper No. 10).

21. Although significant progress has been made since the sixth session of the Commission on Transnational Corporations, the Working Group noted that the time available had not permitted it to complete its work. While most substantive parts of the draft Code have been negotiated, the introductory part, which includes the preamble, objectives and definitions, and the provisions regarding implementation have not yet been concluded. The Working Group requests the Commission to recommend to the Economic and Social Council that the Working Group hold three more two-week sessions before the eighth session of the Commission. The final report of the Working Group should contain the complete results of its work.

Annex I

CONCLUDED PROVISIONS

ACTIVITIES OF TRANSNATIONAL CORPORATIONS

A. General and political

Respect for national sovereignty and observance of domestic laws, regulations and administrative practices

1. Transnational corporations should/shall respect the national sovereignty of the countries in which they operate and the right of each State to exercise its /full permanent sovereignty/ /in accordance with international law/ /in accordance with agreements reached by the countries concerned on a bilateral and multilateral basis/ over its natural resources /wealth and economic activities/ within its territory.
2. /Transnational corporations/ /Entities of transnational corporations/ /shall/ should observe/ /are subject to/ the laws, regulations /jurisdiction/ and /administrative practices/ /explicitly declared administrative practices/ of the countries in which they operate. /Entities of transnational corporations are subject to the jurisdiction of the countries in which they operate to the extent required by the national law of these countries./
3. Transnational corporations should/shall respect the right of each State to regulate and monitor accordingly the activities of their entities operating within its territory.

Adherence to economic goals and development objectives, policies and priorities

4. Transnational corporations should/shall /endeavour to/ carry on their activities in conformity with the /declared/ /established/ development policies, objectives and priorities /established by/ the countries in which they operate. /Consistent with their financial, technological and managerial resources and capabilities/ /Consistent with the nature, purpose and extent of their business operations/ /entities of/ transnational corporations should /endeavour to/ make a positive contribution towards the achievement of /established/ /declared/ economic development goals of the countries in which they operate at the national and, where appropriate, the regional level within the framework of regional integration programmes. Transnational corporations should/shall /be prepared to/ engage in consultations and co-operate with governmental authorities in the countries in which they operate with a view to maximizing their contributions to the development process thereby establishing mutually beneficial relations with these countries. a/
5. Informal consultations will be pursued at a later stage.

a/ See Chairman's new formulation for para. 4a in Working Paper No. 17 (3 April 1981).

Adherence to socio-cultural objectives and values

6. Transnational corporations should/shall respect the social and cultural objectives, values and traditions of the countries in which they operate. While economic and technological development is normally accompanied by social change, transnational corporations should/shall avoid practices, products or services which cause detrimental effects on cultural patterns and socio-cultural objectives as determined by Governments. For this purpose, transnational corporations should/shall respond positively to requests for consultations from Governments concerned.

Respect for human rights and fundamental freedoms

7+8. Transnational corporations should/shall respect human rights and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational corporations should/shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion. Transnational corporations should/shall conform to government policies designed to extend equality of opportunity and treatment.

9. In accordance with the efforts of the international community towards the elimination of apartheid in South Africa and its continued illegal occupation of Namibia,

/ (a) Transnational corporations shall progressively reduce their business activities and make no further investment in South Africa and immediately cease all business activities in Namibia;

(b) Transnational corporations shall refrain from collaborating directly or indirectly with that régime especially with regard to its racist practices in South Africa and illegal occupation of Namibia to ensure the successful implementation of United Nations resolutions in relation to these two countries. /

/ Transnational corporations operating in southern Africa

(a) Should respect the national laws and regulations adopted in pursuance of Security Council decisions concerning southern Africa;

(b) Should within the framework of their business activities engage in appropriate activities with a view to contributing to the elimination of racial discrimination practices under the system of apartheid. / b/

b/ This paragraph has been referred to in previous working papers as "non-collaboration by transnational corporations with racist minority régimes in southern Africa". The Group will consider at subsequent sessions whether to include a separate heading regarding this paragraph.

/...

Non-interference in internal political affairs

10. Transnational corporations should/shall not interfere illegally in the internal political affairs of the countries in which they operate by resorting to They should refrain from any subversive and other illicit activities aimed at undermining the political and social systems in these countries.

11. Transnational corporations should/shall not engage in activities of a political nature which are not permitted by the laws and established policies and administrative practices of the countries in which they operate.

Non-interference in intergovernmental relations

12. Transnational corporations should/shall not interfere in any affairs concerning intergovernmental relations, which are the sole concern of Governments.

13. Deleted.

14-15. Discussion was postponed. c/

Abstention from corrupt practices

16. Discussion was postponed.

B. Economic, financial and social

Ownership and control

17. Transnational corporations should/shall so allocate endeavour so to allocate their decision-making powers among their entities as to enable them to contribute to the economic and social development of the countries in which they operate.

18. To the extent permitted by national laws, policies and regulations of the country in which it operates, each entity of a transnational corporation consistent with its legal status and obligations should/shall co-operate with the other entities so as to enable each entity to meet effectively the requirements established by the laws, policies and regulations of the country in which it operates.

19. (ex-19 and 20) Transnational corporations shall/should co-operate with Governments and nationals of the countries in which they operate in the implementation of national objectives for local equity participation and for the effective exercise of control by local partners as determined by equity, contractual terms in non-equity arrangements or the laws of such countries.

c/ See para. 15 of the present report.

21. Transnational corporations should/shall carry out their personnel policies in accordance with the national policies of each of the countries in which they operate which give priority to the employment and promotion of its /adequately qualified/ nationals at all levels of management and direction of the affairs of each entity so as to enhance the effective participation of its nationals in the decision-making process.

22. Transnational corporations should/shall contribute to the managerial and technical training of nationals of the countries in which they operate and facilitate their employment at all levels of management of the entities and enterprises as a whole.

Balance of payments and financing

23. Transnational corporations should/shall carry on their operations in conformity with laws and regulations and with full regard to the /declared/ policy objectives of the countries in which they operate, particularly developing countries, relating to balance of payments, financial transactions and other issues dealt with in the subsequent paragraphs of this section. d/

24. (ex-28). Transnational corporations should/shall respond positively to requests for consultation on their activities from the Governments of the countries in which they operate, with a view to contributing to the alleviation of pressing problems of balance of payments and finance of such countries.

25. (ex-24). /As required by government regulations and in furtherance of government policies/ /Consistent with the purpose, nature and extent of their operations/ transnational corporations should/shall contribute to the promotion of exports and the diversification of exports /and imports/ in the countries in which they operate and to an increased utilization of goods, services and other resources which are available in these countries.

26. Transnational corporations should/shall be responsive to requests by Governments of the countries in which they operate, particularly developing countries, concerning the phasing over a limited period of time of the repatriation of capital in case of disinvestment or remittances of accumulated profits, when the size and timing of such transfers would cause serious balance-of-payments difficulties for such countries.

27. (ex-25). Transnational corporations should/shall not, /contrary to prudent financial practices/, engage in short-term financial operations or transfers /short-term financial transactions/ nor defer or advance foreign exchange payments, including intra-corporate payments, in a manner which would increase currency instability and thereby cause serious balance-of-payments difficulties for the countries concerned.

28. (ex-26). /In respect of their intra-corporate transactions,/ transnational corporations should/shall not impose restrictions on their entities, /beyond generally accepted commercial practices/ regarding the transfer of goods, services and funds which would cause serious balance-of-payments difficulties for the countries in which they operate.

d/ See Chairman's new formulation in Working Paper No. 17.

29. (ex-27). When having recourse to the money and capital markets of the countries in which they operate, transnational corporations should/shall not /beyond generally accepted financial practices/ engage in activities which would have a significant adverse impact on the working of local markets, particularly by restricting the availability of funds to other enterprises /than international corporations/. When issuing shares with the objective of increasing local equity participation in an entity operating in such a country, or engaging in long-term borrowing in the local market, transnational corporations shall/should consult with the Government of the country concerned upon the request on the effects of such transactions on the local money and capital markets.

Transfer pricing

30. (ex-29-30). In respect of their intra-corporate transactions, transnational corporations should/shall not use pricing policies that are not based on relevant market prices, or, in the absence of such prices, the arm's length principle, which have the effect of modifying the tax base on which their entities are assessed or of evading exchange control measures /or customs valuation regulations/ /or which /contrary to national laws and regulations/ adversely affect economic and social conditions of the countries in which they operate.

Taxation

31. (ex-32b). Transnational corporations should/shall not, contrary to the laws and regulations of the countries in which they operate, use their corporate structure and modes of operation, such as the use of intra-corporate pricing which is not based on the arm's length principle, or other means, to modify the tax base on which their entities are assessed.

Competition and restrictive business practices

32. (ex-33). /a. Transnational corporations shall conform to the laws and regulations relating to restrictive business practices in the countries in which they operate and consult and co-operate with the competent authorities of those countries in charge of controlling restrictive business practices.

b. Transnational corporations shall refrain from restrictive business practices adversely affecting international trade, particularly that of developing countries and the economic development of these countries.

c. Transnational corporations in their intra-group transactions and in their dealings with other enterprises shall/should adhere to the relevant provisions of The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, adopted by the General Assembly in its resolution 35/63 of 5 December 1980, and in particular refrain from the practices listed in section D thereof containing principles and rules for enterprises including transnational corporations. /

/ For the purposes of this Code, the relevant provisions of The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in its resolution 35/63 of 5 December 1980 shall/should apply in the field of restrictive business practices. / e/

e/ This last alternative is to be included in one of the substantive introductory parts of the Code.

/...

Transfer of technology

33. (ex-34). Discussion was postponed pending developments in UNCTAD.

Employment and labour f/

Consumer protection

36. Transnational corporations shall/should carry out their operations, in particular production and marketing, in accordance with national laws, regulations, administrative practices and policies concerning consumer protection of the countries in which they operate. Transnational corporations shall/should also perform their activities, with due regard to relevant international standards, so that they do not cause injury to the health or endanger the safety of consumers or bring about variations in the quality of products in each market which would have detrimental effects on consumers.

37. Transnational corporations shall/should, in respect of the products and services which they produce or market or propose to produce or market in any country, supply to the competent authorities of that country on request or on a regular basis, as specified by these authorities, all relevant information concerning:

Characteristics of these products or services which may be injurious to the health and safety of consumers including experimental uses and related aspects;

Prohibitions, restrictions, warnings and other public regulatory measures imposed in other countries on grounds of health and safety protection on these products or services.

38. Transnational corporations shall/should disclose to the public in the countries in which they operate all appropriate information on the contents and to the extent known, on possible hazardous effects of the products they produce or market in the countries concerned by means of proper labelling, informative and accurate advertising or other appropriate methods. Packaging of their products should be safe and the contents of the product should not be misrepresented.

39. Transnational corporations shall/should be responsive to requests from Governments of the countries in which they operate and be prepared to co-operate with international organizations in their efforts to develop and promote national and international standards for the protection of the health and safety of consumers and to meet the basic needs of consumers.

f/ See p. 17 of the present document.

Environmental protection

40. Transnational corporations shall/should carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate and with due regard to relevant international standards. Transnational corporations shall/should, in performing their activities, take steps to protect the environment and where damaged to restore it /qualification will be elaborated later/ and should make efforts to develop and apply adequate technologies for this purpose. g/

41. Transnational corporations shall/should in respect of the products, processes and services they have introduced or propose to introduce in any country supply to the competent authorities of that country on request or on a regular basis, as specified by these authorities, all relevant information concerning:

Characteristics of these products, processes and other activities including experimental uses and related aspects which may harm the environment and the measures and costs necessary to avoid or at least to mitigate their harmful effects;

Prohibitions, restrictions, warnings and other public regulatory measures imposed in other countries on grounds of protection of the environment on these products, processes and services.

42. Transnational corporations shall/should be responsive to requests from Governments of the countries in which they operate and be prepared where appropriate to co-operate with international organizations in their efforts to develop and promote national and international standards for the protection of the environment.

C. Disclosure of information

43. Transnational corporations should disclose to the public in the countries in which they operate by appropriate means of communication, clear, full and comprehensible information on the structure, policies, activities and operations of the transnational corporation as a whole. The information should include financial as well as non-financial items and should be made available on a regular annual basis, normally within six months and in any case not later than 12 months from the end of the financial year of the corporation. In addition, during the financial year, transnational corporations should wherever appropriate make available a semi-annual summary of financial information.

The financial information to be disclosed annually should be provided where appropriate on a consolidated basis together with suitable explanatory notes and should include, inter alia, the following:

g/ See Chairman's new formulation in Working Paper No. 17.

- (1) A balance sheet;
- (2) An income statement, including operating results and sales;
- (3) A statement of allocation of net profits or net income;
- (4) A statement of the sources and uses of funds;
- (5) Significant new long-term capital investment;
- (6) Research and development expenditure.

The non-financial information referred to in the first subparagraph should include, inter alia:

- (1) The structure of the transnational corporations, showing the name and location of the parent company, its main entities, its percentage ownership, direct and indirect, in these entities, including shareholdings between them;
- (2) The main activity of its entities;
- (3) Employment information including average number of employees;
- (4) Accounting policies used in compiling and consolidating the information published;
- (5) Policies applied in respect of transfer pricing.

The information provided for the transnational corporation as a whole should as far as practicable be broken down:

- By geographical area or country, as appropriate, with regard to the activities of its main entities, sales, operating results, significant new investments and number of employees;
- By major line of business as regards sales and significant new investment.

The method of breakdown as well as details of information provided should/shall be determined by the nature, scale and interrelationships of the transnational corporations operations, with due regard to their significance for the areas or countries concerned.

The extent, detail and frequency of the information provided should take into account the nature and size of the transnational corporation as a whole; the requirements of confidentiality and effects on the transnational corporation's competitive position as well as the cost involved in producing the information.

The information herein required should, as necessary, be in addition to information required by national laws, regulations and administrative practices of the countries in which transnational corporations operate.

/...

44. Transnational corporations should/shall supply to the competent authorities in each of the countries in which they operate, upon request or on a regular basis as specified by those authorities, and in accordance with national legislation, all information required for legislative and administrative purposes relevant to the activities and policies of their entities in the country concerned.

Transnational corporations should/shall, to the extent permitted by the provisions of the relevant national laws, regulations, administrative practices and policies of the countries concerned, supply to competent authorities in the countries in which they operate, information held in other countries needed to enable them to obtain a true and fair view of the operations of the transnational corporation concerned as a whole in so far as the information requested relates to the activities of the entities in the countries seeking such information.

The provisions on paragraph 48 concerning confidentiality shall apply to information supplied under the provisions of this paragraph.

44a. With due regard to the relevant provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and in accordance with national laws, regulations and practices in the field of labour relations, transnational corporations should/shall provide to trade unions or other representatives of employees in their entities in each of the countries in which they operate, by appropriate means of communication, the necessary information on the activities dealt with in this code to enable them to obtain a true and fair view of the performance of the local entity and, where appropriate, the corporation as a whole. Such information should/shall include, where provided for by national law and practice, inter alia, prospects or plans for future development having major economic and social effects on the employees concerned.

Procedures for consultation on matters of mutual concern should/shall be worked out by mutual agreement between entities of transnational corporations and trade unions or other representatives of employees in accordance with national law and practice.

Information made available pursuant to the provisions of this paragraph should be subject to appropriate safeguards for confidentiality so that no damage is caused to the parties concerned. h/

h/ Para. 44a was accepted as concluded on the basis that it **would be** the sole reference in the Code to the subject consultations discussed therein.

TREATMENT OF TRANSNATIONAL CORPORATIONS

General treatment of transnational corporations by the countries in which they operate

45. States have the right to regulate the entry and establishment of transnational corporations including determining the role that such corporations may play in economic and social development and prohibiting or limiting the extent of their presence in specific sectors.

46. Transnational corporations should receive /fair and/ equitable /and non-discriminatory/ treatment /under/ /in accordance with/ the laws, regulations and administrative practices of the countries in which they operate /as well as intergovernmental obligations to which the Governments of these countries have freely subscribed/ /consistent with their international obligations/ /consistent with international law/.

47. Consistent with /national constitutional systems and/ national needs to /protect essential/national economic interests,/ maintain public order and to protect national security, /and with due regard to provisions of agreements among countries, particularly developing countries,/ entities of transnational corporations should be given by the countries in which they operate /the treatment/ /treatment no less favourable than that/ /appropriate treatment./ i/ accorded to domestic enterprises under their laws, regulations and administrative practices /when the circumstances in which they operate are similar/identical/ /in like situations/. /Transnational corporations should not claim preferential treatment nor the incentives and concessions granted to domestic enterprises of the countries in which they operate./ /Such treatment should not necessarily include extension to entities of transnational corporations of incentives and concessions granted to domestic enterprises in order promote self-reliant development or protect essential economic interests./ j/

47a. /Endeavouring to assure the clarity and stability of national policies, laws, regulations and administrative practices is of acknowledged importance. Laws, regulations and other measures affecting transnational corporations should be publicly and readily available. Changes in them should be made with proper regard to the legitimate rights and interests of all concerned parties, including transnational corporations./

/to be deleted/

48. (ex-51). Information furnished by transnational corporations to the authorities in each of the countries in which they operate containing /legitimate business secrets/ /confidential business information/ should be accorded reasonable safeguards normally applicable in the area in which the information is provided, particularly to protect its confidentiality.

49. k/.

i/ In this alternative, the sentence will end here.

j/ Some delegations preferred not to have a second sentence.

k/ See reference to employment and labour on p. 17 of the present document.

50. (ex-51 (b)). /In order to achieve the purposes of paragraph 22 relating to managerial and technical training and employment of nationals of the countries in which transnational corporations operate, the transfer of those nationals between the entities of a transnational corporation should, where consistent with the laws and regulations of the countries concerned, be facilitated./

/to be deleted/

51. /Transnational corporations should be able to transfer freely and without restriction all payments relating to their investments such as income from invested capital and the repatriation of this capital when this investment is terminated, and licensing and technical assistance fees and other royalties, without prejudice to the relevant provisions of the "Balance of payments and financing" section of this Code and, in particular, its paragraph 26./

/to be deleted/

B. Nationalization and compensation

52. 1/

C. Jurisdiction

53-56. 1/

INTERGOVERNMENTAL CO-OPERATION

57. /It is acknowledged/ /States agree/ that intergovernmental co-operation is essential in accomplishing the objectives of the Code.

58. /States agree that/ intergovernmental co-operation should be established or strengthened at the international level and, where appropriate, at the bilateral, regional and interregional levels /with a view to promoting the contribution of transnational corporations to their developmental goals, particularly those of developing countries, while controlling and eliminating their negative effects/. m/

59. States /agree to/ /should/ exchange information on the measures they have taken to give effect to the Code and on their experience with the Code.

60. States /agree to/ /should/ consult on a bilateral or multilateral basis, as appropriate, on matters relating to the Code and its application /in particular on conflicting requirements imposed on transnational corporations by the countries in which they operate and issues of conflicting national jurisdictions/ /in particular in relation to conflicting requirements imposed by parent companies on their entities operating in different countries/ and with respect to the development of international agreements and arrangements on issues related to the Code.

1/ See para. 19 of the present document.

m/ It is agreed that the last bracketed text will be deleted provided that the concept embodied therein is referred to in the section on objectives.

61. (ex-60) States /agree to/ /should/ take into consideration the objectives of the Code as reflected in its provisions when negotiating bilateral or multilateral agreements concerning transnational corporations.

62. / States agree to co-operate, within the framework of regional groupings, for making appropriate arrangements to assess the effectiveness of the application of the Code in the region./

/To be deleted or to be considered under the part of the Code related to implementation/

63. (ex-49) States / agree not to use / / should not use / transnational corporations as instruments to intervene in the internal or external affairs of other States / and agree to take appropriate action within their jurisdiction to prevent transnational corporations from engaging in activities referred to in paragraphs 10 to 12 of this Code./

Employment and labour n/

For the purposes of this Code, the principles set out in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, should apply in the field of employment, training, conditions of work and life and industrial relations.

n/ To be placed in one of the introductory substantive parts of the Code.

Annex II

CHAIRMAN'S FORMULATIONS ON THE PARTS OF THE CODE NOT YET CONCLUDED a/

ACTIVITIES OF TRANSNATIONAL CORPORATIONS b/

A. General and political

Adherence to economic goals and development objectives, policies and priorities

5. Transnational corporations should, as all parties to contracts freely entered into, respect and adhere to such contracts. In the absence of contractual clauses providing for review or renegotiation, transnational corporations should respond positively to requests for review or renegotiation of contracts concluded with Governments or governmental agencies in circumstances marked by duress, or clear inequality between the parties, or where the conditions upon which such a contract was based have fundamentally changed, causing thereby unforeseen major distortions in the relations between the parties and thus rendering the contract unfair or oppressive to either of the parties. Aiming at ensuring fairness to all parties concerned, review or renegotiation in such situations should be undertaken in accordance with applicable legal principles and generally recognized legal practices.

Non-interference in intergovernmental relations

14. Transnational corporations, in pursuing their corporate interests, should not request Governments to act on their behalf in any manner that exceeds normal diplomatic representation or other regular intergovernmental communication and, in particular, in any manner that amounts to the use of coercive measures of an economic and political character.

15. Transnational corporations shall/should exhaust available means provided by local laws in host countries. When applicable, other agreed means for resolving disputes, including the submission of international legal claims, may be used.

TREATMENT OF TRANSNATIONAL CORPORATIONS b/

B. Nationalization and compensation

52. In the exercise of their sovereignty, States have the right, acting in the public interest, to nationalize property in their territory. Fair and equitable treatment of transnational corporations by the countries in which they operate includes payment of just compensation in the event of nationalization or other taking of their property, such government action being undertaken under due process of law, in accordance with national laws, regulations and administrative practices without discrimination between enterprises in comparable situations and with full regard to international obligations and contractual undertakings to which States have freely subscribed.

a/ These formulations are contained in Working Paper No. 10 (7 November 1979), Working Paper No. 17 (3 April 1981), Working Paper No. 16 (11 February 1981) and E/C.10/AC.2/14 (21 March 1980), respectively.

b/ The formulations covered under these headings are contained in Working Paper No. 10, with the exception of paragraph 15, contained in Working Paper No. 17.

C. Jurisdiction

53. Entities of transnational corporations are subject to the jurisdiction of the countries in which they operate.

54. Disputes between a State and a transnational corporation, which are not amicably settled between the parties, are subject to the jurisdiction of the courts and other authorities of that State and are to be submitted to them, except for disputes which the State has agreed to settle by arbitration or by other methods of dispute settlement.

55. The validity of clauses providing for selection of applicable law or of the forum for settlement of disputes or for commercial arbitration in contracts between private parties, at least one of which is an entity of a transnational corporation, is to be determined by the national law of the countries concerned.

56. Where the exercise of jurisdiction over transnational corporations and their entities by more than one State may lead to conflicts of jurisdiction, adoption by the States concerned of mutually acceptable principles and procedures, bilaterally or multilaterally, for the avoidance or settlement of such conflicts, on the basis of respect for the interests of the States concerned and relevant international obligations, serves to improve the relations among States and between States and transnational corporations.

INTRODUCTORY PART c/

Preamble

..... d/

Conscious of the world-wide growth of transnational corporations, the diversity of their operations, their role in the utilization of capital, technology and human resources, their impact on international relations and their influence on the development process of the countries in which they operate, particularly developing countries,

Noting that the advances made by transnational corporations in organizing their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives.

Recognizing that transnational corporations can bring substantial benefits to the countries in which they operate by contributing to the efficient use and development of the resources of those countries,

Noting that the nature, influence and growth of transnational corporations has caused concern in the countries in which they operate and led to action towards the regulation and monitoring of those corporations,

Considering that the complexity of operations and the international structure of transnational corporations may render national measures ineffective,

c/ The formulations in this section on the preamble, objectives, definitions and scope of action are contained in Working Paper No. 16 (11 February 1981).

d/ The formal identification of the adopting parties has been left open, pending a decision on the legal nature and the procedure for adoption of the Code.

Noting that the economic situation of developing countries makes them particularly sensitive to the impact of the activities of transnational corporations and may put them at a disadvantage in their dealings with such corporations,

Recognizing the need to associate effectively the activities of transnational corporations with the efforts to establish the new international economic order, thereby also contributing to the achievement of the individual and collective self-reliance of developing countries,

Bearing in mind relevant decisions of the General Assembly pertaining to the activities of transnational corporations,

Recalling Economic and Social Council resolutions 1721 (LIII), 1908 (LVII) and 1913 (LVII) on the impact of transnational corporations on the development process and on international relations, which led to the establishment of the Commission on Transnational Corporations as a subsidiary body of the Council to deal with the entire range of issues related to the activities and operations of transnational corporations,

Recalling also the Decision of the Commission on Transnational Corporations, approved in Council decision 180 (LXI), which assigned highest priority to the formulation of a code of conduct and established the Intergovernmental Working Group on a Code of Conduct to elaborate and submit to the Commission and the Council a final draft of a code of conduct,

Referring to work done by other bodies of the United Nations system relevant to transnational corporations, in particular to the International Labour Organisation Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, adopted by the General Assembly in resolution 35/63, and the work of the United Nations Conference on an International Code of Conduct on the Transfer of Technology, of the Intergovernmental Working Group on the Problem of Corrupt Practices and the Committee on Illicit Payments, pursuant to Council resolution 2041 (LXI) and of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, pursuant to Council resolution 1979/44,

Convinced that a universally adopted and effective Code of Conduct establishing international standards concerning the activities and treatment of transnational corporations will usefully supplement national measures and provide a framework for international co-operation among States on issues relating to transnational corporations,

Have agreed to adopt this Code of Conduct.

Objectives

The objectives of the Code of Conduct are:

1. To establish international standards and arrangements, supplementing national measures and forming an integrated whole where all parts are related to one another, with a view to reducing and resolving the difficulties to which the activities of transnational corporations may give rise and promoting the contribution of transnational corporations to economic and social progress in the countries in which they operate;
2. To facilitate co-operation among States on issues relating to transnational corporations and alleviate difficulties stemming from the transnational character of those corporations and the multiplicity of national laws and policies relating to them;
3. To reassert the principle of respect by transnational corporations for the national sovereignty, laws and regulations of the countries in which they operate, and for the established policies of those countries and the right of States to regulate and accordingly monitor the activities of transnational corporations;
4. To proscribe subversion, interference in the internal affairs of States and other inadmissible activities by transnational corporations which aim to undermine the political and social systems of the countries in which they operate;
5. To reassert the principle that when applying their national laws, regulations and administrative practices to entities of transnational corporations under their jurisdiction, the countries concerned remain committed to any applicable international obligations;
6. To help create conditions conducive to the promotion of mutually beneficial relations between transnational corporations and the countries in which they operate, under which the laws, regulations and administrative practices of those countries would be equitably applied and the ability of transnational corporations to make efficient use of their capabilities maintained, so as to allow them to contribute fully to the economies of those countries;
7. To help ensure that the activities of transnational corporations are carried out in conformity with and contribute to established development policies of the countries in which they operate, giving due recognition to the special needs of developing countries;
8. To contribute to strengthening the negotiating capacity of developing countries in their dealings with transnational corporations;
9. To improve the understanding of the nature, structure and effects of transnational corporations by all parties concerned by establishing standards for the disclosure of information by transnational corporations;

10. To make adequate arrangements for the effective implementation of the Code of Conduct at the national, regional and international levels, including procedures for revising and supplementing the Code as required in the light of experience and evolving circumstances, thus giving the Code an evolutionary character;

11. To establish a focal point for international arrangements and agreements relating to transnational corporations in close co-operation with other bodies within the United Nations system.

Definitions and scope of application

1. The term "transnational corporation" as used in this Code means a commercial enterprise, comprising entities in two or more countries, regardless of the legal form and the fields of activity of these entities, which operates under a system of decision-making permitting coherent policies and a common strategy and in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others, and, in particular, to share knowledge, resources and responsibilities with the others.

2. The Code applies to all enterprises having those characteristics, including State-owned or State-controlled enterprises, in so far as they pursue activities dealt with in the Code.

3. The term "entities" in the Code means both parent entities - that is, entities which are the main source of influence over others - and other entities.

4. The term "transnational corporation" in the Code refers to the enterprise as a whole and/or its various entities according to the actual distribution of responsibilities among them, on the understanding that entities will co-operate and provide assistance to one another as necessary to facilitate observance of the Code.

5. The term "home country" means the country in which the parent entity is located. The term "host country" means a country in which an entity other than the parent entity is located.

6. The term "country in which a transnational corporation operates" means a country in which an entity of a transnational corporation conducts substantial operations. The term includes home as well as host countries.

7. The Code is universally applicable in and open to adoption by all States, regardless of their political and economic systems and their level of development.

8. Any reference in the Code to "States", "countries" or "Governments" includes regional groupings of States to the extent that they have power to take action in matters relating to transnational corporations.

IMPLEMENTATION OF THE CODE OF CONDUCT

1. Governments agree that action at the national and international levels is essential in accomplishing the objectives of the Code.

Action at the national level

2. In order to support and promote the application of the Code at the national level Governments will:

(a) Publicize and disseminate the Code and, as appropriate, reports relevant to the Code prepared by the Commission on Transnational Corporations, through official policy statements and other means, with a view to ensuring that transnational corporations, trade unions and others concerned are fully aware of them;

(b) Review the application of the Code within their territories;

(c) Make appropriate administrative and institutional arrangements to review the application of the Code and to deal with any related issues and difficulties;

(d) Report to the Commission on Transnational Corporations every second year, or upon its request, on the action taken at the national level to promote the Code and the experience gained from its application, the form and structure of such reports to be recommended by the Commission;

(e) Take the Code fully into account when introducing, implementing and reviewing laws, regulations and administrative practices relevant to the application of the Code with a view to facilitating the observance of the Code.

(f) Take no action contrary to the objectives of the Code.

Action at the international level

3. In order to increase the effectiveness of the Code, to enhance consistency in its application and to alleviate difficulties related to its application, Governments will:

(a) Co-operate at the bilateral, regional and other multilateral levels, as appropriate, by:

These formulations are contained in document E/C.10/AC.2/14.

It appears appropriate to include in the chapter on information a provision to the effect that transnational corporations should state publicly, preferably in their annual reports, their acceptance of the Code. If this is not deemed feasible, Governments should be requested, in the chapter on implementation, to encourage transnational corporations operating within their territories to do so.

/...

- (i) Exchanging information related to the application of the Code;
 - (ii) Engaging in consultations at the request of another Government regarding specific issues on the application of the Code relating to the Governments concerned, including difficulties arising from conflicting requirements on transnational corporations;
 - (iii) Taking fully into consideration the relevant provisions of the Code when negotiating bilateral or multilateral agreements concerning issues related to the Code;
 - (iv) Promoting the application of the Code within the framework of regional arrangements in which Governments participate;
- (b) Making full use of the United Nations institutional machinery, the structure and functions of which are described below.

Institutional machinery

4. The United Nations institutional machinery for the application of the Code at the international level will consist of the Commission on Transnational Corporations, which may establish the subsidiary bodies and specific procedures it deems necessary for the effective discharge of its functions in this respect, and the United Nations Centre on Transnational Corporations, which will act as the secretariat to the Commission.

5. The Commission will:

- (a) Periodically or at the request of a Government discuss matters related to the Code. The Commission may invite representatives of transnational business, trade unions, consumer organizations and other interested groups to express their views on such matters. If agreed by all Governments engaged in consultations on specific issues related to the application of the Code, such consultations may be held within the Commission;
- (b) Periodically review the application of the Code, such reviews being based on reports submitted by Governments and supplemented by documentation from non-governmental organizations and United Nations organizations and specialized agencies performing work relevant to the Code, as well as by studies prepared for this purpose by the Centre upon the request of the Commission. The timing and procedures of the reviews are to be determined by the Commission. The first review will be made not earlier than two years and not later than three years after the adoption of the Code;
- (c) Provide, upon the request of a Government, clarification of the provisions of the Code in the light of actual situations in which the applicability and implications of the Code have been the subject of intergovernmental consultations. The Commission may also decide to provide clarification at the request of non-governmental organizations represented in the Commission. Transnational business, trade unions, consumer organizations and other interested parties may request

clarification through Governments or non-governmental organizations represented in the Commission. The Commission should endeavour to respond in a timely manner to requests for clarification. In clarifying the provisions of the Code, the Commission shall not draw conclusions concerning the conduct of the parties involved in the situation which led to the request for clarification. The clarification is to be restricted to issues illustrated by such a situation. The detailed procedures regarding clarification are to be determined by the Commission;

(d) Recommend, as and when appropriate, revision of the Code in the light of experience gained in its application and evolving circumstances, including developments in other United Nations organizations and specialized agencies performing work relevant to the Code. Having regard to the importance of stability and consistency to the effectiveness of the Code, recommendations for its revision will not be made during the initial period of five years after its adoption, unless justified by exceptional circumstances or as a consequence of developments in other international forums to which reference is made in the Code;

(e) Consider, under its general mandate to promote the exchange of views between, inter alia, transnational business and trade unions, steps aimed at encouraging an exchange of views regarding the application of the Code between individual transnational corporations and business organizations on the one hand and trade union representatives of the various entities of a transnational corporation on the other hand;

(f) Report to the Economic and Social Council the results of its discussions and periodic reviews, the response given to requests for clarification and the recommendations made in regard to revising the Code;

(g) The Commission will act as the focal international body for all matters related to the Code. It will establish and maintain close contacts with other United Nations organizations and specialized agencies dealing with matters related to the Code and its implementation with a view to co-ordinating steps taken for the promotion and application of the Code. When matters covered by international agreements and arrangements which have been worked out in other United Nations forums specifically referred to in the Code arise, the Commission will forward such matters to the competent bodies charged with the implementation of such agreements or arrangements.

6. The United Nations Centre on Transnational Corporations will:

(a) Collect and analyse information with regard to the promotion and application of the Code on the basis of reports submitted to the Commission by Governments and documentation supplied to the Commission by non-governmental organizations and other United Nations organizations and specialized agencies;

(b) Conduct research and surveys concerning the substantive issues relating to the Code as directed by the Commission;

(c) Provide other assistance as required by the Commission.