

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/C.10/46
11 April 1979

ORIGINAL: ENGLISH

COMMISSION ON TRANSNATIONAL CORPORATIONS

Fifth session

14-25 May 1979

Item 5 of the provisional agenda. Work related to the formulation of a code of conduct: report of the Intergovernmental Working Group on a Code of Conduct

REPORT OF THE INTERGOVERNMENTAL WORKING GROUP ON A CODE OF
CONDUCT ON ITS FIFTH, SIXTH, AND SEVENTH SESSIONS

Rapporteur: Mr. B. SEPÚLVEDA (Mexico)

Background

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/ and approved by the Economic and Social Council in decision 180 (LXI) of 5 August 1976, held its first and second sessions in 1977, on which it submitted a report to the Commission on Transnational Corporations at its third session (E/C.10/31). The Working Group held its third and fourth sessions in 1978, on which it submitted a report to the Commission on Transnational Corporations at its fourth session (E/C.10/36).

2. At its fourth session, the Commission adopted the following decision: 2/

"The Commission

"(a) Took note of the report of the Intergovernmental Working Group on a Code of Conduct on the work of its third and fourth sessions (E/C.10/36);

"(b) Expressed its appreciation for the work done so far;

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

2/ Ibid., 1978, Supplement No. 12 (E/1978/52), para. 15.

"(c) Instructed the Working Group to continue its work with a view to carrying out its mandate, taking into account the views expressed during the fourth session of the Commission;

"(d) Requested the Economic and Social Council to decide as a matter of urgency, taking into account the strong support expressed by the Commission of the recommendation of the Working Group (E/C.10/36, para. 18) that it should hold at least three sessions of two weeks each before the fifth session of the Commission and that the fifth session of the Working Group should be held before the thirty-third session of the General Assembly in order to carry out its work expeditiously with a view to completing its mandate;

"(e) Requested the Working Group to report to the Commission at its fifth session."

3. The present report is in answer to that request.

Fifth session (18-29 September 1978)

A. Organization of work

4. The Working Group held its fifth session at United Nations Headquarters from 18 to 29 September 1978 with the following States members of the Commission attending: Algeria, Argentina, Brazil, Canada, Colombia, Cuba, France, German Democratic Republic, Germany, Federal Republic of, Ghana, India, Iran, Italy, Ivory Coast, Jamaica, Japan, Kenya, Mexico, the Netherlands, Nigeria, Panama, Peru, Romania, Spain, Sweden, Switzerland, Thailand, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia. Poland and the United Republic of Cameroon were represented by observers.

5. The session was also attended by the following persons selected by the Commission on Transnational Corporations to assist it and the Working Group as expert advisers: Mr. I. D. Akumu, Mr. S. Babar Ali, Mr. I. M. Gonzalez, Mr. I. N. Goudswaard, Mr. I. D. Ivanov, Mr. G. E. Jones, Mr. D. Lea, Mr. A. Lewis, Mr. S. Paul, Mr. M. Sanfelici, Mr. G. Tacke and Mr. T. Zaki.

6. The Working Group adopted the provisional agenda contained in document E/C.10/AC.2/6. It had before it the following documents: "Transnational corporations: texts relevant to an annotated outline suggested by the Chairman of the Intergovernmental Working Group on a Code of Conduct" (E/C.10/AC.2/3); "Formulation of a code of conduct: elaboration of the Chairman's annotated outline on the basis of discussion in the Intergovernmental Working Group on a Code of Conduct" (Working Papers No. 1 and Add.1-4 and No. 3); and "Transnational corporations: aspects of possible relationships between the work on a code of conduct and related work in UNCTAD and ILO" (E/C.10/AC.2/5).

7. During the session, the Working Group held 11 meetings.

B. Preparation of a code of conduct

8. At its fifth session, the Working Group discussed "Common elements - tentative formulations", contained in chapter III of Working Paper No. 1/Add.1-4, on principles and/or issues related to the activities of transnational corporations:

3. Economic, financial and social; ownership and control, balance of payments, transfer pricing, taxation, consumer protection, environmental protection, disclosure of information; and chapter IV, on principles and/or issues relating to the treatment of transnational corporations: A. General treatment of transnational corporations in home and host countries; B. Nationalization and compensation, and C. Jurisdiction. The Working Group also discussed the possible relationship between its work and the related work in the United Nations Conference on Trade and Development (UNCTAD) (restrictive business practices and transfer of technology) as well as the issue of employment and labour.

9. Nationalization and compensation, jurisdiction, balance of payments, and disclosure of information were subjects on which the Working Group dedicated the greater part of its discussions. With respect to the balance of payments, the Working Group requested the Centre on Transnational Corporations to present, during the session, a reformulation of the common elements - tentative formulation on that issue (Working Paper No. 3).

10. The Working Group requested its Chairman to reformulate, on the basis of the discussions in the Working Group, the "common elements - tentative formulations" contained in Working Paper No. 1/Add.1-4 and attach to his paper an explanatory note on nationalization and compensation. The Working Group also requested the Centre on Transnational Corporations to prepare for its sixth session (a) a document presenting alternative modalities regarding the implementation of the code, taking into account various options regarding its legal nature, (b) a document aimed at isolating issues contained in the work of the United Nations Group of Experts on Tax Treaties, relevant to the formulation of the provision on taxation in a code of conduct; (c) a working paper presenting appropriate reference to the International Labour Organisation's Tripartite Declaration; and (d) a working paper presenting a tentative formulation on the issue of free, timely and unrestricted transfer of investment capital and repatriation of capital in case of disinvestment.

11. The Working Group agreed on the following provisional agenda for its sixth session:

1. Opening of the session
2. Election of officers
3. Adoption of the agenda and organization of work
4. Preparation of a code of conduct

5. Draft provisional agenda for the seventh session of the Intergovernmental Working Group on a Code of Conduct

Sixth session (8-19 January 1979)

A. Organization of work

12. The Intergovernmental Working Group on a Code of Conduct held its sixth session at United Nations Headquarters from 8 to 19 January 1979 with the following States members of the Commission attending: Argentina, Brazil, Canada, Colombia, Cuba, France, German Democratic Republic, Germany, Federal Republic of, Ghana, India, Indonesia, Iran, Italy, Jamaica, Japan, Kenya, Kuwait, Madagascar, Mexico, the Netherlands, Nigeria, Panama, Romania, Suriname, Swaziland, Sweden, Switzerland, Thailand, Tunisia, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zaire. Gabon and Spain were represented by observers.

13. The session was also attended by the following persons selected by the Commission on Transnational Corporations to assist it and the Working Group as expert advisers: Mr. J. D. Akumu, Mr. S. Babar Ali, Mr. J. M. Goudswaard, Mr. G. Jones, Mr. K. Kojima, Mr. S. Paul, Mr. G. Tacke, and Mr. T. Zaki.

14. During the sixth session, the Working Group held 16 meetings. At its 59th meeting, the Working Group re-elected Mr. S. Niklasson (Sweden) as Chairman, Messrs. R. S. Bhatt (India), H. Heininger (German Democratic Republic), as Vice-Chairmen, and Mr. B. Sepúlveda (Mexico) as Rapporteur. Mr. Abuah (Nigeria) was re-elected Vice-Chairman at the 71st meeting.

15. The Working Group adopted the provisional agenda contained in document E/C.10/AC.2/7. It had before it the following documents: "Transnational corporations: code of conduct; formulations by the Chairman" (E/C.10/AC.2/8); "Transnational corporations: certain modalities for implementation of a code of conduct in relation to its possible legal nature" (E/C.10/AC.2/9); "Transnational corporations: the work of the Group of Experts on Tax Treaties relevant to the formulation of a code of conduct" (E/C.10/AC.2/10); "Formulation of a code of conduct: employment and labour" (Working Paper No. 4/Rev.1); and "Tentative formulation on the timely and unrestricted transfer of investment income and repatriation of investment capital in case of disinvestment" (Working Paper No. 5).

B. Preparation of a code of conduct

16. At its sixth session, the Working Group concentrated its deliberations on the legal nature of a code of conduct and the alternative modalities regarding the implementation of the code. The Working Group also discussed the appropriate reference in a code of conduct to the International Labour Organisation's Tripartite Declaration, the issue of timely and unrestricted transfer of investment capital in the case of disinvestment, and the work of the United Nations Group of Experts on Tax Treaties relevant to the issue of taxation in a code of conduct.

17. On the issue of employment and labour, there was a general consensus to use, as a text for further discussion, a text proposed by the Centre on Transnational Corporations (Working Paper No. 4/Rev.1) which refers to the principles set out under the main headings of the International Labour Organisation's Tripartite Declaration.

18. For its seventh session, the Working Group requested the Centre on Transnational Corporations to prepare working papers identifying and isolating the key elements involved in the implementation of a code of conduct and formulations regarding intergovernmental co-operation, taxation and disclosure of information to representatives of employees. The Working Group also decided to request UNCTAD to make available to respective working groups of UNCTAD document E/C.10/AC.2/5, dealing with the possible relationship between the work of the Commission on a code of conduct and the work in UNCTAD with respect to transfer of technology and restrictive business practices.

19. The Working Group agreed on the following provisional agenda for its seventh session:

1. Opening of the session
2. Adoption of the agenda and organization of work
3. Preparation of a code of conduct
4. Report of the Intergovernmental Working Group on a Code of Conduct to the fifth session of the Commission on Transnational Corporations

Seventh session (12-23 March 1979)

A. Organization of work

20. The Intergovernmental Working Group on a Code of Conduct held its seventh session at United Nations Headquarters from 12 to 23 March 1979 with the following States members of the Commission attending: Algeria, Argentina, Benin, Brazil, Canada, Colombia, Cuba, France, German Democratic Republic, Germany, Federal Republic of, India, Indonesia, Iran, Italy, Jamaica, Japan, Kenya, Kuwait, Madagascar, Mexico, the Netherlands, Nigeria, Panama, Peru, Poland, Romania, Suriname, Swaziland, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela, Yugoslavia, and Zambia. Gabon, Guyana, Honduras, Philippines and Spain were represented by observers.

21. The session was also attended by the following persons selected by the Commission on Transnational Corporations to assist it and the Working Group as expert advisers: Mr. J. D. Akumu, Mr. S. Babar Ali, Mr. J. M. Goudswaard, Ms. E. Jager, Mr. G. Jones, Mr. D. Lea, Mr. A. Lewis, Mr. S. Paul, Mr. M. Sanfelici, Mr. G. Tacke and Mr. T. Zaki.

22. The Working Group adopted the annotated provisional agenda contained in document E/C.10/AC.2/11. It had before it the following documents: "Transnational corporations: code of conduct; formulations by the Chairman" (E/C.10/AC.2/8); "Transnational corporations: formulation of a code of conduct; key elements regarding implementation" (Working Paper No. 6); "Transnational corporations: formulation of a code of conduct; common elements - tentative formulations regarding intergovernmental co-operation" (Working Paper No. 7); "Transnational corporations: formulation of a code of conduct; taxation" (Working Paper No. 8) and "Transnational corporations: formulation of a code of conduct; tentative formulations on information disclosure to representatives of employees" (Working Paper No. 9).

23. During the seventh session, the Working Group held 20 meetings.

B. Preparation of a code of conduct

24. During its first six meetings, the Working Group completed its discussion of key elements regarding implementation, as well as common elements regarding intergovernmental co-operation, contained respectively, in Working Papers Nos. 6 and 7, prepared by the Centre on Transnational Corporations.

25. During the discussion on effectiveness of the code, it was noted that effectiveness should be linked with the objectives of the code and referred to in the preamble of the code. In discussing key elements regarding application of the code at the national and international levels, the Working Group noted that any understandings on these topics should have to be tentative since the legal nature of the code - which was preliminarily discussed at the sixth session - was still to be determined. It was generally felt that the code could become effective only if it were widely accepted or adopted; a general agreement on the substance and the scope, namely, the addressees of the code, was relevant in this context.

26. The importance of the application of the code at the national level was generally recognized. It was pointed out that the basic follow-up measures could be based on express provisions contained in the code, while others might be independently taken by States in fulfilment of the broad commitment to promote the code's application. Several delegations considered uniformity and predictability to be important in this regard.

27. Regarding particular follow-up measures, there was general consensus that States should publicize the contents of the code and issue official statements in its support. The idea of establishing some type of national body for handling matters pertaining to the code was, on the whole, well received. There was broad agreement to the effect that States should undertake to take the code fully into account when introducing and implementing new legislation. Several delegations also felt that the code might be used as a source of law. Opposing views were expressed regarding the possibility of revising existing legislation so as to reflect the spirit of the code, as well as incorporating the code into national laws. It was generally felt, however, that there would be such effects on

national legislation if the code were to become a legally binding instrument. If not, countries might still feel that the code should be wholly or partly incorporated into national legislation irrespective of whether provisions to that effect are included in the code. It was pointed out that this possibility increases the need for consistency in the application of the code. The possibility of the code serving as a general model for subsequent national legislation was also mentioned by some delegations.

28. On the issue of application at the international level, the Group discussed possible functions of an intergovernmental body, which was generally presumed to be the Commission on Transnational Corporations, while some delegations thought that those functions could be exercised by a subsidiary body of the Commission. There was general consensus that the functions of a Secretariat should be carried out by the Centre on Transnational Corporations under the direction of the Commission. It was noted in this context that in case of a binding code, the intergovernmental body should consist of signatory parties.

29. There was consensus that one of the functions of the intergovernmental body should be the review and appraisal of the application of the code on the basis of reports received from Governments and other sources, these reports being analysed by the Secretariat. There was a general feeling that this body should also have the function of being a forum for consultations. Different views were expressed regarding the functions of clarification or interpretation of the code. Some delegations were of the view that the Commission should not interpret the code in relation to specific cases, particularly if the code were of a non-binding nature. Several delegations felt, however, that a procedure aimed at clarifying the meaning of the code should be introduced, particularly since some of the provisions would include general language and concepts which would need to be clarified in the light of practical experience. Moreover, it was felt that such a procedure should not have a judicial or semijudicial character. The advisory nature of the clarification function was stressed by a number of delegations. Further, several delegations pointed out that although no conclusions should be made, or judgements passed on the conduct of individual enterprises, the clarification of provisions of the code should not take place only in abstracto but also in the light of concrete situations, and should result from consultations in the intergovernmental body. It was suggested in this context that the intergovernmental body could invite other parties, such as representatives of transnational business, trade unions or consumer organizations, to express their views. Several delegations felt that private parties, namely, businesses, trade unions and other, should be able to present their views on issues pertaining to the code through Governments or through their own non-governmental international organizations. The intergovernmental body, however, could also take up issues included in reports by non-governmental organizations submitted to it through the Centre.

30. There was consensus regarding the need for consultation among States on matters related to the application of the code aiming, inter alia, at the resolution of difficulties. Opposing views were expressed by several delegations regarding the possible function of dispute settlement and complaints procedure. It was proposed by some delegates that an appropriate body could handle complaints

on an ad hoc basis. Several delegations expressed the view that the Commission should not be entrusted with the functions of disputes settlement and complaints procedure.

31. A consensus emerged regarding the need for future review and revision of the code. It was noted that such revision should be undertaken periodically, since the code is subject to an evolutionary process. It was felt, however, that in view of the need of certain stability, such revision should not take place too soon after the adoption of the code. A period of five years was mentioned by some delegations.

32. Regarding the functions of the Secretariat, the Group agreed that the Centre should collect and disseminate information on the basis of reports by Governments and other interested parties, as mentioned above, conduct research, and prepare reports with a view to facilitating the review and appraisal of the application of the code by the intergovernmental body.

33. Various views were expressed regarding the inclusion of provisions encouraging exchange of views by the individual transnational corporations and trade unions or representatives of employees of all units of a transnational corporation. Although consensus was not reached, an understanding emerged that relevant provisions should reflect this idea.

34. On the subject of intergovernmental co-operation, the Group discussed common elements prepared by the Centre in Working Paper No. 7. All delegations stressed the importance of intergovernmental co-operation on matters related to the code. This co-operation at the bilateral and multilateral levels, including the regional level, was thought to be useful for the purposes of consultations, exchange of information and promotion of agreements and arrangements related to the code and other relevant issues. Some delegations were in favour of consultation, particularly in the case of conflicting requirements imposed on transnational corporations by the Governments concerned. Others noted the importance of co-operation towards increased harmonization of policies of countries of a region and towards the resolving of difficulties.

35. The Group decided to request the Centre to prepare common elements regarding the application of the code at the national and international levels and requested the Chairman to prepare formulations regarding intergovernmental co-operation in the light of its discussions.

36. The Group at its next 13 meetings discussed the Chairman's formulations contained in document E/C.10/AC.2/8.

37. Under the section Activities of Transnational Corporations - A. General and Political, several delegations expressed the view that these provisions were of utmost importance and that the reference to respect for national sovereignty and the right of each State to exercise jurisdiction over transnational corporations operating in its territory should be strengthened. Other delegations maintained that a reference to the fact that transnational corporations are subject to the

laws of the countries in which they operate would suffice and that the issue of jurisdiction should be dealt with under the appropriate section. In addition, it was noted that the code should include, in an appropriate place, a distinction between the entities of transnational corporations and the transnational corporation as a whole. These delegations noted that the provisions referred to should be read in conjunction with those under Treatment of Transnational Corporations; the over-all effect should be balanced; the provisions should contain a reference to the international law and contractual obligations. Several delegations expressed disagreement to these proposals.

38. Although the ideas contained under the heading "Adherence to economic goals and development objectives, policies and priorities" were acceptable to all delegations, there was disagreement regarding the reference to the term "viability" of transnational corporations, as a qualification to the provision as well as to conditions on the basis of which transnational corporations would be responsive to requests for renegotiation of contracts. The concepts expressed under the headings "Adherence to socio-cultural objectives and values", "Respect for human rights and fundamental freedoms", and "Non-interference in internal political affairs" were found to be acceptable by the Group although some qualifications and changes in language were proposed by delegations. In this regard, it was brought to the attention of the Group that in paragraph 8, account should be taken of the language used in the ILO Tripartite Declaration. Although no discussion was held regarding the issue of non-collaboration of transnational corporations with racist minority régimes in southern Africa, several delegations made a proposal according to which transnational corporations were called to terminate their activities in that region in accordance with resolutions adopted by the United Nations.

39. Several proposals were made regarding formulations under "Non-interference in intergovernmental relations" in which several delegations opposed references to diplomatic protection as a means of exerting pressure on host Governments, while others were of the view that Governments have the right to protect the interests of their nationals and espouse international claims after the exhaustion of national remedies.

40. Under the heading "Abstention from corrupt practices", the Group heard a description of the progress of the work in the Committee on Illicit Payments. Although no discussion was held, several delegations indicated that a link existed between the work on the code of conduct and that on illicit payments.

41. Taking up the formulations under B. Economic, Financial and Social, on "Ownership and control", delegations made a number of suggestions regarding the possible restructuring of the provisions including some drafting changes. While some delegations pointed out that sound commercial practices should be taken into account in this regard and prescription of strict standards on the structure of corporations should be avoided, others opposed these suggestions. Some delegations emphasized the importance of decentralization in decision-making among entities of a transnational corporation. The basic ideas contained under the heading "Balance of payments and financing" were acceptable to the Group, although delegations expressed some difficulties in agreeing with the language

as at present formulated. While some delegations expressed the view that the principle of timely and unrestricted transfer of capital and investment income should be mentioned and that reference to the viability of transnational corporations or sound commercial practices should be retained, and that rephrasing of transfers of capital in case of disinvestment and accumulated income should only be permitted under exceptional circumstances, others maintained that such qualifications should not be introduced and that transnational corporations should be responsive to requests for rephrasing when such transfers aggravate serious balance-of-payments problems. The Group found acceptable, on the whole, the formulations contained under "Transfer pricing" and "Taxation" (the latter included in Working Paper No. 3 prepared by the Centre), although some drafting and additional proposals were made by some delegations.

42. The Group decided to postpone discussion on "Competition and restrictive business practices" as well as "Transfer of technology" until further progress was made in other United Nations intergovernmental bodies dealing with these issues. On the issue of "Employment and labour" the Group reiterated its tentative agreement, reached at its sixth session, to make a reference to the ILO Tripartite Declaration, as contained in Working Paper No. 4/Rev.1, prepared by the Centre, and to repeat this reference as far as Governments are concerned under the section Treatment of Transnational Corporations, or in another appropriate place.

43. On "Consumer protection" and "Environmental protection", the Group expressed its basic agreement on the ideas contained therein, while some of its members made some specific proposals. A number of delegations were of the view that some of the elements were somewhat demanding on transnational corporations, and that domestic enterprises should be equally requested to accept relevant standards. Other delegations pointed out that the issue of non-discriminating treatment of transnational corporations vis-à-vis national enterprises was dealt with elsewhere in the code and that no specific reference to the latter was needed, adding that the code was meant to deal with transnational corporations only. It was also observed that environmental and consumer protection is, in principle, the responsibility of Governments. Accordingly, transnational corporations should comply with existing national laws and regulations in those fields and with national policies when specific national legislation or regulations do not exist.

44. With respect to "Disclosure of information", the Group expressed its basic agreement on the concepts contained in the formulations, and agreed not to postpone its discussions on this subject until the conclusions of a possible ad hoc Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (whose composition and mandate still has to be determined), were known. The Group also made a number of suggestions regarding possible restructuring of the formulations as well as certain drafting changes.

45. Several delegations stressed that the formulations should first deal with the information to be disclosed to Governments, followed by the information to be disclosed to the public, and that information to Governments should be given on a regular basis and not only on specific requests by Governments. Other delegations

pointed out that in disclosing information to Governments, appropriate safeguards for confidentiality should be clearly defined while some delegations pointed out that only information requested by national laws, regulations and administrative practices should be disclosed. Some delegations pointed out that, according to national laws and regulations, certain distinctions between transnational corporations should be made on the basis of their size in determining the amount of information to be disclosed to the public. The Group showed a broad understanding for the inclusion of a provision on the disclosure of information to trade unions or other representatives of employees. In this connexion, suggestions were made to simplify the language contained in Working Paper No. 9, along the lines of the relevant provisions of the ILO Tripartite Declaration. The Group also agreed to ask delegations which may wish to do so, to prepare separate lists of information on financial and non-financial items to be disclosed to the public, and to request the Centre to compile those lists in a single document, without revealing their origin.

46. In discussing the formulations of the Chairman under the heading Treatment of Transnational Corporations, the Group dealt first with A. General treatment of transnational corporations by the countries in which they operate. A consensus emerged on several of the concepts expressed in this section, although some drafting changes in the formulations were proposed by some delegations. Differences of opinion, however, arose on some other concepts. Several delegations were of the view that reference to fair and equitable treatment of transnational corporations was not necessary since that idea could be covered by the reference granting transnational corporations the same treatment as that given to domestic enterprises in situations where their operations are comparable. Some delegations, on the other hand, thought that specific reference to fair, equitable and non-discriminatory treatment should be made in this context. The question arose as to the meaning of non-discriminatory treatment, particularly in regard to the application of that principle to entities of transnational corporations. Differences also appeared with respect to the references to generally accepted international standards and to diplomatic protection. While several delegations opposed such references as being vague and implying limitations to national sovereignty, some other delegations stated that these references were necessary and should be amplified to include references to international law and contractual obligations. Some delegations reiterated their view that this section should include provisions regarding timely and unrestricted transfer of capital from disinvestment and income, free access to capital markets, movement of employees across borders, and positive governmental response to requests of transnational corporations for renegotiation of contracts. These suggestions were opposed by several delegations; they pointed out that the inclusion of further provisions could adversely affect the balance and purpose of the code and the procedures of the Group. An understanding emerged that a reference to the ILO Tripartite Declaration should be made in this section, and that the issue of transfer of capital and income would be dealt with in an appropriate section of the code.

47. The discussion of the formulation under B. Nationalization and compensation showed a persistence of differing views on this matter. It was generally felt that the formulation by the Chairman and his attached comments were a useful basis for discussion.

48. Several delegations reaffirmed the inalienable right of States to nationalize foreign property. According to them, the grounds for undertaking such a measure, namely, the reference to the public interest, should be broadened to include national security and social interest. They opposed the reference to the notion of fair and equitable treatment and they indicated that the notion of "just" compensation had a subjective element in it and could be substituted by the concept of appropriate compensation. The concept of due process of law, according to these delegations, was considered to have a meaning not precisely defined in scope, since nationalization measures would not in all cases be subject to further legal procedures. These same delegations questioned the need of having a reference to non-discrimination, international obligations and contractual undertakings, since national laws, regulations and administrative practices would govern the nature and modalities of compensation. It was also said by these delegations that the formulation as it stands imposes too heavy a burden on the right of States to nationalize foreign property, and that it should be reformulated in a more balanced manner.

49. Other delegations expressed the view that although the right of States to nationalize foreign property was acknowledged, both this right and the procedure and amount of compensation should take place under due process of law and in accordance with national and international law and contractual agreements. They were of the view that the concept of "just" compensation needed elaborating to refer, for example, to the timeliness and transferability of the payment which should, according to them, reflect the equivalent value of the nationalized property.

50. During the discussion it was pointed out that often these cases are settled amicably and do not lead to dispute. Thus although there was consensus regarding the right of States to nationalize foreign property and to the need for payment of compensation, there were disagreements regarding the procedures to be followed and the legal standards to be applied.

51. With regard to C. Jurisdiction, there was a general agreement in the Group that the present formulations could be a basis for further discussions on this subject, although conflicting views were expressed on the scope of these formulations. Some delegations felt that the elements in this section required further balance and clarification, and put forward new suggestions for future redrafting. Other delegations pointed out that most of these proposals could introduce an imbalance to the code and expressed their preference for the formulation of general principles mutually acceptable and the avoidance of formulating numerous specific standards in this respect. Some delegations further thought that, although the standards on jurisdiction would have to deal with issues pertaining to transnational corporations, the incorporation in the code of provisions including principles going beyond the activities of such corporations may also have to be considered; this question would have to be resolved in the light of the content and scope of the substantive provisions of the code.

52. Following the discussion of the formulations of the Chairman, the Group had a preliminary discussion on the issue of Definitions, the importance of which was

recognized by the Group. Several delegations stressed the importance of making progress on the issue, especially as it concerns the need of definitions in the context of the code of conduct. Various qualitative and quantitative criteria for definition of transnational corporations were proposed. Other delegations favoured a broad definition such as the one used by the Group of Eminent Persons. It was noted that earlier discussions in the Working Group and in the Commission, as well as papers prepared by the Centre on Transnational Corporations, had already raised relevant issues on this subject. The Group, however, did not feel that it was possible at this stage to reach a concrete understanding on the issue of definitions, although it was suggested that further discussion at the fifth session of the Commission could facilitate the elaboration of key elements regarding definitions.

53. In the process of formulating a code of conduct, the Working Group has made steady progress. The Group has adopted a step-by-step procedure which has proved to be useful. The Group has now for the first time a draft document containing most of the basic sections to be included in the code of conduct. These sections have gone into three stages of discussion and formulation: first, an identification of the key elements involved in each issue; then a presentation of the common elements with a tentative formulation; and, finally, a document presenting formulations by the Chairman. This procedure has allowed the Group to submit at each stage useful and constructive ideas for a more precise elaboration of the 58 paragraphs now included in the Chairman's formulations. A preamble, a chapter on definitions and the sections related to implementation and intergovernmental co-operation still require further examination to reach a level similar to other sections. In some sections to be included in the code, namely, abstention from corrupt practices, restrictive business practices and transfer of technology, the Group has decided to wait for further developments in other intergovernmental working groups dealing with these matters.

54. The Group felt that its work should be accelerated. With a view to presenting a comprehensive draft code at the sixth session of the Commission, the Group concluded that it needed three more two-week sessions to accomplish its task as set out in its mandate.
