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COMMISSION ON TRANSNATIONAL CORPORATIONS

REPORT ON THE SPECIAL SESSION

(7-18 March and 9-21 May 1983)

ECONOMIC AND SOCIAL COUNCIL

OFFICIAL RECORDS, 1983

SUPPLEMENT No. 7 ✓



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UNITED NATIONS

New York, 1983

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

E/1983/17/Rev.1 E/C.10/1983/S/5/Rev.1
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INTRODUCTION

1. By its resolution 1982/68 of 27 October 1982, the Economic and Social Council decided that the Commission on Transnational Corporations should hold a special session for the purpose of continuing and completing the formulation of the code of conduct on transnational corporations and requested the Commission to submit the full and final draft code of conduct to the Council for its consideration and transmission to the General Assembly at its thirty-eighth session for consideration and appropriate action.

I. WORK TOWARDS THE COMPLETION OF THE FORMULATION OF THE CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS

A. First part of the special session (7-18 March 1983)

2. For its consideration of the question, the Commission on Transnational Corporations had before it the following documents:

(a) Report of the Intergovernmental Working Group on a Code of Conduct on its fifteenth, sixteenth and seventeenth sessions, containing a draft code of conduct (E/C.10/1982/6);

(b) Information paper on the negotiations: note by the Secretariat (E/C.10/1983/S/2 and Corr.1);

(c) Transnational corporations: a code of conduct - Revised key elements of the preamble: note by the Secretariat (E/C.10/1983/S/3);

(d) Draft code of conduct on transnational corporations proposed by Venezuela on behalf of the Group of 77 (E/C.10/1983/S/4).

3. All delegations underlined the importance of the code of conduct on transnational corporations and stressed their interest in bringing the work on the code to a successful conclusion.

4. During the first part of the special session, the Commission conducted its work in both formal and informal meetings. It decided to establish two working groups: Working Group I, chaired by the Rapporteur, considered the section of the draft code on definitions and scope of application, and the preamble and objectives; Working Group II, chaired by the Chairman of the special session, considered key outstanding issues in the section on the treatment of transnational corporations, as well as the closely related issues in the section on the activities of transnational corporations.

5. On the basis of the discussions held in Working Group I on the paragraphs relating to definitions and scope of application, the Chairman of Working Group I presented a package proposal (see annex IV to the present report). It was the conclusion of the Chairman of Working Group I that there was a consensus on an ad referendum basis on the structure of the package and the basic elements contained therein. However, some delegations emphasized that, in their view, it should be made clear that all enterprises, irrespective of their country of origin and form of ownership, should be explicitly covered. Other delegations stressed that that issue had been adequately dealt with in the text (contained in annex IV).

6. With regard to the paragraph in that section relating to the relevance of the provisions of the code to domestic enterprises, it was suggested that one way of dealing with the issue could be to express the substance of the paragraph in an appropriate manner in the preamble of the code. Many delegations felt that in a code on transnational corporations the reference was not relevant and should be deleted.

7. Working Group I also considered the paragraph in that section relating to the application of the code to regional groupings of States within the areas of their

competence. Informal consultations were conducted on the issue but remained inconclusive.

8. With respect to the preamble and objectives, Working Group I discussed elements to be included in those parts of the code. On the basis of those discussions, the Chairman proposed texts for further consideration (see annex V to the present report).

9. Working Group II considered key outstanding issues in the section of the draft code on the treatment of transnational corporations, as well as closely related issues in the section on the activities of transnational corporations. Following the discussions in Working Group II, the Chairman of that Group submitted a package proposal (see annex IV).

10. At the end of the first part of the special session, the Chairmen of the two Working Groups submitted a working paper on the basis of extensive discussion of the elements contained in it (see annex IV). In submitting the working paper, they expressed the view that the suggestions contained therein relating to definitions and scope of application and to treatment and activities were each presented as a package representing a delicate balance between the positions of various groups represented in the Commission. They expressed the firm belief that any major change in a particular part of the document was likely to upset that balance. They stated that they would welcome the reactions of members of the Commission to the proposed text. There was no opportunity to discuss the working paper as such.

B. Second part of the special session (9-21 May 1983)

11. During the second part of the special session, the Commission organized its work in formal and informal meetings.

12. In addition to the documents listed in paragraph 2 above, the Commission had before it the proposals of the Chairman and the Rapporteur on definitions and scope of application and on the treatment of transnational corporations and related paragraphs in the section on the activities of transnational corporations (annex IV to the present report), and on the preamble and objectives (annex V to the present report).

13. The Commission considered the paragraphs in the section on the activities of transnational corporations which contained outstanding issues, namely, adherence to economic goals and development objectives, policies and priorities; non-collaboration by transnational corporations with racist minority régimes in southern Africa; non-interference in internal political affairs; and non-interference in intergovernmental relations, together with outstanding issues relating to ownership and control and to balance of payments and financing.

14. Agreement was reached on the paragraphs dealing with the following issues: adherence to economic goals and development objectives, policies and priorities; ownership and control; balance of payments and financing (see annex I). Some delegations accepted the paragraphs on balance of payments and financing on an ad referendum basis.

15. With respect to the paragraph on the issue of non-collaboration by transnational corporations with racist minority régimes in southern Africa, the

Working Group which dealt with that matter elaborated a text (see annex III to the present report). Many delegations expressed their support for that text. Those delegations stated that their acceptance of the text was based on the understanding that the heading of the paragraph formed an integral part of the text and that, together with the substance of the paragraph, represented a balance. One delegation, while supporting that paragraph, stated that it should also cover racist régimes in other areas.

16. Some delegations stated that they were not yet in a position to take a final decision on the text. They further stated that it was their understanding that in elaborating the text of the paragraph in the Working Group, no linkage was made between the text and an eventual heading. They pointed out that in that case, as in other cases, the wording of any possible heading had not been discussed.

17. No agreement was reached in the informal consultations on the paragraphs relating to non-interference in internal political affairs and non-interference in intergovernmental relations.

18. The Commission also considered one of the paragraphs in the section on the activities of transnational corporations relating to matters on which international instruments have been elaborated, namely, the issue of competition and restrictive business practices. Agreement was reached on a formulation for that paragraph. No decision was taken on the placement of the paragraph. A decision similar to that taken by the Intergovernmental Working Group on a Code of Conduct on the paragraph relating to employment and labour relations was adopted by the Commission (see annex I).

19. The Commission took up consideration of the proposals of the Chairman and the Rapporteur on definitions and scope of application and on the treatment of transnational corporations, and related paragraphs in the section on the activities of transnational corporations. Many delegations stated that they could accept those proposals as a compromise in itself, which represented the outcome of a process of intensive negotiations, only if it were accepted by all others as such. Some delegations stated that they considered the proposals only a basis for negotiations. With regard to those proposals, those delegations, although appreciating the Chairman's efforts, indicated that the text, in its present form, did not meet a number of substantial concerns on their part and therefore had to be amended considerably. In particular, they expressed concern that the applicability of the definitions and scope of application section to enterprises and entities of all countries had not been adequately clarified. Many other delegations stressed that that issue had been adequately dealt with in the proposed text. One delegation expressed its reservation about the structure of the proposal made by the Chairman of the Working Group on definitions and scope of application. Informal consultations were held but were not concluded. At the end of the session, the Chairman of the Commission urged the further consideration of those proposals to facilitate the completion of the code.

20. The Commission did not consider the working paper containing the proposals on the preamble and objectives (E/C.10/1983/S/3). However, many delegations supported the proposal contained therein as an adequate expression of the main issues to be included in a part setting out preamble and objectives. Other delegations did not fully share that view and stated that, among other modifications, they would wish to see the preamble and objectives contain more elements on the positive contribution of transnational corporations.

21. At the end of the special session, the Commission held discussions on the future work on the code of conduct on transnational corporations. Although the code had not been completed, the Commission adopted the present report for submission to the Economic and Social Council at its second regular session of 1983 for its consideration and further action.

II. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

22. The special session of the Commission was held in New York, from 7 to 18 March and from 9 to 21 May 1983, during which time 15 meetings were held.

23. The session was opened by the Under-Secretary-General for International Economic and Social Affairs, who also made an opening statement.

24. At its 7th meeting, on 17 March, the Commission heard a statement by the Secretary-General (see annex VI).

25. During the first part of its special session, from 7 to 18 March 1983, the Commission held eight meetings (1st to 8th), as well as a number of informal meetings.

26. During the second part of its special session, from 9 to 29 May, the Commission held seven meetings (9th to 15th), as well as a number of informal meetings.

B. Membership and attendance

27. 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:

Algeria	France	Republic of Korea
Argentina	German Democratic Republic	Romania
Australia	Germany, Federal Republic of	Saudi Arabia
Austria	Ghana	Senegal
Bahamas	Greece	Sierra Leone
Bangladesh	Guatemala	Spain
Barbados	Holy See	Suriname
Belgium	Hungary	Swaziland
Brazil	Iceland	Sweden
Bulgaria	India	Switzerland
Byelorussian Soviet Socialist Republic	Indonesia	Syrian Arab Republic
Canada	Iran, Islamic Republic of	Thailand
Chile	Ireland	Trinidad and Tobago
China	Italy	Tunisia
Colombia	Ivory Coast	Turkey
Comoros	Jamaica	Uganda
Congo	Japan	Ukrainian Soviet Socialist Republic
Costa Rica	Libyan Arab Jamahiriya	Union of Soviet Socialist Republics
Cuba	Malaysia	United Kingdom of Great Britain and Northern Ireland
Cyprus	Mexico	United States of America
Czechoslovakia	Netherlands	Upper Volta
Denmark	New Zealand	Uruguay
Djibouti	Nicaragua	Venezuela
Dominican Republic	Norway	Yugoslavia
Ecuador	Pakistan	Zimbabwe
Egypt	Peru	
El Salvador	Philippines	
Finland	Poland	
	Portugal	

28. The following expert advisers attended the sessions: Carlos Navarro Carrasco (Venezuela), Friedrich Dribbusch (Federal Republic of Germany), Wim Kok (Netherlands), Elias Mashasi (United Republic of Tanzania), Charles Albert Michalet (France), Zuhayr Mikdashi (Lebanon), Jones Santos Neves (Brazil), Louis von Planta (Switzerland), Mario Ramos da Silva (Portugal), Bogdan Sosnowski (Poland), Branko Vukmir (Yugoslavia), Nat Weinberg (United States of America), Ralph A. Weller (United States of America), Eduardo White (Argentina).

29. The following United Nations bodies were represented: Economic Commission for Western Asia, Office of the United Nations Disaster Relief Co-ordinator, United Nations Conference on Trade and Development, United Nations Industrial Development Organization.

30. The following specialized agencies were represented: International Labour Organisation, United Nations Educational, Scientific and Cultural Organization, World Health Organization.

31. The International Atomic Energy Agency was also represented.

32. The following intergovernmental organizations attended the session: European Economic Community, Organisation for Economic Co-operation and Development.

33. 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 Consumers Unions, International Organization of Employers, World Confederation of Labour, World Federation of Trade Unions.

C. Election of officers

34. At its 2nd and 3rd meetings, on 7 and 8 March, the Commission elected by acclamation the following officers:

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. Adoption of the agenda

35. At its 3rd meeting, on 8 March, the Commission adopted the following agenda:

1. Opening of the session
2. Election of officers
3. Adoption of the agenda and organization of work

4. Completion of the formulation of the code of conduct on transnational corporations
5. Adoption of the report of the Commission

E. Documentation

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

III. ADOPTION OF THE REPORT OF THE COMMISSION

37. The Commission considered the draft report (E/C.10/1983/S/L.1 and Add.1 and Corr.1, Add.2, Add.3, Add.4 and Corr.1, Add.5 and Corr.1 and Add.6) at its 15th meeting, on 21 May 1983.

38. At the same meeting, the Commission adopted the draft report, as amended during the discussion.

39. Also at the same meeting, the Commission decided to annex to its report the following texts:

(a) The paragraphs agreed to during the special session (annex I);

(b) The draft United Nations Code of Conduct on Transnational Corporations as contained in the report of the Intergovernmental Working Group on a Code of Conduct on its fifteenth, sixteenth and seventeenth sessions (E/C.10/1982/6) and reflecting the paragraphs agreed to during the special session (annex II);

(c) The text on non-collaboration by transnational corporations with racist minority régimes in southern Africa (annex III);

(d) The proposal by the Chairmen of Working Groups I and II on the basis for a concluding document (annex IV);

(e) The proposal by the Chairman of Working Group I on the preamble and objectives (annex V);

(f) The statement by the Secretary-General to the Commission at its 7th meeting, on 17 March 1983 (annex VI).

Annex I

PARAGRAPHS AGREED TO DURING THE SPECIAL SESSION

ACTIVITIES OF TRANSNATIONAL CORPORATIONS a/

A. General and political

Adherence to economic goals and development objectives, policies and priorities

9. Transnational corporations shall/should carry on their activities in conformity with the development policies, objectives and priorities set out by the Governments of the countries in which they operate and work seriously towards making a positive contribution to the achievement of such goals at the national and, as appropriate, the regional level, within the framework of regional integration programmes. Transnational corporations shall/should co-operate with the Governments of the countries in which they operate with a view to contributing to the development process and shall/should be responsive to requests for consultation in this respect, thereby establishing mutually beneficial relations with these countries.

B. Economic, financial and social

Ownership and control

21. Transnational corporations should/shall make every effort 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.

22. To the extent permitted by national laws, policies and regulations of the country in which it operates, each entity of a transnational corporation should/shall co-operate with the other entities, in accordance with the actual distribution of responsibilities among them and consistent with paragraph 21, 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.

Balance of payments and financing b/

26. Transnational corporations should/shall carry on their operations in conformity with laws and regulations and with full regard to the policy objectives set out by 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.

30. Transnational corporations should/shall not, contrary to generally accepted financial practices prevailing in the countries in which they operate, engage in short-term financial operations or transfers or 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.

31. Transnational corporations should/shall not impose restrictions on their entities, beyond generally accepted commercial practices prevailing in the countries in which they operate, regarding the transfer of goods, services and funds which would cause serious balance-of-payments difficulties for the countries in which they operate.

32. 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 prevailing in such countries, 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. 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 its request on the effects of such transactions on the local money and capital markets.

Reference to other instruments

The following text was drafted by the Intergovernmental Working Group on a Code of Conduct and a decision was taken to place it in one of the substantive introductory parts of the Code. c/

"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." d/

For the purpose 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 also apply in the field of restrictive business practices. d/

Notes

a/ No final decision has yet been taken regarding the use and contents of headings and subheadings throughout the Code.

b/ Some delegations accepted these paragraphs on balance of payments and financing on an ad referendum basis.

c/ See E/C.10/1982/6, annex, p. 2.

d/ The placement of this paragraph has not yet been decided.

Annex II

DRAFT UNITED NATIONS CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS

PREAMBLE AND OBJECTIVES* a/

DEFINITIONS AND SCOPE OF APPLICATION

1. (a) [The term "transnational corporation" as used in this Code means an enterprise, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres, 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.]

[The term "transnational corporation" as used in this Code means an enterprise whether of public, private or mixed ownership, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres, 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.]

(b) The term "entities" in the Code refers to both parent entities - that is, entities which are the main source of influence over others - and other entities, unless otherwise specified in the Code.

(c) The term "transnational corporation" in the Code refers to the enterprise as a whole or its various entities.

(d) 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.

(e) The term "country in which a transnational corporation operates" refers to a home or host country in which an entity of a transnational corporation conducts operations.

2. [The Code is universally applicable in, and to this end is open to adoption by, all States.]

[The Code is universally applicable in [home and host countries of transnational corporations] [as defined in paragraph 1 (a)], and to this end is open to adoption by, all States [regardless of their political and economic systems and their level of development].]

* No final decision regarding the use and contents of headings and subheadings appearing in the text has yet been taken.

[The Code is open to adoption by all States and is applicable in all States where an entity of a transnational corporation conducts operations.]

[The Code is universally applicable to all States regardless of their political and economic systems and their level of development.]

3. [This Code applies to all enterprises as defined in paragraph 1 (a) above.]

[To be placed in paragraph 1 (a).]

[4. The provisions of the Code addressed to transnational corporations reflect good practice for all enterprises. They are not intended to introduce differences of conduct between transnational corporations and domestic enterprises. Wherever the provisions are relevant to both, transnational corporations and domestic enterprises should be subject to the same expectations in regard to their conduct.]

[To be deleted]*

[5. Any reference in this Code to States, countries or Governments also includes regional groupings of States, to the extent that the provisions of this Code relate to matters within these groupings' own competence, with respect to such competence.]

[To be deleted]

ACTIVITIES OF TRANSNATIONAL CORPORATIONS

A. General and political

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

6. 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.

7. [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.]

8. Transnational corporations should/shall respect the right of each State to regulate and monitor accordingly the activities of their entities operating within its territory.

* On the grounds, inter alia, that the text within the first pair of brackets goes beyond the mandate of the Intergovernmental Working Group on a Code of Conduct.

benefit of a public official as consideration for performing or refraining from the performance of his duties in connection with those transactions.

Transnational corporations shall maintain accurate records of payments made by them, in connection with their transactions, to any public official or intermediary. They shall make available these records to the competent authorities of the countries in which they operate, upon request, for investigations and proceedings concerning those payments.]

[For the purposes of this Code, the principles set out in the International Agreement on Illicit Payments adopted by the United Nations should apply in the area of abstention from corrupt practices.]*

B. Economic, financial and social

Ownership and control

21. Transnational corporations should/shall make every effort 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.

22. To the extent permitted by national laws, policies and regulations of the country in which it operates, each entity of a transnational corporation should/shall co-operate with the other entities, in accordance with the actual distribution of responsibilities among them and consistent with paragraph 21, 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.

23. 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.

24. 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.

25. 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 b/

26. Transnational corporations should/shall carry on their operations in conformity with laws and regulations and with full regard to the policy objectives

* To be included in one of the substantive introductory parts of the Code.

set out by 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.

27. 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.

28. [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.

29. 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.

30. Transnational corporations should/shall not, contrary to generally accepted financial practices prevailing in the countries in which they operate, engage in short-term financial operations or transfers or 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.

31. Transnational corporations should/shall not impose restrictions on their entities, beyond generally accepted commercial practices prevailing in the countries in which they operate, regarding the transfer of goods, services and funds which would cause serious balance-of-payments difficulties for the countries in which they operate.

32. 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 prevailing in such countries, 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. 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 its request on the effects of such transactions on the local money and capital markets.

Transfer pricing

33. 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

34. 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

35. For the purpose 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 also apply in the field of restrictive business practices. c/

Transfer of technology

36. [Transnational corporations shall conform to the transfer of technology laws and regulations of the countries in which they operate. They shall co-operate with the competent authorities of those countries in assessing the impact of international transfers of technology in their economies and consult with them regarding the various technological options which might help those countries, particularly developing countries, to attain their economic and social development.

Transnational corporations in their transfer of technology transactions, including intra-corporate transactions, shall avoid practices which adversely affect the international flow of technology, or otherwise hinder the economic and technological development of countries, particularly developing countries.

Transnational corporations shall contribute to the strengthening of the scientific and technological capacities of developing countries, in accordance with the science and technology policies and priorities of those countries. Transnational corporations shall undertake substantial research and development activities in developing countries and make full use of local resources and personnel in this process.]

[For the purposes of this Code the relevant provisions of the International Code of Conduct on the Transfer of Technology adopted by the General Assembly in its resolution _____ of _____ shall/should apply in the field of transfer of technology.]*

Consumer protection

37. 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.

* To be included in one of the substantive introductory parts of the Code.

38. 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.

39. 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.

40. 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.

Environmental protection

41. 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 to the extent appropriate and feasible] [rehabilitate it] and should make efforts to develop and apply adequate technologies for this purpose.

42. 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.

43. 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

44. 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:

- (a) A balance sheet;
- (b) An income statement, including operating results and sales;
- (c) A statement of allocation of net profits or net income;
- (d) A statement of the sources and uses of funds;
- (e) Significant new long-term capital investment;
- (f) Research and development expenditure.

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

- (a) 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;
- (b) The main activity of its entities;
- (c) Employment information including average number of employees;
- (d) Accounting policies used in compiling and consolidating the information published;
- (e) 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 corporation's 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.

45. 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 of paragraph 51 concerning confidentiality shall apply to information supplied under the provisions of this paragraph.

46. 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 practices, 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.

TREATMENT OF TRANSNATIONAL CORPORATIONS

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

47. 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.

48. 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].

49. 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].* 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 or 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 to promote self-reliant development or protect essential economic interests.]**

[50. 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]

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

* In this alternative, the sentence will end here.

** Some delegations preferred not to have a second sentence.

normally applicable in the area in which the information is provided, particularly to protect its confidentiality.

[52. In order to achieve the purposes of paragraph 25 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]

[53. 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 29.]

[To be deleted]

B. Nationalization and compensation

54. [In the exercise of its right to nationalize or expropriate totally or partially the assets of transnational corporations operating in its territory, the State adopting those measures should pay adequate compensation taking into account its own laws and regulations and all the circumstances which the State may deem relevant. When the question of compensation gives rise to controversy or should there be a dispute as to whether a nationalization or expropriation has taken place, it shall be settled under the domestic law of the nationalizing or expropriating State and by its tribunals.]

[In the exercise of their sovereignty, States have the right to nationalize or expropriate foreign-owned property in their territory. Any such taking of property whether direct or indirect, consistent with international law, must be non-discriminatory, for a public purpose, in accordance with due process of law, and not be in violation of specific undertakings to the contrary by contract or other agreement; and be accompanied by the payment of prompt, adequate and effective compensation. Such compensation should correspond to the full value of the property interests taken, on the basis of their fair market value, including going concern value, or where appropriate other internationally accepted methods of valuation, determined apart from any effects on value caused by the expropriatory measure or measures, or the expectation of them. Such compensation payments should be freely convertible and transferable, and should not be subject to any restrictive measures applicable to transfers of payments, income or capital.]

[In the exercise of its sovereignty, a State has the right to nationalize or expropriate totally or partially the assets of transnational corporations in its territory, and appropriate compensation should be paid by the State adopting such measures, in accordance with its own laws and regulations and all the circumstances which the State deems relevant. Relevant international obligations freely undertaken by the States concerned apply.]

[A State has the right to nationalize or expropriate the assets of transnational corporations in its territory against compensation, in accordance with its own laws and regulations and its international obligations.]

C. Jurisdiction

[55.] [Entities of transnational corporations are subject to the jurisdiction of the countries in which they operate.]

[An entity of a transnational corporation operating in a given country is subject to the jurisdiction of such a country] [in respect of its operations in that country]

[To be deleted]

56. [Disputes between a State and an entity of a transnational corporation operating in its territory are subject to the jurisdiction of the courts and other competent authorities of that State unless amicably settled between the parties.]

[Disputes between a State and an entity of a transnational corporation which are not amicably settled between the parties or resolved in accordance with previously agreed dispute settlement procedures, should be submitted to competent courts or other authorities, or to other agreed means of settlement, such as arbitration.]

[Disputes between States and entities of transnational corporations, which are not amicably settled between the parties, shall/should be submitted to competent national courts or authorities in conformity with the principle of paragraph 7. Where the parties so agree, such disputes may be referred to other mutually acceptable dispute settlement procedures.]

[57. In contracts in which at least one party is an entity of a transnational corporation the parties should be free to choose the applicable law and the form for settlement of disputes, including arbitration, it being understood that such a choice may be limited in its effects by the law of the countries concerned.]

[To be deleted]

58. [States should [use moderation and restraint in order to] [seek to] avoid [undue] encroachment on a jurisdiction more [properly appertaining to, or more] appropriately exercisable, by another State.] Where the exercise of jurisdiction over transnational corporations and their entities by more than one State may lead to conflicts of jurisdiction, States concerned should endeavour to adopt mutually acceptable [principles and procedures, bilaterally or multilaterally, for the avoidance or settlement of such conflicts,] [arrangements] on the basis of respect for [their mutual interests] [the principle of sovereign equality and mutual interests.]

[To be placed in the section on intergovernmental co-operation.]

INTERGOVERNMENTAL CO-OPERATION

59. [It is acknowledged] [States agree] that intergovernmental co-operation is essential in accomplishing the objectives of the Code.

60. [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].*

61. 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.

62. 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.

63. 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.

64. 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 15 to 17 of this Code].

65. Government action on behalf of a transnational corporation operating in another country should/shall be subject to the principle of exhaustion of local remedies provided in such a country and, when agreed among the Governments concerned, to procedures for dealing with international legal claims. Such action should not in any event amount to the use of any type of coercive measures not consistent with the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

IMPLEMENTATION OF THE CODE OF CONDUCT

A. Action at the national level

66. In order to ensure and promote the implementation of the Code at the national level, States shall/should, inter alia:

(a) Publicize and disseminate the Code;

(b) Follow the implementation of the Code within their territories;

(c) Report to the United Nations Commission on Transnational Corporations on the action taken at the national level to promote the Code and on the experience gained from its implementation;

* 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.

(d) Take actions to reflect their support for the Code and take into account the objectives of the Code as reflected in its provisions when introducing, implementing and reviewing laws, regulations and administrative practices on matters dealt with in the Code.

B. International institutional machinery

67. The United Nations Commission on Transnational Corporations shall assume the functions of the international institutional machinery for the implementation of the Code. In this capacity, the Commission shall be open to the participation of all States having accepted the Code. [It may establish the subsidiary bodies and specific procedures it deems necessary for the effective discharge of its functions.] The United Nations Centre on Transnational Corporations shall act as the secretariat to the Commission.

68. The Commission shall act as the focal international body within the United Nations system for all matters related to the Code. It shall 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 work related to the Code. When matters covered by international agreements or arrangements, specifically referred to in the Code, which have been worked out in other United Nations forums, arise, the Commission shall forward such matters to the competent bodies concerned with such agreements or arrangements.

69. The Commission shall have the following functions:

(a) To discuss at its annual sessions matters related to the Code. If agreed by the Governments engaged in consultations on specific issues related to the Code, the Commission shall facilitate such intergovernmental consultations to the extent possible. [Representatives of trade unions, business, consumer and other relevant groups may express their views on matters related to the Code through the non-governmental organizations represented in the Commission.]

(b) Periodically to assess the implementation of the Code, such assessments being based on reports submitted by Governments and, as appropriate, on documentation from United Nations organizations and specialized agencies performing work relevant to the Code and non-governmental organizations represented in the Commission. The first assessment shall take place not earlier than two years and not later than three years after the adoption of the Code. The second assessment shall take place two years after the first one. The Commission shall determine whether a periodicity of two years is to be maintained or modified for subsequent assessments. The format of assessments shall be determined by the Commission.

[(c) To 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. 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.]

[To be deleted.]

(d) To report annually to the General Assembly [through the Economic and Social Council] on its activities regarding the implementation of the Code.

(e) To facilitate intergovernmental arrangements or agreements on specific aspects relating to transnational corporations upon request of the Governments concerned.

70. The United Nations Centre on Transnational Corporations shall provide assistance relating to the implementation of the Code, inter alia, by collecting, analysing and disseminating information and conducting research and surveys, as required and specified by the Commission.

C. Review procedure

71. The Commission shall make recommendations to the General Assembly [through the Economic and Social Council] for the purpose of reviewing the Code. The first review shall take place not later than six years after the adoption of the Code. The General Assembly shall establish, as appropriate, the modalities for reviewing the Code.*

Notes

a/ No drafting was done on the Preamble and Objectives of the Code. However, the following text was drafted during the discussion on other parts of the Code and the decision was taken to place it in one of the substantive introductory parts of the Code:

"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."

(No decision has yet been taken on the exact location of this paragraph.)

b/ Some delegations accepted paragraphs 26, 30, 31 and 32 on balance of payments and financing on an ad referendum basis.

c/ The placement of this paragraph has not yet been decided.

* Further discussion of this provision will take place after related issues, such as the mode of adoption and the legal nature of the Code, have been settled.

Annex III

NON-COLLABORATION BY TRANSNATIONAL CORPORATIONS WITH RACIST MINORITY REGIMES IN SOUTHERN AFRICA a/

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

(a) Transnational corporations shall/should refrain from operations and activities supporting and sustaining the racist minority régime of South Africa in maintaining the system of apartheid and the illegal occupation of Namibia;

(b) Transnational corporations shall/should engage in appropriate activities within their competence with a view to eliminating racial discrimination and all other aspects of the system of apartheid;

(c) Transnational corporations shall/should comply strictly with obligations resulting from Security Council decisions and shall/should fully respect those resulting from all relevant United Nations resolutions;

(d) With regard to investment in Namibia, transnational corporations shall/should comply strictly with obligations resulting from Security Council resolution 283 (1970) and other relevant Security Council decisions and shall/should fully respect those resulting from all relevant United Nations resolutions.

Notes

a/ The text of paragraph 14 was agreed ad referendum in the working group on paragraph 14, but no final decision was taken by the Commission on it.

Annex IV

BASIS FOR A CONCLUDING DOCUMENT: PROPOSAL BY THE CHAIRMEN OF WORKING GROUPS I AND II

1. This document contains a set of proposals which, in the opinion of the Chairman of the special session and the Rapporteur in their capacities as Chairmen of Working Groups II and I, respectively, constitute compromise formulations which could resolve some of the major outstanding issues in the code of conduct on transnational corporations.
2. The following suggestions on the sections on definitions and on the treatment of transnational corporations are presented each as a package representing a delicate balance between the positions of the various groups represented in the Commission. It is the firm belief of the proponents that any major change in a particular part of this document is likely to upset this balance.
3. In drafting these proposals, due account was taken of the priorities established by the Economic and Social Council in its resolution 1982/68. These proposals have been submitted in the genuine hope that they will make a meaningful contribution to the expeditious conclusion of our work.
4. The Chairman and the Rapporteur would welcome the reactions of members of the Commission to this document.

DEFINITIONS AND SCOPE OF APPLICATION a/

1. (a) The term "transnational corporation" as used in this Code means an enterprise, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres, 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. This Code applies to all enterprises having those characteristics mentioned in paragraph 1 (a) above, regardless of their ownership.
3. The Code is universally applicable in and open for adoption by all States, regardless of their political and economic systems and their level of development.

ACTIVITIES OF TRANSNATIONAL CORPORATIONS

A. General and political

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

6. Transnational corporations should/shall respect the national sovereignty of the countries in which they operate and the right of each State to exercise its permanent sovereignty over its natural resources and wealth.

7. An entity of a transnational corporation is subject to the jurisdiction, laws, regulations, and administrative practices of the country in which it operates.

TREATMENT OF TRANSNATIONAL CORPORATIONS

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

48. Transnational corporations should receive fair and equitable treatment in the countries in which they operate.

49. Subject to national requirements for maintaining public order and protecting national security and other vital national interests and consistent with socio-economic systems as reflected in national constitutions and other laws, and without prejudice to measures specified in legislation and policies relating to declared development objectives of the developing countries, entities of transnational corporations should be given the treatment accorded to domestic enterprises when the circumstances under which they operate are similar.

B. Nationalization and settlement of disputes

54. It is acknowledged that States have the right to nationalize or expropriate the assets of transnational corporations operating in their territory, and that compensation is to be paid by the State concerned in accordance with the applicable legal rules.

55. Deleted.

56. Disputes between States and entities of transnational corporations, which are not amicably settled between the parties, shall/should be submitted to competent national courts or authorities in conformity with the principle of paragraph 7. Where the parties so agree, such disputes may be referred to other mutually acceptable dispute settlement procedures.

57. Deleted.

C. Conflict of jurisdiction

58. Where the exercise of jurisdiction over transnational corporations and their entities by more than one State may lead to conflicts of jurisdiction, States concerned should endeavour to adopt mutually acceptable principles and procedures, bilaterally and multilaterally, for the settlement of such conflicts on the basis of respect for their mutual interests.

To be inserted in an appropriate place in the Code:

The principle of the fulfilment in good faith of international obligations will apply to the Code.

Notes

a/ Regarding the concerns that have been expressed by some delegations on certain points in this package, it was felt that they could be dealt with by reflecting them in the report.

Annex V

PREAMBLE AND OBJECTIVES: PROPOSAL BY THE CHAIRMAN OF WORKING GROUP I

PREAMBLE

Recalling General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States, 3362 (S-VII) of 16 September 1975 on development and international economic co-operation, and 35/56 of 5 December 1980, containing the International Development Strategy for the Third United Nations Development Decade, in which the Assembly emphasized the need, inter alia, to formulate, adopt and implement an international code of conduct regarding transnational corporations,

Recalling Economic and Social Council resolutions 1721 (LIII) of 28 July 1972, 1908 (LVII) of 2 August 1974 and 1913 (LVII) of 5 December 1974 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 to deal with the entire range of issues related to the activities and operations of transnational corporations,

Recalling Economic and Social Council decision 180 (LXI) of 5 August 1976, by which the Council approved the programme of work recommended by the Commission on Transnational Corporations, assigning the highest priority to the formulation of a code of conduct and establishing 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,

Recalling also Economic and Social Council resolution 1980/60 of 24 July 1980, entitled "Progress made towards the establishment of the new international economic order and obstacles that impede it: the role of transnational corporations",

Recalling also that the Economic and Social Council, in resolution 1980/60, affirmed that the code of conduct should, inter alia, deal in the most effective and appropriate manner with the issue of the activities of transnational corporations in South Africa and Namibia, recognizing that concern was widely expressed in the Commission on Transnational Corporations, in the context of the struggle against apartheid, at the collaboration of transnational corporations with the racist minority régime,

Taking into account the work done by other bodies of the United Nations system relevant to transnational corporations, in particular the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office, 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 the work of the United Nations Conference on an International Code of Conduct on the Transfer of Technology, of the Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices and of the Committee on an International Agreement on Illicit Payments, pursuant to Council resolution 2041 (LXI) of 5 August 1976, and

of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, pursuant to Council resolution 1979/44 of 11 May 1979,

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

Recognizing that transnational corporations could bring benefits to the countries in which they operate, by maximizing their positive contribution and eliminating their negative effects,

Noting that the activities and operations of transnational corporations, if not carried out in conformity with the development objectives and priorities of the countries in which they operate, lead to conflicts with the national policies of those countries,

Recognizing that the provisions of this Code establish acceptable standards of corporate conduct which may be applied as appropriate to enterprises other than transnational corporations, to the extent that the provisions are relevant,

Convinced that a universally adopted effective and comprehensive code of conduct could provide a framework for further international co-operation on issues relating to transnational corporations,

Objectives

This Code of Conduct is designed to achieve the following objectives:

(a) To associate effectively the activities of transnational corporations with the efforts to establish the new international economic order and their capabilities with the developmental objectives of developing countries;

(b) 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 eliminating the adverse effects and resolving the difficulties to which the activities of transnational corporations may give rise while promoting the contribution of transnational corporations to economic and social progress in the countries in which they operate;

(c) To reflect the principle of respect by transnational corporations for the national sovereignty, laws and regulations of the countries in which they operate, as well as the established policies of those countries and the right of States to regulate and accordingly to monitor the activities of transnational corporations;

(d) To encourage the contribution that transnational corporations can make in conformity with the developmental goals and established objectives of the countries in which they operate, particularly developing countries;

(e) To facilitate co-operation among States on issues relating to transnational corporations and to alleviate difficulties stemming from the

transnational character of those corporations and the diversity of national laws and policies to which they are subject;

(f) To proscribe subversion, interference in the internal affairs of countries and other inadmissible activities by transnational corporations which aim to undermine the political and social systems of the countries in which they operate;

(g) To prevent the collaboration of transnational corporations with the illegal racist minority régime of apartheid in South Africa and its continued illegal occupation of the Territory of Namibia;

(h) To strengthen the capacity of developing countries in their dealings with transnational corporations;

(i) To create an environment conducive to mutually beneficial relations between States and transnational corporations;

(j) 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.

A decision was taken by the Intergovernmental Working Group on a Code of Conduct to place the following paragraph in one of the substantive introductory parts of the Code:

"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."

No decision has yet been taken on the exact location of this paragraph.

Annex VI

STATEMENT BY THE SECRETARY-GENERAL TO THE COMMISSION AT ITS 7TH MEETING, ON 17 MARCH 1983

I am pleased to have this opportunity to address this special session of the Commission on Transnational Corporations and to emphasize to you the importance that I attach to the work in which you are engaged. It is important in itself, and it is also important in the wider context of international co-operation in the economic field.

The United Nations system and, indeed, other intergovernmental organizations, have within the past decade invested considerable time, resources and energy in devising appropriate international régimes for international business. Your work on the code of conduct on transnational corporations may be described as the centre-piece of these endeavours, not only because it addresses the problems posed by the operations of major actors in international economic relations, but also because the product of your work will be the most comprehensive instrument dealing with a wide variety of issues in this area on a global basis.

At the same time, your admirable perseverance in the task before you for the past six years attests eloquently to the need for the establishment of appropriate norms - both national and international - to contain or eliminate any negative aspects of the operations of transnational corporations and to harmonize their activities with the development objectives of the countries in which they operate. I firmly believe that a code of conduct, by establishing universally accepted standards, would enhance the positive contribution that transnational corporations, with their resources and potential, can make to the development process. It would thereby fulfil one of the most important objectives of the Declaration and the Programme of Action on the Establishment of a New International Economic Order.

I understand that important progress has been made at the special session of the Commission during the past two weeks. This progress has, moreover, been particularly noteworthy in relation to one of the key issues, namely, the issue of the scope and application of the code of conduct. Significant concessions have been made on all sides in a spirit of give and take. A formula on definitions and scope of application has been evolved which, I am informed, delegations have undertaken to explore with their respective authorities.

On other parts of the code, likewise, significant movement has taken place, and divergencies in positions have been narrowed, or at any rate avenues for further progress in the negotiations have been identified. I am advised that tentative proposals are being formulated which could make a significant contribution towards the resolution of some of the time-honoured controversies over the applicable norms in the relations between Governments and transnational corporations or foreign investors generally. Although numerous United Nations resolutions have been adopted in this troublesome area, I believe that your endeavours, if successful, would constitute the first comprehensive global consensus on a subject which has been highly divisive in the international community. The profound significance of such a breakthrough in improving international economic relations will be obvious.

I am sure that these developments must be a source of great encouragement to members of the Commission and to the Chairman and bureau, all of whom have been putting forth their utmost efforts to bring about a successful outcome. I need hardly say that it is also highly encouraging to me.

I should like to appeal to all members of the Commission to maintain their efforts during the weeks between now and the resumption of this session in May. There is every reason to believe that a code of conduct is now within our grasp, and I am sure that all of us gathered here are determined not to lose any opportunity of reaching the goal that we have set for ourselves. Certainly, as far as the Secretariat is concerned, I pledge all our efforts to assist you in every possible way.

The main case for the code rests upon its own merits and the objectives that it is intended to achieve. But we should also not lose sight of the relationship of these efforts to the broader objectives of international co-operation in the economic field. The world economy in general, and developing countries in particular, face the greatest difficulties experienced during the past 30 years. At a time when there are disturbing signs of erosion in multilateral co-operation, success in your task will give a clear indication of the will of Governments to strengthen co-operation in the recognition of interdependence and mutuality of interests. Furthermore, I do not have the slightest doubt that success in developing a universally acceptable code of conduct will also make a major contribution towards larger objectives by strengthening confidence in the possibilities of fruitful co-operation through the United Nations.

In these circumstances, I believe that it is incumbent upon us to make every effort to bridge the differences that remain in devising a code of conduct. I wish you well in this most significant undertaking.

Annex VII

LIST OF DOCUMENTS BEFORE THE COMMISSION AT ITS SPECIAL SESSION

<u>Symbol</u>	<u>Agenda item</u>	<u>Title</u>
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E/C.10/1983/S/1	3	Annotated provisional agenda
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E/C.10/1983/S/3	4	Transnational corporations: a code of conduct - Revised key elements of the preamble: note by the Secretariat
E/C.10/1983/S/4	4	Draft code of conduct on transnational corporations proposed by Venezuela on behalf of the Group of 77
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