

(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.

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\* 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.

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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>
E/C.10/1982/6	4	Report of the Intergovernmental Working Group on a Code of Conduct on its fifteenth, sixteenth and seventeenth sessions
E/C.10/1983/S/1	3	Annotated provisional agenda
E/C.10/1983/S/2 and Corr.1	4	Information paper on the negotiations: note by the Secretariat
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
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	5	Draft report
E/C.10/1983/S/INF.1		List of delegations to the first part of the special session
E/C.10/1983/S/INF.2		List of delegations to the second part of the special session