

## **DRAFT UNITED NATIONS CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS\***

The elaboration of the United Nations Code of Conduct on Transnational Corporations was one of the main tasks of the Commission on Transnational Corporations (established by the Economic and Social Council under resolution 1913 (LVII) of 5 December 1974). The preparation of the text of the Draft Code was entrusted first to an Ad Hoc Inter-Governmental Working Group. The Group submitted its report to the Commission at its eighth session in 1982 (United Nations document E/C.10/1982/6). The next stage of the negotiations was entrusted to a special session of the Commission on Transnational Corporations which began deliberations in 1983 and was open to the participation of all States. The special session was reconvened a number of times between 1983 and 1990. In 1988, the Chairman of the reconvened special session and the Secretary-General of the United Nations prepared a text of a draft code (E/1988/39/Add.1), drawing upon discussions and proposals presented over the years. In an effort to facilitate compromise while preserving the already agreed texts, the Chairman, at the meeting on 24 May 1990, transmitted to the Economic and Social Council a revised text of the draft code of conduct, based on the 1988 draft. The text of the Draft Code of Conduct on Transnational Corporations reproduced in this volume reflects the status of negotiations as at 1986.

[1983 version]

### **PREAMBLE AND OBJECTIVES\*\* a/**

### **DEFINITIONS AND SCOPE OF APPLICATION**

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\* Source: Commission on Transnational Corporations, Report on the Special Session (7-18 March and 9-21 May 1983) *Official Records of the Economic and Social Council*, 1983, Supplement No. 7 (E/1983/17/Rev. 1), Annex II. This text of the Code was also reproduced in United Nations Centre on Transnational Corporations (1986).

*The United Nations Code of Conduct on Transnational Corporations*, Current Studies, Series A (New York: United Nations) United Nations publication sales No. E.86.II.A.15, (ST/CTC/SER.A/4), Annex I, pp.28-45 [Note added by the editor].

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

1. (a) [The term "transnational corporations" 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] .]

[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.]
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[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.

#### **Adherence to economic goals and development objectives, policies and priorities**

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\* 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.

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.

10. Transnational corporations shall/should carry out their operations in conformity with relevant intergovernmental co-operative arrangements concluded by countries in which they operate.

#### **Review and renegotiation of contracts**

11. Contracts between Governments and transnational corporations should be negotiated and implemented in good faith. In such contracts, especially long-term ones, review or renegotiation clauses should normally be included.

In the absence of such clauses and where there has been a fundamental change of the circumstances on which the contract or agreement was based, transnational corporations, acting in good faith, shall/should co-operate with Governments for the review or renegotiation of such contract or agreement.

Review or renegotiation of such contracts or agreements shall/should be subject to [the laws of the host country] [relevant national laws and international legal principles].

#### **Adherence to socio-cultural objectives and values**

12. Transnational corporations should/shall respect the social and cultural objectives, values and traditions of the countries in which they operate. While economic and technological development is normally accompanied by social change, transnational corporations should/shall avoid practices, products or services which cause detrimental effects on cultural patterns and socio-cultural objectives as determined by Governments. For this purpose, transnational corporations should/shall respond positively to requests for consultations from Governments concerned.

#### **Respect for human rights and fundamental freedoms**

13. Transnational corporations should/shall respect human rights

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and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational corporations should/shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion. Transnational corporations should/shall conform to government policies designed to extend equality of opportunity and treatment.

**Non-collaboration by transnational corporations with racist minority regimes in southern Africa**

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

[ (a) Transnational corporations shall progressively reduce their business activities and make no further investment in South Africa and immediately cease all business activities in Namibia;

(b) Transnational corporations shall refrain from collaborating directly or indirectly with that regime especially with regard to its racist practices in South Africa and illegal occupation of Namibia to ensure the successful implementation of United Nations resolutions in relation to these two countries.]

[Transnational corporations operating in southern Africa

(a) Should respect the national laws and regulations adopted in pursuance of Security Council decisions concerning southern Africa;

(b) Should within the framework of their business activities engage in appropriate activities with a view to contributing to the elimination of racial discrimination practices under the system of apartheid.]

**Non-interference in internal political affairs**

15. Transnational corporations should/shall not interfere [illegally] in the internal [political] affairs of the countries in which they operate [by resorting to] [They should refrain from any] [subversive and other [illicit] ] activities [aimed at] undermining the political and social systems in these countries.

16. Transnational corporations should/shall not engage in

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activities of a political nature which are not permitted by the laws and established policies and administrative practices of the countries in which they operate.

**Non-interference in intergovernmental relations**

17. Transnational corporations should/shall not interfere in [any affairs concerning] intergovernmental relations [, which are the sole concern of Governments].

18. Transnational corporations shall/should not request Governments acting on their behalf to take the measures referred to in the second sentence of paragraph 65.

19. With respect to the exhaustion of local remedies, transnational corporations should/shall not request Governments to act on their behalf in any manner inconsistent with paragraph 65.

**Abstention from corrupt practices**

20. [Transnational corporations shall refrain, in their transactions, from the offering, promising or giving of any payment, gift or other advantage to or for the 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

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

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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 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.

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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.

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## **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.]\*

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

### **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.

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

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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;
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- (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 corporation, 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

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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.

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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

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\* In this alternative, the sentence will end here.

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

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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 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

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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

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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

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\* 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.

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 paragraph 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 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;
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- (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 of 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.

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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

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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.

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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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**Appendix**

**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 regime 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 thereon was taken by the Commission.

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