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COMMISSION ON TRANSNATIONAL CORPORATIONS  
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Whole on the Code of Conduct  
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TRANSNATIONAL CORPORATIONS: VIEWS AND PROPOSALS OF  
STATES ON A CODE OF CONDUCT

Report of the Secretariat

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Annex. Text of the note verbale sent by the Secretary-General of 19 August 1976

## INTRODUCTION

1. The Commission on Transnational Corporations, adopting its work programme at its second session in Lima, Peru (1-12 March 1976), assigned highest priority to the formulation of a code of conduct and agreed on a procedure to accomplish this goal. An Intergovernmental Working Group, to meet intersessionally, was thus established, charged with the preparation of an annotated outline to be submitted to the third session of the Commission, and to finalize a draft code of conduct for the fourth session of the Commission (Spring 1978). 1/
2. To assist the Intergovernmental Working Group in its task, the Commission requested, inter alia, the Secretary-General to invite all States to present their proposals or views for the code of conduct. The Centre on Transnational Corporations was instructed to incorporate these governmental proposals or views into a single document to be submitted along with other documents to the first session of the Working Group. 2/
3. The deadline for the submission of the answers of States was set by the Economic and Social Council, at its sixty-first session, for 30 November 1976. The present report summarizes the proposals or views of States which were communicated to the Secretary-General in response to his note verbale dated 19 August 1976 and a reminder dated 19 November 1976.
4. As of 22 December 1976, the following Governments had made known their views or proposals: Argentina, Chile, Ecuador, Finland, German Democratic Republic, Germany, Federal Republic of, Jamaica, Japan, the Netherlands, New Zealand, United Kingdom of Great Britain and Northern Ireland and the United States of America. Responses were also received from Switzerland and the Permanent Observer of the Holy See to the United Nations. 3/ Addenda to the present report will be issued as soon as more replies are received.

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1/ See Commission on Transnational Corporations, "Report on the Second Session". Official Records of the Economic and Social Council, Sixty-first session, Supplement No. 5 (E/5782), chap. I, paras. 10-17.

2/ See also United Nations documents, "Transnational Corporations: Issues Involved in the Formulation of a Code of Conduct" (E/C.10/17); "Transnational Corporations: Material Relevant to the Formulation of a Code of Conduct" (E/C.10/18); "Transnational Corporations: Views and Proposals of Non-Governmental Interests on a Code of Conduct" (E/C.10/20).

3/ The full texts of the replies are available for consultation at the Centre on Transnational Corporations.

SUMMARY OF REPLIES

Argentina

5. The Government of Argentina draws attention to the new Argentinian Foreign Investment Law of 13 August 1976 which represents in general the position of Argentina on transnational corporations.
6. The law distinguishes types of foreign investments and specifies the amount of government involvement in the foreign investment decision process. Approval is obtained more easily on small investments or investments where earnings are reinvested; on the other hand, foreign investments of a certain size or in strategic areas is subject to closer scrutiny.
7. The Government reserves the right to determine levels and conditions of profit repatriation; other provisions guarantee the investor's right to transfer part of this investment abroad, subject to foreign exchange considerations.
8. The law also considers the relationship between the foreign parent company and the Argentinian subsidiary. Intra-enterprise transactions are treated in the normal manner as long as market practices and market prices are used. Exceptions concern transfer of technology and loan agreements between parent and affiliate.

Chile

9. With regard to the scope of a code of conduct regarding transnational corporations, the Government of Chile considers that it should cover a broad range of subjects and that it should be addressed exclusively to the corporations. Any recommendations deriving from the code that might affect the attitudes of Governments should be of a strictly voluntary nature.
10. The code should be of a general character to allow considerable margin of negotiation to Governments and transnational corporations. The application of a code should be through national legislation. The code should be geographically universal. Transnational corporations should act in conformity with the objectives and the national priorities of the host country. No political interference of any kind should be tolerated.
11. As to the economic aspects of the code, each country should define areas in which no transnational corporate participation is allowed. Contributions to the balance of payments are not as important as the net contribution to the economic growth of the country that the corporation generates. Internal credit should be available to transnational corporations when the conditions of the capital market of the host country so permit. Transnational corporations should contribute to the transfer, adaptation and local generation of technology. Transnational corporations must provide Governments enough information on their activities and policies for adequate evaluation of their activities.
12. Regarding the characteristics of the code, this could be a resolution of the General Assembly or the Economic and Social Council of the United Nations.

Although Governments would not be formally bound, there would be a moral and political obligation to implement the code, with any reservations that each State may have previously expressed. The rules should not be binding but rather general prescriptions of acceptable conduct, it being up to the national authorities to implement the code.

#### Ecuador

13. The Government of Ecuador suggests that transnational corporations can effectively participate in the process of development. However, without any control, the activities of these corporations have negative effects which endanger the economy of developing countries. By having the co-operation and goodwill of home Governments, United Nations actions to regulate these activities might therefore be a step forward in the solution of some development problems, thus converting transnational corporations into real mechanisms for progress.

14. The objectives of the code of conduct should be the following:

(a) To reduce the negative effects of the activities of transnational corporations deriving from their exploitation of the resources of the host country for which the latter should demand efficient technology in the exploitation of natural resources and the employment of native manpower.

(b) The code should aim at minimizing the negative effects mentioned above, especially in those countries whose bargaining power is weak; likewise, the code should enhance the positive effects derived from the activities of transnational corporations.

(c) The developing countries should identify the products and technologies to be applied to their needs and they must also negotiate the conditions which will rule the activities of transnational corporations in their territories.

(d) The code should contemplate sanctions for corrupt practices of transnational corporations.

15. The Government of Ecuador states that the code ought to be addressed to transnational corporations only and not the States themselves. It is the belief of the Government of Ecuador that the States have the sovereign right to enact national laws aimed at procuring the safeguarding of their wealth, natural resources and economic activities. This was the spirit in which the Andean Pact countries adopted decision 24, dealing with rules on foreign capital, which is in perfect harmony with the Charter on Duties and Rights of States, the pertinent articles of which could be included in the code.

16. The Government of Ecuador considers the basic issues to be the following:

(a) Observance of local laws and adherence to social, political and economic development goals;

(b) Abstention from corrupt practices;

(c) Transnational corporations should not influence internal matters of the host country, nor should home Governments intervene in the relationship between host Governments and transnational corporations;

(d) Transnational corporations should transfer technology to the nationals of the host country, and also ought to make contributions to the development of scientific and technical capabilities of the host country;

(e) The code should sanction the right of host countries to nationalize or expropriate foreign property on condition that compensation is paid.

17. In case of litigation, the national law of the country in which the transnational corporations operate is the only one applicable.

#### Finland

18. According to the preliminary views of the Government of Finland, the fundamental objective of the code of conduct should be to increase the beneficial effects and decrease the negative aspects of the operations of transnational corporations, taking fully into account the development objectives of the host country. Conditions providing a balance between the interests of the host country and those of transnational corporations should be enhanced. The purposes stated in the report E/C.10/17, paragraphs 30-32, should be considered and the implications of harmonization of rules governing transnational corporations should be carefully studied.

19. The Government of Finland considers the definition of TNCs employed by the Group of Eminent Persons a satisfactory basis for the work leading to the formulation of a code of conduct.

20. Touching upon some of the substantive issues, the Finnish Government considers the disclosure of information on a country-by-country basis a central question.

21. The principle of permanent sovereignty over natural resources is fully supported. However, claims arising from nationalization of foreign-owned property should be dealt with by international tribunals. The principle of national treatment should not be considered a binding obligation on Governments but simply a recommendation allowing for the possibility of exceptions when economic and social policy of host countries warrant them.

22. The Government of Finland is of the view that the code of conduct dealing with transnational corporations should not have formal binding force. A machinery providing for consultation procedures should allow corporations the right of participation in such consultations.

German Democratic Republic

23. The Government of the German Democratic Republic favours the strengthening of the role of the Commission on Transnational Corporations to promote, with the assistance of the Centre on Transnational Corporations, the process of elaborating international measures for controlling the activities of transnational corporations and subordinating their operations to the national jurisdictions of States. An effective curtailment of the neo-colonialist practices of transnational corporations should be, according to the Government of the German Democratic Republic, a prerequisite for establishing truly equitable international economic relations based on the principle of mutual advantage.

24. Considering that principles contained in the Charter of Economic Rights and Duties of States and the Declaration and the Programme of Action of the Sixth Special Session of the General Assembly are appropriate in the formulation of the code, the German Democratic Republic proposes that the code of conduct should deal, as a first priority, with measures regarding the following issues: violation of national sovereignty and international security by transnational corporations; permanent sovereignty over natural resources; collaboration with racist régimes; restrictive business practices and transfer of profits adversely affecting the economic and social conditions of developing countries; restriction of trade union rights and adverse effects on living conditions of workers employed by transnational corporations; bribes and other corrupt practices. The importance of the last two issues is particularly stressed.

25. The Government of the German Democratic Republic further proposes that the code should consider the issues proposed by developing countries in document E/C.10/16, annex IV, those presented by the World Federation of Trade Unions (E/C.10/NGO/2 and E/C.10/NGO/4) as well as those submitted by the Centre on Transnational Corporations in document E/C.10/17.

Germany, Federal Republic of

26. The Government of the Federal Republic of Germany is of the view that a code of conduct should aim at overcoming difficulties which may arise as a result of the activities of transnational corporations, given their nature and potential conflicts of interest with home and host countries. A code, bringing into balance these differing interests, should encourage the positive role played by transnational corporations in the world economy. The elements of a positive investment climate in home and host countries should be defined. Therefore, recommendations to transnational corporations should be accompanied in each case by recommendations to home and host countries.

27. The Federal Government suggests that the term transnational corporations should be broadly defined (as employed by the Group of Eminent Persons) to embrace corporations fully or partly owned by States, regardless of their legal status.

28. The Code should apply universally, allowing for relevant recommendations tailored to the needs of developing countries.

29. Regarding the nature and machinery of a code, the Federal Government favours a voluntary one. Since transnational corporations are non-legal entities under international law, recommendations addressed to them could be made binding only if they are transformed into national law. A legally-binding code would require sufficiently concrete rules and a harmonization of national legislation which, given the divergent views of Member States, appears to be unlikely. A legally non-binding code would not necessarily lack binding force if its provisions were formulated in a concrete manner and a consultation procedure were established. In addition, public opinion, supported by trade unions and consumer organizations, would play a significant role in ensuring observance by transnational corporations of such a code.

30. On the substantive issues, the Government of the Federal Republic of Germany has the following views: the introductory part of the code should make clear that national corporations, sharing transnational characteristics (e.g. size), should not be treated differently from transnational corporations; furthermore, transnational corporations should not be made responsible for conditions resulting from political decisions of home or host countries.

31. The Government of the Federal Republic, noting that the report E/C.10/17 has given adequate account of the issues to be covered, proposes that the code could endorse the general rule of observance of the political, economic and social objectives of the host country and of abstaining from improper involvement in domestic political affairs.

32. Regarding disclosure of information, transnational corporations should publish regularly balance-sheets (particularly in consolidated form) and provide information on the structure, sales, number of employees, new fixed investments with due regard to requirements of confidentiality.

33. Abuse of dominant market position adversely affecting competition should be avoided, financing should take into account the country's declared objectives regarding balance of payments and credit policies, adequate information should be given to tax authorities and transfer pricing should be based on the arm's length principle.

34. Research facilities in host countries should be established and improved and technologies transferred in a manner compatible with policies and conditions of host countries.

35. In the area of employment and industrial relations, it is recommended that employees have the right to elected representation, to information, to improved working conditions and to assistance in case of closure of parts of the enterprise and mass layoffs.

36. The Government of the Federal Republic of Germany suggests that recommendations addressed to home and host countries, accompanying those addressed to transnational corporations, should include adequate protection of investments (adequate, prompt and effective compensation in cases of expropriation), guarantee of free transfer of capital and profits and the principle of national treatment of foreign investors.



Jamaica

37. The objective of the code, in the view of the Government of Jamaica, is to obtain agreement between Governments to ensure that the rules and guidelines governing the conduct of transnational corporations and requiring government enforcement are implemented by all signatory Governments. Such a code should be mandatory for transnational corporations.

38. The implementation of the code, given the diversity of countries participating in its formulation, should be achieved through a declaration of principles and objectives, adopted by Governments. The code should be flexible in that it should declare the objective to be achieved by each provision, and then decide upon the comprehensiveness of the mechanisms and the extent of legal sanctions appropriate to achieve that objective, on a case by case basis. While in some instances it might be more appropriate to leave host countries free to determine mechanisms to achieve these objectives according to their domestic law, in other cases provisions could approximate international law and still others provide guidelines for assisting domestic lawmakers in formulating appropriate laws and regulations. Some of the provisions might be more effective if they were applicable to developing host countries only.

39. The only responsibility that the code could assign to home Governments is that they ensure that their transnational corporations direct affiliates abroad to operate as good corporate citizens and not act against the stated objectives of host countries.

40. A transnational corporation operating in a host country should be regarded as a national of that country and be entitled to treatment accorded to nationals of the host State, and as a corollary, obey the laws of that State. Thus, the laws of the host country should always take precedence over the laws and the objectives of the home, or any other, country. If these goals are unacceptable to the parent company as, for example, in the case of apartheid, the company should be free to exercise its right not to establish an affiliate in that country or to terminate its operations.

41. According to the Government of Jamaica, transnational corporations should be defined as those which own or control production or service facilities outside the country in which they are based. Provisions regarding corrupt practices should be included in a code. An international convention, wide enough in scope, could be concluded on the subject. Such an agreement could deal with the penalties to be imposed by the country whose decision was intended to be altered by the bribe; penalties against both the giver and the recipient. Home Governments should provide every assistance in prosecuting cases involving bribes.

42. Political involvement in the affairs of the host country, including efforts to overthrow, embarrass, finance Governments or political parties, should be declared unacceptable in the code. Public discussion of issues with a view to influencing public opinion, as opposed to discussions with the appropriate authorities, should also be prohibited. Approved charitable activities, falling within the social

objectives of the Government, are acceptable. Transnational corporations should have the right to solicit assistance from both home and host Governments to achieve their objectives only through legitimate representation and not through exercise of political and economic pressure.

43. Regarding economic and commercial issues to be included in the code, the Government of Jamaica suggests that the code affirm the right of States to dispose of their natural resources in accordance with their national objectives and to determine the sectors in which TNCs are permitted to participate.

44. On balance of payments, the code should state that the TNC is expected to make a positive contribution to the foreign exchange reserves of the host country throughout the life stream of its earnings. The detailed mechanism to achieve this objective can vary by country, type of company, and firm. Foreign exchange earnings may also vary during the life cycle of the investment.

45. Information on transfer prices should be made freely available to Governments. These prices should be related to market prices or, when these do not exist, be valued at "cost plus a reasonable profit", and not be used to circumvent host government policies, particularly regarding taxation, exchange control, currency speculation, profit remittances.

46. Regarding taxation, a province of intergovernmental agreement (double taxation regulations, apportionment of taxation between home and host countries), the code should indicate that transnational corporations be required to provide all necessary information to host Governments.

47. Restrictive business practices, or policies approximate to them, should be disclosed to host Governments, which should reserve the right to control them. The work of UNCTAD and other international forums should be taken into account in formulating provisions on this topic.

48. Given the work of UNCTAD on a code on transfer of technology, the code could touch upon basic provisions included in that code.

49. Concerning employment and labour, TNCs could be called upon to conform to relevant rules and guidelines existing in the host country, especially as regards trade union activities and collective bargaining, vocational training, employment of local managerial cadres and wage patterns. Detailed provisions in this area, however, would be difficult to include in a code, given wide divergencies among countries regarding labour, endowments and trade union policies.

50. To monitor effectively a code of conduct, transnational corporations should be required to disclose all relevant information about their operations, including foreign sales and purchases, which should be treated as confidential and apply to all enterprises to avoid discrimination. Information regarding the parent company and its affiliates should be made available to home and host countries.

Japan

51. The Government of Japan, noting that transnational corporations have contributed to economic development, recognizes that their activities give rise to problems because of the scale of their operations, and believes a code of conduct will further encourage the positive aspects and eliminate as much as possible the negative aspects of those activities. It also agrees that work on the code should proceed without the previous framing of a definition of transnational corporations, a review of the code to be made after the definition is formulated.

52. Regarding the scope of application of the code, the Government of Japan supports the view that the code should basically cover transnational corporation activities, but should also contain some provisions covering government policies (e.g. nationalization, taxation, anti-corruption). Although both private and State-owned transnational corporations should be covered, the code should limit itself to transnational corporations whose operations exceed a certain size. Since some would require action by home or host countries or both of them jointly, the code should be geographically comprehensive, including activities in developed countries as well as in developing countries.

53. The Government of Japan considers that the code should comprise voluntary guidelines and not be legally binding. This would allow each country certain flexibility in determining its policies, taking into account its particular economic and social conditions.

Netherlands

54. According to the Government of the Netherlands, a code of conduct should be comprehensive; it should contain rules applying to TNCs and to Governments and it should draw upon the work of other United Nations organizations in specific areas (ILO and labour issues; UNCTAD and transfer of technology and restrictive business practices).

55. The Government of the Netherlands tentatively assumes that it will be possible to formulate a code which will be universal in application. To designate part of a code's provisions as pertaining to a particular category of countries, for example developing countries, is less desirable.

56. Regarding the major substantive issues the Government of Netherlands states that, in general, TNCs should observe local laws and should adhere to the social and economic objectives of the host country. If the national laws of different countries impose incompatible obligations on TNCs, the Governments should co-operate in good faith on a solution to these problems. Also, because national objectives are not always clear and because they are subject to change, Governments should guarantee the legal security of TNCs. Furthermore, the code should recommend that Governments make the national objectives explicit in contracts signed with TNCs.

57. On specific issues, the Government of the Netherlands states that a code should contain provisions against corrupt practices by TNCs; the work of the United Nations

Ad Hoc Intergovernmental Working Group on Corrupt Practices should be taken into account in this area.

58. On political issues, the Government of the Netherlands believes that the code should condemn interference by TNCs in national political affairs; a general provision combatting such interference should be part of the code, but specific provisions should be left to national law. The issue of appeal by TNCs to home Governments should be formulated so that prohibition of appeal does not affect normal diplomatic protection; United Nations General Assembly resolution 2625 (XXV) on non-intervention seems to be an appropriate basis in this case. Home Governments should refrain from using TNCs as vehicles for interference in the internal affairs of host States; however, this should not impinge upon the right of States to give diplomatic protection to their citizens.

59. The economic and commercial issues are adequately outlined in the paper of the Centre, "Issues involved in the formulation of a code of conduct" (E/C.10/17); however, the issue of ownership - except the problems related to sovereignty of natural resources - does not at present seem to lend itself to inclusion in the code. Without increased co-operation between States, a code of conduct on these subjects will probably not go beyond very general rules.

60. Disclosure of adequate information, based on a uniform method which promotes comparability, is advocated by the Government of the Netherlands. The OECD guidelines on this subject might be supplemented by the future work of the United Nations Group of Experts on International Standards of Accounting and Reporting. Rules regarding transnational corporation information disclosure should be complemented by other provisions relating to exchange of information between Governments.

61. The Government of the Netherlands suggests a number of recommendations to host Governments which could be included in a code of conduct on TNCs. In particular, the principle of national treatment is supported, although exceptions may be acceptable.

62. A code should contain principles confirming the right of States to nationalize foreign property. Disputes between States arising from nationalization ought to be settled by international law on the basis of sovereign equality of nations and freedom of choice of the means of international settlement of disputes. The code should encourage the establishment of procedures providing for the impartial settlement of disputes through international arbitration.

63. The harmonization of laws and policies of different States on foreign investment is perhaps the most effective instrument available to developing countries to strengthen their negotiating position vis-à-vis TNCs. This subject is not suitable for inclusion in the code and should be covered in a separate document. Also, governmental co-operation on other problems with an international element could be improved if suitable procedural guidelines were agreed upon.

64. At this stage the Government of the Netherlands feels unable to give a definitive answer to the question of the code's legal nature. Whether it is

mandatory or voluntary is less important than its actual contents. The forms in which a voluntary code might be presented - international declaration or resolution, recommendation by a "conference" or by the General Assembly of the United Nations - do not have essential differences. All Governments who vote in favour of any international recommendation have the moral duty to observe its regulatory provisions.

65. To supervise compliance with the code, observance by national Governments, monitoring functions of international machinery (United Nations Centre on Transnational Corporations and intergovernmental consultation) and where appropriate, observation by tripartite machinery (ILO) should be combined.

#### New Zealand

66. The Government of New Zealand attaches great importance to the formulation of a set of internationally accepted guidelines covering the activities of transnational corporations. Considering that these corporations can make a constructive contribution to national and international economic development, the Government of New Zealand believes that a code of conduct should take into account both the positive aspects as well as the problems that the activities of TNCs present to host countries.

#### United Kingdom of Great Britain and Northern Ireland

67. The Government of the United Kingdom, attaching particular importance to the establishment of an international framework concerning the operations of transnational corporations, is of the view that the work of the Commission on the code of conduct should proceed on a priority basis adopting, however, a cautious and evolutionary approach.

68. The purpose of the code, according to the United Kingdom reply, should be to secure effective international arrangements for the operations of transnational corporations designed to promote their contribution to national developmental goals and to world economic growth while controlling or eliminating their adverse effects. The effectiveness of the code is based on general acceptability and on achieving a just balance between the interests of all parties involved. Thus, it should cover not only the activities of transnational corporations but also the responsibilities of Governments. It should also provide for co-operation between Governments to resolve any difficulties which may arise from conflicting demands on individual transnational corporations. In drawing up the code, consideration should be given to the possible effect it may have on the flow of international direct investment.

69. Regarding the nature of the code, the Government of the United Kingdom believes that it would not be practicable to attempt to prepare a mandatory code, given the existing differences in laws, policies and objectives among States. Thus, the first task of the Commission should be to draw up guidelines, not legally binding, covering the responsibilities both of Governments and corporations. The moral force of voluntary guidelines, endorsed by all Member States, should not

be underestimated. However, in certain areas such as disclosure of information and accounting, further arrangements, or even binding agreements, could be envisaged for the subsequent stages of the work of the Commission.

70. As a matter of procedure of the work of the Intergovernmental Working Group, the Government of the United Kingdom believes that agreement should first be reached on the nature of the code and to whom it should be addressed as well as on the identification of issues to be covered by the code.

71. The coverage of the code should be as wide as possible; the definition of transnational corporations, suggested by the Group of Eminent Persons, should be adopted. While the code should be universal, particular account could be taken of the needs of developing countries.

72. The views of the Government of the United Kingdom regarding substantive issues are as follows: the basic principle should be that transnational corporations should conform to laws, regulations, developmental goals and policies of host countries, which in turn should be clearly stated and conform to international law. Arrangements should be made for resolving issues regarding conflicts of jurisdiction. Consideration should be given to the extent to which host countries may discriminate either in favour or against transnational corporations as compared with domestic enterprises. While host countries are free to decide on the extent to which foreign ownership and control of sectors of their economies should be permitted, expropriation should be in accordance with the rules of international law; that is, to serve the public purpose and to be non-discriminatory. The compensation, amounting to the market value of the investment expropriated, should be made without delay, be effectively realizable and freely transferable.

73. While diplomatic protection of corporations should be an accepted principle, as far as the complex issue of interference in political affairs is concerned, it should be the responsibility of individual Governments to define those political activities that are considered unacceptable.

74. On the subject of corrupt practices, for which work is under way examining the possibility of concluding an international agreement, the code should condemn corrupt practices in general and call on Governments to collaborate in the ongoing effort on the international level and enforce their domestic legislation regarding these practices.

75. The code should deal with the issues of balance of payments (e.g., transnational corporations to take into account various government policies in this area and contribute to imports and exports), financing (to what extent transnational corporations should be required to use overseas financing for their operations), transfer pricing (for instance, considerations relevant to establishing transfer prices and the scope of intergovernmental co-operation in this respect), taxation (assuring proper assessment of profits in all relevant countries); bilateral government co-operation needed to preserve equitable tax régimes and appropriate information.



76. Other issues to be included are competition and restrictive business practices where a co-ordination with the work of UNCTAD should be ensured. The basic principle in this area is that transnational corporations should not abuse a dominant market position either by themselves or in concert with other enterprises. In the area of transfer of technology, where the work of UNCTAD is already well under way, the Working Group might want to incorporate basic principles in the code of conduct developed in that body; and in the light of UNCTAD's work, issues arising from the activities of transnational corporations could be considered with the aim of agreeing upon a balanced framework intended to promote the contribution of transnational corporations to the international flow of technology.

77. On employment and labour, the Government of the United Kingdom is of the view that the ILO should be invited to draw up a draft regarding principles of employment and social questions to be incorporated into the code, provided this does not delay the work of the Working Group.

78. On consumer protection, the code, taking into account the ongoing international efforts, could include provisions requiring transnational corporations not to market products without adequate information or instructions for safe use and that labelling and advertising of goods should be full and accurate and in conformity with the laws of the host country. The issue of international rules on environmental protection might be too complex to be dealt with in a code; the United Nations Environment Programme, however, should be consulted on this matter.

79. On disclosure of information, the code should give general guidance on the types of information to be provided by transnational corporations. Such guidance should take into account requirements of business confidentiality, costs and the effects of such disclosure on the competitive position of transnational corporations in relation to domestic enterprises. In the long run an effort to achieve a great harmonization of standards of disclosure of information would be beneficial.

80. On the implementation and monitoring of the code of conduct, the Government of the United Kingdom is of the view that arrangements would be necessary to monitor the effectiveness of the code and resolve difficulties arising from conflicting requirements imposed on transnational corporations by Governments. Collection of information on the extent to which the code is effective and proposals for its improvement could be central in this machinery. In the light of accumulated experience, the Commission could also consider whether a non-mandatory code could be supplemented by further arrangements and agreements on particular issues.

81. The Government of the United Kingdom finally reaffirms the importance of associating persons with profound experience from business, trade unions and other groups with the work of the Group on the code of conduct.

United States of America

82. The creation of an environment in which adequate international investment flows would be beneficial to all nations is desirable, according to the Government

of the United States. A voluntary code of conduct related to transnational corporations could encourage the positive contributions and minimize and resolve difficulties arising from their operations.

83. The United States Government perceives a consensus among developed and developing countries regarding the activities of transnational corporations. A code reflecting this consensus can serve to increase harmonious co-operation among all States. The process of reaching agreement itself would reduce existing misunderstanding and might improve relations between investors and governments, particularly of developing countries, whose interests in maintaining flows of investment capital must be strong, given recent unfavourable tendencies in the direction of new foreign investment.

84. Although some transnational corporations occasionally engage in inappropriate behaviour, they sometimes suffer from actions on the part of home or host Governments and from contradictory policies between States. Thus, a code of conduct could contain provisions addressed to Governments with the aim of resolving their differences, including jurisdictional problems. The code should also address itself to the issue of creating an international climate conducive to providing maximum opportunities for transnational corporations to contribute to economic development.

85. Regarding the scope of the code the United States Government believes that a balanced code should clarify what transnational corporations should legitimately expect from Governments and what Governments should expect from each other. The code should try to influence, rather than regulate, the behaviour of transnational corporations. Regulatory schemes beyond the national scope are impractical and unfeasible. On the other hand, the consensus on a general voluntary code would not preclude the negotiation of binding arrangements on certain specific issues, such as are presently considered on the subject of illicit payments.

86. The definition of transnational corporations adopted by the Group of Eminent Persons is basically supported by the United States Government. Principles, however, addressed to transnational corporations, should, whenever relevant, cover domestic enterprises as well.

87. On some of the substantive issues the views of the United States Government are as follows: transnational corporations should respect the sovereignty and laws of the countries in which they operate and refrain from unlawful interference in the domestic affairs of host countries. Unacceptable political activities should be clearly defined by each country. Legitimate contacts of transnational corporations with Governments do not constitute interference.

88. While host countries are free to regulate the operations of transnational corporations within their jurisdiction, international law and international agreements to which Governments have subscribed should be respected. The issue of conflict of laws and jurisdiction is complex. Host country laws cannot automatically have precedence over the laws of home or other countries. The States concerned should co-operate in finding solutions to these problems.



89. The view that transnational corporations should take fully into account the policies and economic and social goals of host countries, including those related to development, employment and technology, is supported by the Government of the United States.

90. The principle of fair treatment of transnational corporations - equitable, non-discriminatory and in accordance with international law - is also emphasized. Both Governments and corporations should respect the contractual obligation into which they freely enter. To encourage and facilitate the contribution transnational corporations could make to development, host countries should guarantee property rights, repatriation of profits, royalties and disinvestment, as well as the right to prompt, adequate and effective compensation in case of expropriation.

91. According to the Government of the United States, a code of conduct should encourage consultations between Governments in case of conflicts concerning the activities of transnational corporations. The code should also encourage the utilization of neutral pre-established dispute settlement or fact-finding mechanisms to resolve differences between Governments and transnational corporations.

#### Holy See

92. The Holy See believes that a code of conduct for transnational corporations has become necessary. While these corporations are important in the development process, their entry and involvement in national economies should be regulated through rules adopted by all interested parties. As national measures are not by themselves sufficient to deal with transnational corporations, more universal rules of conduct, providing a greater degree of uniformity in the relations between transnational corporations and host countries are needed.

93. A code of conduct based on ethical principles aimed at promoting well-being should attempt to achieve harmonious integration of transnational corporations into the host country, taking into account domestic economic, social and cultural goals and priorities.

94. The Holy See supports the principle of permanent national sovereignty over natural resources, while realizing that it may often be economically advantageous for a host country to seek the co-operation of transnational corporations in exploiting these resources. In such cases, and on the condition that transnational corporations adhere to the general policies of the host country, certain guarantees should be offered by host countries against arbitrary nationalization.

95. The enormous economic power wielded by transnational corporations may lead them to the temptation to resort to political interference and to corrupt practices in an attempt to affect political decisions. Therefore, a code should not only contain provisions prohibiting these practices but also controls to be exercised by home countries.

96. Increased local participation in the operations of transnational corporations is supported, provided that it involves the participation of the masses of the population, especially of the poorest sectors, in order to improve skills and enhance their levels of living.

#### Switzerland

97. Switzerland views the work on the code of conduct with particular attention being both a home and host country of transnational corporations. It considers the report E/C.10/17 to be of great importance as it clarifies issues concerning the scope, content and nature of a code. Since, in the view of the Government of Switzerland, the formulation of a code of conduct must necessarily be a long, complex and evolutionary process, it will comment at this time on questions relating only to the purpose and the nature of a code.

98. The increase in the activities of transnational corporations had led to the necessity for closer bilateral and multilateral co-operation among Governments in order to achieve the following aims: creating an investment climate leading to steady growth of the world economy; directing more investments to the developing countries; ensuring that foreign investments contribute to national economic and social development goals.

99. To realize these objectives the parallel efforts of transnational corporations and Governments are necessary. On the one hand, the negative effects of transnational corporate activity must be minimized; on the other, Governments must maintain a stable investment climate. The host country also has a role to play as providing a stable investment climate. The code must therefore seek to meet the combined needs of the three parties involved by providing a framework for global co-operation.

100. Therefore, the Swiss Government believes that the code should be addressed to transnational corporations and Governments of home and host countries. All transnational corporations should be covered, whether of private, public or dual ownership. (For the definition of transnational corporation, the Swiss Government suggests that used by the Group of Eminent Persons.) It is also stressed that the code not discriminate against transnational corporations vis-à-vis national enterprises.

101. Regarding the legal nature of the code, the Swiss Government believes that the final choice should be dictated by practical considerations. It is important that the instrument encompass a degree of flexibility to take into account diversities in legal, political and economic systems of various Governments. In many countries, including Switzerland, government on the whole refrains from intervening in the economic decisions of the private sector. They use, however, other methods to influence such decisions. Therefore, the question is to find the formula best able to induce all parties concerned to observe those elements necessary for the implementation of the code. Even if provisions of a code do not have a mandatory character, they can be effective as long as a broadly-based political will exists to adopt the code. Its impact is a function of the number of Governments which

subscribe to the code. For all these reasons, the Government of Switzerland feels that a non-binding code is appropriate.

102. Regarding the comprehensiveness of the code, the Swiss Government believes that this issue is related to the legal nature and to whom the code is addressed. The wide diversity of transnational corporate activities should be taken into account. It is therefore suggested that the code should be drafted on the basis of general principles which could, at a later stage, be supplemented by detailed intergovernmental agreements. However, the essential aspects of problems posed by transnational corporations from the point of view of their contribution to national development objectives should be covered by the code.

103. The provisions pertaining to host countries should cover such areas as: stabilization of investment policies, national treatment, free transfer of funds, adequate compensation in cases of nationalization, recourse to impartial arbitration in settlement of disputes, etc.

104. Home countries could try to harmonize their investment guarantee schemes to avoid distortions of investment flows and provide technical assistance to host countries.

105. Work on the formulation of the code of conduct should take into account the work already done by other organizations, i.e. OECD, UNCTAD and ILO.

106. Concerning the geographical application of the code, the Swiss Government notes that while among the OECD countries an arrangement concerning matters related to transnational corporations does exist, there is no comparable instrument on the activities of transnational corporations in the framework of relations between developed and developing countries. However, it is felt that a code with universal coverage would have many advantages. It might prevent a situation in which more favourable arrangements within a group of countries would lead to the diversion of needed foreign investment away from developing countries, where it is most needed. Although the Swiss Government views a universal code more favourably, it has not yet taken a categorical position on this matter. It notes, however, that the formulation of a code of conduct should take into account the Declaration of the OECD on Multinational Enterprises.



ANNEX

Text of the note verbale sent by the Secretary-General of 19 August 1976

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of ... to the United Nations and has the honour to refer to the decisions taken by the Commission on Transnational Corporations at its second session, endorsed by the Economic and Social Council at its sixty-first session, concerning the preparation of a code of conduct.

The Commission on Transnational Corporations decided to assign the highest priority to the preparation of a code of conduct. Towards that end, it decided to establish an intergovernmental working group, which will meet intersessionally with a view to submitting to the third session of the Commission in the spring of 1977 an annotated outline of a code and, on the basis of further directives of the Commission, to submit to its fourth session in the spring of 1978, the full text of a code of conduct.

To assist the intergovernmental working group in its task, the Commission on Transnational Corporations decided inter alia to invite all States to submit their views or proposals on a code of conduct to the intergovernmental working group through the Centre on Transnational Corporations. The Commission on Transnational Corporations has requested that the views or proposals received from Governments be incorporated into a single document by the Centre on Transnational Corporations in time for the first session of the intergovernmental working group which will take place from 10 to 14 January 1977 in New York. Therefore the Economic and Social Council, at its sixty-first session, decided that the deadline for such submission is 30 November 1976.

As requested by the Commission on Transnational Corporations, the Centre has completed an action-oriented paper on all issues involved in a code of conduct (document E/C.10/17). This document is being distributed to all States. A copy is attached for easy reference.

The Secretary-General would be most grateful if the views or proposals of His Excellency's Government would reach him by 30 November 1976 at the latest.

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