



Economic and Social Council

Distr.
GENERAL

E/1984/9
E/C.10/1984/S/3
26 January 1984

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Organizational session for 1984
Item 4 of the provisional agenda*

RECONVENED SPECIAL SESSION OF THE COMMISSION ON
TRANSNATIONAL CORPORATIONS

Commission on Transnational Corporations

Report on the reconvened special session
(9-13 January 1984)

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* E/1984/2.

I. MATTERS REQUIRING ACTION BY THE ECONOMIC AND SOCIAL COUNCIL

1. The following decision, adopted by the Commission on Transnational Corporations at its reconvened special session, is brought to the attention of the Economic and Social Council:

DECISION

The Commission on Transnational Corporations, having assessed the work on the draft code of conduct on transnational corporations and the divergencies still to be overcome in that regard, decides:

(a) To take note with appreciation of the paper prepared by the Secretariat concerning the assessment of the work on the draft code of conduct on transnational corporations (E/C.10/1984/S/2 and Corr.1);

(b) To recommend the Economic and Social Council, at its organizational session for 1984, to reconvene the special session of the Commission on Transnational Corporations early in 1984, with a view to completing the work on the formulation of the draft code of conduct.

II. ASSESSMENT OF THE WORK ON THE DRAFT CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS

2. At the 16th (opening) meeting, on 9 January 1984, the Under-Secretary-General for International Economic and Social Affairs made a statement, in which he emphasized that there continued to be a widely-felt need for an international code of conduct on transnational corporations. He stated that even though the Commission had not been able at its special session* to complete the negotiations, the draft code of conduct that had been arrived at responded in broad terms to the concerns of the international community. He emphasized, therefore, that disappointment at the fact that the negotiations had not yet been concluded should not be allowed to obscure the very important progress that had been made at the special session, at which the Commission had succeeded in reaching agreement on a number of important provisions. He added that, in his view, the progress made on some still unfinished parts of the draft code was almost as significant as the complete agreement that had been reached on certain other issues. He also stated that, although the Commission had run into difficulties during the second part of its special session, it was his view that such difficulties had been overcome and could also be overcome in the future. It was therefore his hope that the Commission would meet the challenge successfully.

3. At the 17th to 19th meetings, on 9 and 10 January, the Commission held a general discussion on the draft code of conduct. During that discussion, several delegations expressed appreciation for the information paper prepared by the Secretariat on the negotiations on the draft code of conduct (E/C.10/1984/S/2 and Corr.1). They noted that the paper summarized accurately the positions of

* Held from 7 to 18 March and from 9 to 21 May 1983.

delegations on the key outstanding issues dealt with at the special session and that it also contained a useful outline of the remaining outstanding issues in the draft code.

4. All delegations reaffirmed their commitment to the early conclusion of the work on the code of conduct. One representative, speaking on behalf of many delegations, stated that his group remained very interested in seeing a code of conduct. He added that the discussions at the present session should effectively enable delegations to decide whether or not to continue work on the code. He reiterated his group's position that the proposals by the Chairman and the Rapporteur of the special session (E/1983/17/Rev.1, annex IV), although they did not meet all the concerns of his group, represented a compromise package which could be acceptable to his group provided it was accepted by other groups and delegations as such. Several delegations pointed out that the need for a code of conduct was reinforced by the prevailing international economic conditions. They stated that the proposals of the Chairman and the Rapporteur of the special session constituted a good basis for negotiation, though a number of problems remained to be solved. They drew attention to the wide range of other issues on which proposals had been made, which had still to be resolved. Several other delegations underlined the important political task that had been assigned to the Commission by the General Assembly, namely, to assess the work done on the draft code of conduct on transnational corporations. They stressed that the need for the code was as urgent today as it had been in 1976, and expressed their willingness to contribute to an early completion of the code. They also stated that they could accept the compromise text of the Chairman and the Rapporteur as it stood at present. One representative recalled that the code should be an important element in the establishment of the new international economic order. He reiterated that although some elements of the proposals of the Chairman and the Rapporteur were far from being satisfactory, he could accept them as they were.

5. After the general discussion, the Commission organized its work along the following lines:

(a) Consideration of the key outstanding issues discussed at the special session;

(b) Consideration of key outstanding issues not as fully discussed at the special session, as well as other outstanding issues in the draft code;

(c) Consideration of issues on which texts were adopted ad referendum at working group level at the special session.

6. On the issue of definitions and scope of application, several delegations stated that the compromise text proposed by the Chairman and the Rapporteur of the special session (E/1983/17/Rev.1, annex IV) did not adequately meet their concerns. Among the possible solutions suggested by the Chairman was the introduction of a footnote clarifying the matter. Those delegations, while expressing their readiness to consider solutions, stated that, for them, the crucial point was that the code should be universally applied. Some other delegations declared their political will to consider solutions to the so-called

problem of the ambiguity of the formulation regarding the scope of application of the code contained in paragraph 2 of the compromise text, provided the balance of that whole package was maintained. They stated that a final stand would be taken by their delegations after the negotiations on all the items of the package text had been concluded.

7. In the sections of the code on treatment and activities of transnational corporations, the Commission discussed the issue of respect for national sovereignty and the question of international law and international obligations. Some delegations recalled their positions as expressed at previous sessions. One delegation, speaking on behalf of many, indicated that they had already made major efforts on their side to reach the formulations on paragraphs dealing with the issues of national sovereignty and the fulfilment of international obligations contained in the compromise text. In the course of the discussions, delegations generally expressed their willingness to seek a solution that would take account of the concerns of all delegations regarding the formulae that had been put forward in the past.

8. The Commission also took up other issues contained in the proposals of the Chairman and the Rapporteur, namely, national treatment, compensation, settlement of disputes and conflict of jurisdiction. Most delegations emphasized that that text was a compromise package and that substantial changes could not be introduced into it without upsetting its balance. Some delegations, however, stated that efforts should be continued with a view to finding a solution which would meet the concerns they still had and which would be acceptable to all delegations.

9. The Commission also dealt with other outstanding issues listed in section II.B of the information paper (E/C.10/1984/S/2 and Corr.1), in particular paragraphs 4, 5, 50, 51, 52 and 53 of the draft code. One delegation, speaking on behalf of many, expressed their objection to some of those paragraphs and maintained that they should be deleted. That position was supported by other delegations. Some delegations, however, felt that the paragraphs contained important concepts which should be included in the code, and that formulations in addition to those already existing could be considered with a view to meeting the concerns of all delegations.

10. Discussions were held also on the preamble and objectives. It was generally felt that the text proposed by the Chairman of Working Group I, which had dealt with those issues at the special session, was a good basis for negotiations (E/1983/17/Rev.1, annex V).

11. Finally, the Commission considered the paragraph on the issue of non-collaboration by transnational corporations with racist minority régimes in southern Africa, for which a compromise text had been adopted ad referendum in a working group at the special session (E/1983/17/Rev.1, annex III). The Chairman of that working group recalled that no objection had been raised to the text of the paragraph itself, but that in his view full agreement on the matter by the Commission depended upon the treatment accorded to the heading of the paragraph. Many delegations recalled and reaffirmed their view that their acceptance of that text was on the understanding that its heading was an integral part of the text of the paragraph. Some delegations stated that the text agreed upon ad referendum in

the working group should be preserved. They reiterated their understanding that, in elaborating that text, no linkage had been made between the text and an eventual heading, and they again pointed out that the wording of any possible heading had not been discussed. Some other delegations pointed out that the principle of non-collaboration had been an integral part of the text; therefore, they considered that the compromise text agreed ad referendum had been arrived at only on the understanding that that principle would be embodied in the heading of the paragraph.

12. At the 21st (closing) meeting, on 13 January, one delegation, on behalf of many other delegations, stated that, while recognizing the progress made in the discussion of certain items, they were still concerned about positions of other delegations. The representative added that they considered still valid their original proposals; but that, in an effort and spirit of compromise, they could accept other formulae if other delegations were ready to match that effort. Finally, he stated that it would be necessary to continue the work in the future with a view to completing the draft code. Another delegation echoed the feeling that, while major problems remained, there were now positive signs for future work.

13. At the 21st meeting, the Director-General for Development and International Economic Co-operation made a statement, in which he expressed satisfaction, on behalf of the Secretary-General and himself, with regard to the decision taken by the Commission to continue work on the draft code of conduct on transnational corporations. He underlined the significance of a code of conduct, particularly in the current international economic situation. He noted the improved atmosphere and good will that characterized the reconvened special session and expressed the hope that with that spirit the negotiations would be brought to a successful conclusion.

Action taken by the Commission

14. At the 20th meeting, the Commission, on the proposal of the Chairman, adopted a decision regarding the reconvened special session (see para. 1 above).

15. The Commission considered the question of the participation of expert advisers in the reconvened special session. Several delegations stated that the expert advisers played an important role as channels of communication to their respective groups and that they should therefore continue to be closely involved in the work of the Commission on the draft code, especially in its final stages. Some other delegations, however, stated that the presence of expert advisers was not necessary at the current stage of the negotiations. The Commission decided to submit the matter to the Economic and Social Council at its organizational session for 1984 for consideration and action.

16. The Commission also considered the question of the dates of the reconvened special session. The Secretariat informed the Commission that, on the basis of the calendar of meetings and the available facilities, the possible dates for a reconvened session in 1984 were (a) from 27 February to 16 March (the last week only with no facilities for two parallel meetings) or (b) from 11 to 29 June. Several delegations expressed their preference for the former period, some others for the latter. One delegation stressed that adequate time should be allocated for the completion of the draft code. The Commission decided to submit the matter to

the Economic and Social Council at its organizational session for 1984 for consideration and action.

17. In the absence of specific indications, in the decision of the Commission on the reconvening of the special session, as to the duration and frequency of the meetings, the Secretariat was not in a position to provide a statement of the programme budget implications of that decision. A statement will therefore be provided to the Economic and Social Council at its organizational session for 1984 when it considers the decision of the Commission.

III. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

18. Pursuant to General Assembly decision 38/428 of 19 December 1983, the reconvened special session of the Commission was held in New York from 9 to 13 January 1984, during which time six meetings were held (16th to 21st), and a number of informal meetings.

19. The session was opened by the Chairman of the Commission at its special session, Mr. Sergio Gonzalez-Galvez (Mexico).

B. Attendance

20. In accordance with Economic and Social Council resolution 1982/68, the special session of the Commission was open to the participation of all States. The following States attended the session:

Afghanistan	Ghana	Paraguay
Algeria	Greece	Peru
Argentina	Holy See	Philippines
Australia	Honduras	Poland
Austria	Hungary	Portugal
Bahamas	India	Republic of Korea
Bangladesh	Indonesia	Romania
Belgium	Iran (Islamic Republic of)	Rwanda
Bolivia	Iraq	Saudi Arabia
Brazil	Ireland	Senegal
Bulgaria	Italy	Sierra Leone
Byelorussian Soviet Socialist Republic	Jamaica	Singapore
Canada	Japan	Sudan
China	Kenya	Swaziland
Colombia	Lao People's Democratic Republic	Sweden
Costa Rica	Lebanon	Switzerland
Cuba	Liberia	Thailand
Czechoslovakia	Libyan Arab Jamahiriya	Togo
Democratic Yemen		Trinidad and Tobago
		Tunisia

Denmark	Luxembourg	Turkey
Djibouti	Madagascar	Uganda
Dominican Republic	Malaysia	Ukrainian Soviet Socialist Republic
Ecuador	Malta	Union of Soviet Socialist Republics
Egypt	Mauritania	United Kingdom of Great Britain and Northern Ireland
El Salvador	Mexico	United States of America
Equatorial Guinea	Morocco	Upper Volta
Ethiopia	Mozambique	Venezuela
Finland	Nepal	Yemen
France	Netherlands	Yugoslavia
Gabon	Nicaragua	Zambia
Gambia	Nigeria	Zimbabwe
German Democratic Republic	Norway	
Germany, Federal Republic of	Oman	
	Pakistan	
	Panama	

21. The following United Nations bodies were represented: World Food Council, United Nations Industrial Development Organization.

22. The following specialized agency was represented: International Fund for Agricultural Development.

23. The following intergovernmental organization attended the session: European Economic Community.

24. The following non-governmental organizations in consultative status, category I, attended the session: International Chamber of Commerce, International Confederation of Free Trade Unions, International Organization of Employers.

C. Election of officers

25. The officers elected at the special session served in the same capacities at the reconvened special session, as follows:

Chairman: Sergio Gonzalez-Galvez (Mexico)

Vice-Chairmen: Horst Heininger (German Democratic Republic)
Jürgen Kühn (Federal Republic of Germany)
Nitis Kumar Sengupta (India)

Rapporteur: Raouf A. Saad (Egypt)

D. Agenda

26. At its 16th meeting, on 9 January, the Commission adopted the following agenda:
1. Opening of the session.
 2. Adoption of the agenda and organization of work.
 3. Assessment of the work on the draft code of conduct on transnational corporations.
 4. Adoption of the report of the Commission.

E. Documentation

27. The documents that were before the Commission at its reconvened special session are listed in the annex to the present report.

IV. ADOPTION OF THE REPORT

28. At the 21st meeting, the Commission had before it the draft report (E/C.10/1984/S/L.1 and Add.1).
29. At the same meeting, the Rapporteur orally corrected the draft report.
30. Also at the same meeting, the Commission decided to authorize the Rapporteur, in consultation with interested delegations, to finalize the report.
31. The Commission adopted the draft report (E/C.10/1984/S/L.1 and Add.1), subject to additions to, and finalization of, the report of the Rapporteur.

Annex

LIST OF DOCUMENTS BEFORE THE COMMISSION AT ITS RECONVENED
SPECIAL SESSION

<u>Document number</u>	<u>Agenda item</u>	<u>Title or description</u>
E/1983/17/Rev.1 'a/	3	Report of the Commission on its special session (7-18 March and 9-21 May 1983)
E/C.10/1984/S/1	2	Provisional agenda
E/C.10/1984/S/2 and Corr.1	3	Information paper - An update: note by the Secretariat
E/C.10/1984/S/L.1 and Add.1	4	Draft report of the Commission
