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On trouvera ci-après un document élaboré par le secrétariat de la CNUCED sur les différences et similitudes existant entre le Projet de Code de conduite à l'intention des sociétés transnationales des Nations Unies et les Principes directeurs de l'OCDE à l'intention des entreprises multinationales. On trouvera en outre, annexés au présent document, les textes du projet de Code de conduite des sociétés transnationales des Nations Unies (versions de 1983 et de 1990), l'Ensemble de principes et de règles équitables convenus au niveau multilatéral pour le contrôle des pratiques commerciales restrictives (1980) et le Projet de Code international de conduite pour le transfert de technologie (version de 1985). Le présent document, ainsi que les textes figurant en annexe, ont été communiqués en réponse à une demande formulée par le Groupe de travail à sa réunion des 16 et 17 juin 1998.*

Projet de Code des sociétés transnationales des Nations Unies et Principes directeurs de l'OCDE à l'intention des entreprises multinationales

Similitudes et différences

Caractéristiques générales: Pour la commodité des références, le Projet de Code de conduite des sociétés transnationales des Nations Unies (le "Projet de Code") - est joint en annexe dans deux versions, la version de 1986, qui reflète l'état d'avancement des négociations à l'époque, et la version de 1990, élaborée par le président des négociations et adressée au Conseil économique et social – qui visait à proposer un cadre général relatif aux droits et obligations des États et des investisseurs étrangers. Sur un certain nombre de questions, le Projet de Code fait référence aux dispositions d'autres instruments traitant de tel ou tel aspect particulier des opérations des sociétés transnationales, notamment l'Ensemble de principes et de règles équitables convenus au niveau multilatéral pour le contrôle des pratiques commerciales restrictives et le Projet de Code international de conduite pour le transfert de technologie (tous deux figurent en annexe pour référence).

Les Principes directeurs de l'OCDE à l'intention des entreprises multinationales ("les Principes directeurs") (mis à la disposition du Groupe de travail précédemment) faisaient partie d'un ensemble contenant aussi des instruments relatifs au traitement national, aux mesures incitatives ou dissuasives et aux prescriptions contradictoires, et ont été inclus dans la Déclaration de l'OCDE sur l'investissement et les entreprises multinationales. Ces instruments de l'OCDE, de même que le Code

* Les annexes sont reproduites en anglais seulement.

de la libéralisation des mouvements de capitaux et le Code de la libéralisation des opérations invisibles courantes traitent également de manière approfondie des droits et obligations des États et des investisseurs.

Les Principes directeurs de l'OCDE ont vu le jour en 1976 et ont par la suite été appliqués et modifiés. Le Projet de Code n'a jamais été complètement parachevé même si certaines formulations ont été largement acceptées au cours des négociations. L'Ensemble de principes et de règles équitables convenus au niveau multilatéral pour le contrôle des pratiques commerciales restrictives a été adopté par l'Assemblée générale des Nations Unies en 1980. Le Projet de Code international de conduite pour le transfert de technologie n'a pas été totalement parachevé, même si l'on s'est mis d'accord sur le libellé de nombreuses dispositions.

Couverture géographique: Le Projet de Code devait être un instrument universel, mais les Principes directeurs ne sont officiellement applicables que dans la zone de l'OCDE, bien que le caractère international des questions dont ils traitent et leur pertinence pour tous les pays aient été soulignés; en fait les Principes directeurs constituent une base pour guider plus généralement le comportement des entreprises multinationales.

Objectif: Le Projet de Code et les Principes directeurs ont pour objectif commun d'encourager la contribution positive des entreprises transnationales à la croissance et au développement en réduisant au maximum les difficultés auxquelles leurs opérations peuvent donner lieu.

Caractère juridique: Il était tacitement entendu que le Projet de Code aurait un caractère volontaire. Les Principes directeurs de l'OCDE sont par nature appliqués sur une base volontaire; il s'agit de recommandations adressées conjointement par les gouvernements de l'OCDE aux entreprises transnationales opérant sur leurs territoires.

Définition des sociétés transnationales: Le Projet de Code contenait une définition large des entreprises transnationales couvrant les entreprises publiques et privées ainsi que les investissements de portefeuille et les investissements autres que les participations. Les Principes directeurs ne contiennent pas de définition juridique précise des entreprises transnationales mais indiquent qu'elles comprennent généralement des entreprises privées et publiques et spécifient que les pratiques énoncées sont, le cas échéant, recommandables pour toutes les entreprises (nationales ou transnationales).

Suivi: Le Projet de Code devait prévoir des mécanismes de suivi, d'examen et de modification; ces mécanismes n'ont toutefois pas été pleinement élaborés et n'ont jamais été utilisés. Les mécanismes de suivi, d'examen et de modifications des Principes directeurs fonctionnent depuis plus de 20 ans, au cours desquels l'instrument a été largement diffusé et a fait l'objet de consultations, de clarifications et de modifications. Le principal domaine dans lequel les Principes directeurs ont eu un impact est celui de l'emploi et des relations du travail.

Questions abordées concernant le comportement des entreprises transnationales

Les deux instruments contiennent des dispositions intéressantes:

- a) l'applicabilité des lois nationales des pays d'accueil aux entreprises transnationales;
- b) le respect des objectifs de politique générale et des objectifs de développement des pays d'accueil;
- c) la coopération avec les gouvernements des pays d'accueil;

- d) la non-ingérence dans les affaires de politique intérieure des pays d'accueil;
- e) le fait de s'abstenir de recourir à des pratiques de corruption;
- f) la divulgation des renseignements;
- g) la concurrence;
- h) la balance des paiements et le financement;
- i) la fiscalité et l'établissement des prix de transfert;
- j) l'emploi et les relations du travail;
- k) la protection de l'environnement;
- l) la protection des consommateurs;
- m) le transfert de technologie.

En outre, le Projet de Code contient des dispositions concernant:

- a) le respect des droits de l'homme et des libertés fondamentales;
- b) le respect des valeurs socioculturelles des pays d'accueil;
- c) le réexamen et la renégociation des contrats.

(S'agissant des normes relatives au traitement des entreprises transnationales, le Projet de Code couvrirait un certain nombre de questions qui ne figurent pas dans la Déclaration de l'OCDE et les instruments connexes, tels que l'expropriation et le règlement des différends.)

La plupart des dispositions du Projet de Code portant sur le comportement des entreprises transnationales ont été acceptées *ad referendum*, la plupart des questions restées en suspens concernant les dispositions relatives au traitement des entreprises transnationales.

Formulation de principes et de normes spécifiques: Il serait difficile d'établir une comparaison entre les libellés respectifs du Projet de Code et des Principes directeurs étant donné que, au cours des négociations sur le Code, on a proposé et examiné de nombreuses variantes de ses dispositions, et que seulement certaines d'entre elles ont été acceptées *ad referendum*.

ANNEX 1**DRAFT UNITED NATIONS CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS*****[1983 version]**

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 eight 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.

PREAMBLE AND OBJECTIVES a/****DEFINITIONS AND SCOPE OF APPLICATION**

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

* 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.

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.]

[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]

* 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.

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

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 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 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 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.

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

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.

29. Transnational corporations should/shall be responsive to requests by Governments of the countries in which they operate, particularly developing countries, concerning the phasing over a limited period of time of the repatriation of capital in case of disinvestment or remittances of accumulated profits, when the size and timing of such transfers would cause serious balance-of-payments difficulties for such countries.

30. Transnational corporations should/shall not, contrary to generally accepted financial practices prevailing in the countries in which they operate, engage in short-term financial operations or transfers or defer or advance foreign exchange payments, including intra-corporate payments, in a manner which would increase currency instability and thereby cause serious balance-of-payments difficulties for the countries concerned.

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

32. When having recourse to the money and capital markets of the countries in which they operate, transnational corporations should/shall not, beyond generally accepted financial practices prevailing in such countries, engage in activities which would have a significant adverse impact on the working of local markets, particularly by restricting the availability of funds to other enterprises. When issuing shares with the objective of increasing local equity participation in an entity operating in such a country, or engaging in long-term borrowing in the local market, transnational corporations shall/should consult with the Government of the country concerned upon its request on the effects of such transactions on the local money and capital markets.

Transfer pricing

33. In respect of their intra-corporate transactions, transnational corporations, should/shall not use pricing policies that are not based on relevant market prices, or, in the absence of such prices, the arm's length principle, which have the effect of modifying the tax base on which their entities are

assessed or of evading exchange control measures [or customs valuation regulations] [or which [contrary to national laws and regulations] adversely affect economic and social conditions] of the countries in which they operate.

Taxation

34. Transnational corporations should/shall not, contrary to the laws and regulations of the countries in which they operate, use their corporate structure and modes of operation, such as the use of intra-corporate pricing which is not based on the arm's length principle, or other means, to modify the tax base on which their entities are assessed.

Competition and restrictive business practices

35. For the purpose of this Code, the relevant provisions of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in its resolution 35/63 of 5 December 1980 shall/should also apply in the field of restrictive business practices. c/

Transfer of technology

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

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

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

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

Consumer protection

37. Transnational corporations shall/should carry out their operations, in particular production and marketing, in accordance with national laws, regulations, administrative practices and policies concerning consumer protection of the countries in which they operate. Transnational corporations shall/should also perform their activities with due regard to relevant international standards, so that they do not cause injury to the health or endanger the safety of consumers or bring about variations in the quality of products in each market which would have detrimental effects on consumers.

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

38. Transnational corporations shall/should, in respect of the products and services which they produce or market or propose to produce or market in any country, supply to the competent authorities of that country on request or on a regular basis, as specified by these authorities, all relevant information concerning:

Characteristics of these products or services which may be injurious to the health and safety of consumers including experimental uses and related aspects;

Prohibitions, restrictions, warnings and other public regulatory measures imposed in other countries on grounds of health and safety protection on these products or services.

39. Transnational corporations shall/should disclose to the public in the countries in which they operate all appropriate information on the contents and, to the extent known, on possible hazardous effects of the products they produce or market in the countries concerned by means of proper labelling, informative and accurate advertising or other appropriate methods. Packaging of their products should be safe and the contents of the product should not be misrepresented.

40. Transnational corporations shall/should be responsive to requests from Governments of the countries in which they operate and be prepared to co-operate with international organizations in their efforts to develop and promote national and international standards for the protection of the health and safety of consumers and to meet the basic needs of consumers.

Environmental protection

41. Transnational corporations shall/should carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate and with due regard to relevant international standards. Transnational corporations shall/should, in performing their activities, take steps to protect the environment and where damaged to [restore it to the extent appropriate and feasible] [rehabilitate it] and should make efforts to develop and apply adequate technologies for this purpose.

42. Transnational corporations shall/should, in respect of the products, processes and services they have introduced or propose to introduce in any country, supply to the competent authorities of that country on request or on a regular basis, as specified by these authorities, all relevant information concerning:

Characteristics of these products, processes and other activities including experimental uses and related aspects which may harm the environment and the measures and costs necessary to avoid or at least to mitigate their harmful effects;

Prohibitions, restrictions, warnings and other public regulatory measures imposed in other countries on grounds of protection of the environment on these products, processes and services.

43. Transnational corporations shall/should be responsive to requests from Governments of the countries in which they operate and be prepared where appropriate to co-operate with international organizations in their efforts to develop and promote national and international standards for the protection of the environment.

C. Disclosure of information

44. Transnational corporations should disclose to the public in the countries in which they operate, by appropriate means of communication, clear, full and comprehensible information on the

structure, policies, activities and operations of the transnational corporation as a whole. The information should include financial as well as non-financial items and should be made available on a regular annual basis, normally within six months and in any case not later than 12 months from the end of the financial year of the corporation. In addition, during the financial year, transnational corporations should wherever appropriate make available a semi-annual summary of financial information.

The financial information to be disclosed annually should be provided where appropriate on a consolidated basis, together with suitable explanatory notes and should include, *inter alia*, the following:

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

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

- (a) The structure of the transnational 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 well as the cost involved in producing the information.

The information herein required should, as necessary, be in addition to information required by national laws, regulations and administrative practices of the countries in which transnational corporations operate.

45. Transnational corporations should/shall supply to the competent authorities in each of the countries in which they operate, upon request or on a regular basis as specified by those authorities, and in accordance with national legislation, all information required for legislative and administrative purposes relevant to the activities and policies of their entities in the country concerned.

Transnational corporations should/shall, to the extent permitted by the provisions of the relevant national laws, regulations, administrative practices and policies of the countries concerned, supply to competent authorities in the countries in which they operate information held in other countries needed to enable them to obtain a true and fair view of the operations of the transnational corporation concerned as a whole in so far as the information requested relates to the activities of the entities in the countries seeking such information.

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

46. With due regard to the relevant provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and in accordance with national laws, regulations and practices in the field of labour relations, transnational corporations should/shall provide to trade unions or other representatives of employees in their entities in each of the countries in which they operate, by appropriate means of communication, the necessary information on the activities dealt with in this code to enable them to obtain a true and fair view of the performance of the local entity and, where appropriate, the corporation as a whole. Such information should/shall include, where provided for by national law and practices, *inter alia*, prospects or plans for future development having major economic and social effects on the employees concerned.

Procedures for consultation on matters of mutual concern should/shall be worked out by mutual agreement between entities of transnational corporations and trade unions or other representatives of employees in accordance with national law and practice.

Information made available pursuant to the provisions of this paragraph should be subject to appropriate safeguards for confidentiality so that no damage is caused to the parties concerned.

TREATMENT OF TRANSNATIONAL CORPORATIONS

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

47. States have the right to regulate the entry and establishment of transnational corporations including determining the role that such corporations may play in economic and social development and prohibiting or limiting the extent of their presence in specific sectors.

48. Transnational corporations should receive [fair and] equitable [and non-discriminatory] treatment [under] [in accordance with] the laws, regulations and administrative practices of the countries in which they operate [as well as intergovernmental obligations to which the Governments of these countries have freely subscribed] [consistent with their international obligations] [consistent with international law].

49. Consistent with [national constitutional systems and] national needs to [protect essential/national economic interests,] maintain public order and to protect national security, [and with due regard to provisions of agreements among countries, particularly developing countries,] entities of transnational corporations should be given by the countries in which they operate [the treatment] [treatment no less favourable than that] [appropriate treatment].* accorded to domestic enterprises under their laws, regulations and administrative practices [when the circumstances in which they operate are similar/identical] [in like situations]. [Transnational corporations should not claim preferential treatment or the incentives and concessions granted to domestic enterprises of the countries in which they operate.] [Such treatment should not necessarily include extension to entities of transnational corporations of incentives and concessions granted to domestic enterprises in order to promote self-reliant development or protect essential economic interests.]**

[50. Endeavouring to assure the clarity and stability of national policies, laws, regulations and administrative practices is of acknowledged importance. Laws, regulations and other measures affecting transnational corporations should be publicly and readily available. Changes in them should be made with proper regard to the legitimate rights and interests of all concerned parties, including transnational corporations.]

[To be deleted]

51. Information furnished by transnational corporations to the authorities in each of the countries in which they operate containing [legitimate business secrets] [confidential business information] should be accorded reasonable safeguards 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 this alternative, the sentence will end here.

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

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

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

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

C. Jurisdiction

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

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

[To be deleted]

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

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

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

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

[To be deleted]

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

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

INTERGOVERNMENTAL CO-OPERATION

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

60. [States agree that] intergovernmental co-operation should be established or strengthened at the international level and, where appropriate, at the bilateral, regional and interregional levels [with a view to promoting the contribution of transnational corporations to their developmental goals, particularly those of developing countries, while controlling and eliminating their negative effects].*

61. States [agree to] [should] exchange information on the measures they have taken to give effect to the Code and on their experience with the Code.

62. States [agree to] [should] consult on a bilateral or multilateral basis, as appropriate, on matters relating to the Code and its application [in particular on conflicting requirements imposed on transnational corporations by the countries in which they operate and issues of conflicting national jurisdictions] [in particular in relation to conflicting requirements imposed by parent companies on their entities operating in different countries] and with respect to the development of international agreements and arrangements on issues related to the Code.

63. States [agree to] [should] take into consideration the objectives of the Code as reflected in its provisions when negotiating bilateral or multilateral agreements concerning transnational corporations.

64. States [agree not to use] [should not use] transnational corporations as instruments to intervene in the internal or external affairs of other States [and agree to take appropriate action within their jurisdiction to prevent transnational corporations from engaging in activities referred to in 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.

* 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.

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;
- (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. The second assessment shall take place two years after the first one. The Commission shall determine whether a periodicity of two years is to be maintained or modified for subsequent assessments. The format of assessments shall be determined by the Commission.

[(c) To provide [, upon the request of a Government,] clarification of the provisions of the Code in the light of actual situations in which the applicability and implications of the Code have been the subject of intergovernmental consultations. In clarifying the provisions of the Code, the Commission shall not draw conclusions concerning the conduct of the parties involved in the situation which led to the request for clarification. The clarification is to be restricted to issues illustrated by such a situation. The detailed procedures regarding clarification are to be determined by the Commission.]

[To be deleted.]

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

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

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

C. Review procedure

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

Notes

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

"For the purposes of this Code, the principles set out in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, should apply in the field of employment, training, conditions of work and life and industrial relations."

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

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

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

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

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.

ANNEX 2

**UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL**

Distr.
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Second regular session of 1990
Item 7(d) of the provisional agenda*

**DEVELOPMENT AND INTERNATIONAL ECONOMIC CO-OPERATION:
TRANSNATIONAL CORPORATIONS**

Letter dated 31 May 1990 from the Chairman of the reconvened special
session of the Commission on Transnational Corporations to the
President of the Economic and Social Council

In accordance with Economic and Social Council resolution 1990/204, the special session of the Commission on Transnational Corporations was reconvened on 24 May 1990 "with a view to concluding the work on the formulation of the code of conduct on transnational corporations for transmission to the Economic and Social Council at its second regular session". That resolution was in consonance with the decision of the enlarged Bureau of the reconvened special session to conclude negotiations by May 1990. Those negotiations began more than a decade ago and in recent years they have concentrated on a few important outstanding issues. In 1988, the Chairman of the reconvened special session and the Secretary-General prepared a text of the draft code, drawing upon the discussions and proposals presented over the years. That text was reproduced in document E/1988/39/Add.1.

During the meetings of the enlarged Bureau in January 1990, a number of amendments were submitted, which were discussed in April and May. In the light of the April discussions, the Secretary-General prepared a draft code of conduct, which was distributed informally. Although it was not possible to agree on a final draft code of conduct, it is important to note that the vast majority of its provisions have already been accepted. It should therefore not be difficult to reach agreement on compromise formulations of the remaining provisions. In an effort to facilitate that compromise while preserving the already agreed texts, the Chairman, at the meeting on 24 May 1990, announced that he would transmit to the Economic and Social Council the text of a draft code of conduct, based on document E/1988/39/Add.1 and bearing in mind the informal draft of the Secretary-General and the discussion in the enlarged Bureau. That text is annexed hereto.

* E/1990/92

The Bureau considers that the work of the reconvened special session of the Commission on Transnational Corporations has been concluded and it is the Chairman's impression that the text annexed will receive the support of the overwhelming majority of countries from all regional groups.

(Signed) Miguel Marin-Bosch
Chairman
Reconvened special session of the
Commission of Transnational Corporations

Annex

PROPOSED TEXT OF THE DRAFT CODE OF CONDUCT
ON TRANSNATIONAL CORPORATIONS

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PREAMBLE

The General Assembly,

Recalling Economic and Social Council resolutions 1908 (LVII) of 2 August 1974 and 1913 (LVII) of 5 December 1974, establishing the Commission on Transnational Corporations and the United Nations Centre on Transnational Corporations with the mandate, as their highest priority of work, of concluding a Code of Conduct on Transnational Corporations,

Convinced that a universally accepted, comprehensive and effective Code of Conduct on Transnational Corporations is an essential element in the strengthening of international economic and social co-operation and, in particular, in achieving one of the main goals and objectives in that co-operation, namely, to maximize the contributions of transnational corporations to economic development and growth and to minimize the negative effects of the activities of these corporations.

Decides to adopt the following Code of Conduct on Transnational Corporations:

DEFINITIONS AND SCOPE OF APPLICATION

1. (a) This Code is universally applicable to enterprises, irrespective of their country of origin and their ownership, including private, public or mixed, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operate 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. Such enterprises are referred to in this Code as transnational corporations.

(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 other than the home 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. For the application of this Code, it is irrelevant whether or not enterprises as described in paragraph 1(a) above are referred to in any country as transnational corporations.

3. The Code is universally applicable in all States, regardless of their political and economic systems or their level of development.

4. The provisions of the Code addressed to transnational corporations reflect good practice for all enterprises. Subject to the provisions of paragraph 52, wherever the provisions of the Code are relevant to both, transnational corporations and domestic enterprises shall be subject to the same expectations with regard to their conduct.

5. Subject to the relevant constitutions, charters or other fundamental laws of the regional groupings of States concerned, 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.

6. In their interpretation and application the provisions of this Code are interrelated and each provision should be construed in the context of the other provisions.

ACTIVITIES OF TRANSNATIONAL CORPORATIONS

A. General

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

7. Transnational corporations 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 wealth and resources.

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

9. Transnational corporations 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

10. Transnational corporations should carry out 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 should co-operate with the Governments of the countries in which they operate with a view to contributing to the development process and should be responsive to requests for consultation in this respect, thereby establishing mutually beneficial relations with these countries.

11. Transnational corporations should carry out their operations in conformity with applicable intergovernmental co-operative arrangements concluded by the countries in which they operate.

Review and renegotiation of contracts and agreements

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

(b) 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, should co-operate with Governments for the review or renegotiation of such contract or agreement.

Adherence to socio-cultural objectives and values

13. Transnational corporations should 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 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 respond positively to requests for consultations from Governments concerned.

Respect for human rights and fundamental freedoms

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

Non-collaboration by transnational corporations with the racist minority regime in South Africa

15. In accordance with the efforts of the international community towards the elimination of apartheid in South Africa,

(a) Transnational corporations shall refrain from operations and activities supporting and sustaining the racist minority regime of South Africa in maintaining the system of apartheid;

(b) Transnational corporations shall 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 comply strictly with obligations resulting from Security Council decisions and shall fully respect those resulting from all relevant United Nations resolutions.

Non-interference in internal affairs of host countries

16. Without prejudice to the participation of transnational corporations in activities that are permissible under the laws, regulations or established administrative practices of host countries, and without prejudice to paragraph 8 of the Code, transnational corporations shall not interfere in the internal affairs of host countries.

Non-interference in intergovernmental relations

17. Transnational corporations shall not interfere in intergovernmental relations provided that this provision shall not preclude such activities as are sanctioned within the framework of bilateral or multilateral co-operation.

18. Transnational corporations 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 not request Governments to act on their behalf in any manner inconsistent with paragraph 65.

Abstention from corrupt practices

20. (a) 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.

(b) Transnational corporations shall maintain accurate records of any payments made by them 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.

B. Economic, financial and social

Ownership and control

21. Transnational corporations should 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 established administrative practices of the country in which it operates, each entity of a transnational corporation should co-operate with the other entities, in accordance with the actual distribution of responsibilities among them and consistent with paragraph 22, 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 should 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 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.

24. Transnational corporations should 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.

Employment conditions and industrial relations

25. 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.

Balance of payments and financing

26. Transnational corporations shall carry out 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. These obligations are without prejudice to multilaterally agreed trade rules and sound commercial practices.

27. Transnational corporations should 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. Transnational corporations should, where appropriate, contribute to the promotion and diversification of exports in the countries in which they operate and to an increased utilization of goods, services and other resources which are available in these countries.

29. Transnational corporations should 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 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 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 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 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 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 adversely affecting the tax revenues, the foreign exchange resources or other aspects of the economy of the countries in which they operate.

Taxation

34. Transnational corporations 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 purposes 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 apply in the field of restrictive business practices.

Transfer of technology

36. (a) 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.

(b) Transnational corporations in their transfer of technology transactions should, in accordance with the criteria set forth in the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, avoid restrictive practices which adversely affect the international flow of technology, or otherwise hinder the economic and technological development of countries, particularly developing countries.

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

Consumer protection

37. Transnational corporations shall 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 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, 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 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 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 carry out their activities in accordance with national laws, regulations, established administrative practices and policies relating to the preservation of the environment of the countries in which they operate and with due regard to relevant international standards. Transnational corporations should, in performing their activities, take steps to protect the environment and where damaged to rehabilitate it and should make efforts to develop and apply adequate technologies for this purpose.

42. Transnational corporations shall, 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 should be responsive to requests from Governments of the countries in which they operate and be prepared where appropriate to co-operate with international organizations in their efforts to develop and promote national and international standards for the protection of the environment.

C. Disclosure of information

44. Transnational corporations should disclose to the public in the countries in which they operate, by appropriate means of communication, clear, full and comprehensible information on the structure, policies, activities and operations of the transnational corporation as a whole. The information should include financial as well as non-financial items and should be made available on a regular annual basis, normally within six months and in any case not later than 12 months from the end of the financial year of the corporation. In addition, during the financial year, transnational corporations should wherever appropriate make available a semi-annual summary of financial information.

The financial information to be disclosed annually should be provided where appropriate on a consolidated basis, together with suitable explanatory notes and should include, *inter alia*, the following:

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

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

- (a) The structure of the transnational 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 be determined by the nature, scale and interrelationships of the transnational corporation's operations, with due regard to their significance for the areas or countries concerned.

The extent, detail and frequency of the information provided should take into account the nature and size of the transnational corporation as a whole, the requirements of confidentiality and effects on the transnational corporation's competitive position as well as the cost involved in producing the information.

The information herein required should, as necessary, be in addition to information required by national laws, regulations and established administrative practices of the countries in which transnational corporations operate.

45. (a) Transnational corporations 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.

(b) Transnational corporations shall, to the extent permitted by the provisions of the relevant national laws, regulations, established 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.

(c) The provisions of paragraph 52 concerning confidentiality shall apply to information supplied under the provisions of this paragraph.

46. (a) 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 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 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.

(b) Procedures for consultation on matters of mutual concern should 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.

(c) 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 provisions relating to the treatment of transnational corporations

47. In all matters relating to the Code, States shall fulfil, in good faith, their obligations under international law.

48. 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.

49. Transnational corporations shall receive fair and equitable treatment in the countries in which they operate.

50. Subject to national requirements for maintaining public order and protecting national security and consistent with national constitutions and basic laws, and without prejudice to measures specified in legislation relating to the declared development objectives of the developing countries, entities of transnational corporations should be entitled to treatment no less favourable than that accorded to domestic enterprises in similar circumstances.

51. The importance of endeavouring to assure the clarity and stability of national policies, laws, regulations and established administrative practices is acknowledged. Laws and regulations affecting transnational corporations should be publicly and readily available. To the extent appropriate, relevant information regarding decisions of competent administrative bodies relating to transnational corporations should be disseminated.

52. Information furnished by transnational corporations to the authorities in each of the countries in which they operate containing confidential business information shall be accorded reasonable safeguards normally applicable in the area in which the information is provided, particularly to protect its confidentiality.

53. In order to achieve the purposes of paragraph 24 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, subject to the laws and regulations of the countries concerned, be facilitated.

54. Transnational corporations are entitled to transfer all payments legally due. Such transfers are subject to the procedures laid down in the relevant legislation of host countries, such as foreign exchange laws, and to restrictions for a limited period of time emanating from exceptional balance of payment difficulties.

B. Nationalization and compensation

55. It is acknowledged that States have the right to nationalize or expropriate the assets of a transnational corporation operating in their territories, and that adequate compensation is to be paid by the State concerned, in accordance with the applicable legal rules and principles.

C. Jurisdiction

56. An entity of a transnational corporation is subject to the jurisdiction of the country in which it operates.

D. Dispute settlement

57. Disputes between States and entities of transnational corporations, which are not amicably settled between the parties, shall be submitted to competent national courts or authorities. Where the parties so agree, or have agreed, such disputes shall be referred to other mutually acceptable or accepted dispute settlement procedures.

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 avoid or minimize such conflicts, and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of Other States.

INTERGOVERNMENTAL CO-OPERATION

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

60. Intergovernmental co-operation should be established or strengthened at the international level and, where appropriate, at the bilateral, regional and interregional levels.

61. States should exchange information on the measures they have taken to give effect to the Code and on their experience with the Code.

62. States should consult on a bilateral or multilateral basis, as appropriate, on matters relating to the Code and its application and with respect to the development of international agreements and arrangements on issues related to the Code.

63. States 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 should not use transnational corporations as instruments to intervene in the internal or external affairs of other States and should take appropriate action within their jurisdiction to prevent transnational corporations from engaging in activities referred to in paragraphs 16 and 17 of this Code.

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

IMPLEMENTATION OF THE CODE OF CONDUCT

A. Action at the national level

66. In order to ensure and promote the implementation of the Code at the national level, States 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;
- (d) Take action 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. Consistent with United Nations practices, it may establish the subsidiary bodies and specific procedures it deems necessary for the effective discharge of its functions. The United Nations Centre on Transnational Corporations shall act as the secretariat to the Commission.

68. The Commission shall act as the international body within the United Nations system for all matters related to the Code. It shall establish and maintain close contacts with other United Nations organizations and specialized agencies dealing with matters related to the Code and its implementation with a view to co-ordinating work related to the Code. When matters covered by international agreements or arrangements, specifically referred to in the Code, which have been worked out in other United Nations forums, arise, the Commission shall forward such matters to the competent bodies concerned with such agreements or arrangements.

69. The Commission shall have the following functions:

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

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

(c) To develop in the light of experience procedures for providing clarifications on provisions of the Code.

(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 provisions of 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.

ANNEX 3

**THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES
FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES^{*1}**

AND

**RESOLUTION ADOPTED BY THE CONFERENCE STRENGTHENING THE
IMPLEMENTATION OF THE SET^{**}**

The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was adopted by the United Nations General Assembly at its thirty-fifth session on 5 December 1980 by its resolution 35/63. The Second United Nations Conference to Review all Aspects of the Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was held in Geneva from 26 November to 7 December 1990. That Conference adopted a resolution on "Strengthening the implementation of the Set" at its sixth meeting on 7 December 1990. A Third Review Conference took place on 13-21 November 1995. This Conference adopted a resolution calling for a number of concrete actions to give effect to the implementation of the Set.

**THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES
FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES**

The United Nations Conference on Restrictive Business Practices,

Recognizing that restrictive business practices can adversely affect international trade, particularly that of developing countries, and the economic development of these countries,

Affirming that a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices can contribute to attaining the objective in the establishment of a new international economic order to eliminate restrictive business practices adversely affecting international trade and thereby contribute to development and improvement of international economic relations on a just and equitable basis,

* Source: United Nations Conference on Trade and Development (1981). *The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices*, United Nations document TD/RBP/CONF/10/Rev.1 (New York: United Nations) [Note added by the editor].

¹ The Set of Principles and Rules was adopted by the United Nations Conference on Restrictive Business Practices as an annex to its resolution of 22 April 1980.

^{**} Source: United Nations Conference on Trade and Development (1991). "Resolution Adopted by the Conference Strengthening the Implementation of the Set", *Report of the Second United Nations Conference to Review all Aspects of the Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices*, United Nations document TD/RBP/CONF.3/9 (Geneva: United Nations), Annex, pp.48-51 [Note added by the editor].

Recognizing also the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting international trade, particularly those affecting the trade and development of developing countries,

Considering the possible adverse impact of restrictive business practices, including among others those resulting from the increased activities of transnational corporations, on the trade and development of developing countries,

Convinced of the need for action to be taken by countries in a mutually reinforcing manner at the national, regional and international levels to eliminate or effectively deal with restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries, and the economic development of these countries,

Convinced also of the benefits to be derived from a universally applicable set of multilaterally agreed equitable principles and rules for the control of restrictive business practices and that all countries should encourage their enterprises to follow in all respects the provisions of such a set of multilaterally agreed equitable principles and rules,

Convinced further that the adoption of such a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices will thereby facilitate the adoption and strengthening of laws and policies in the area of restrictive business practices at the national and regional levels and thus lead to improved conditions and attain greater efficiency and participation in international trade and development, particularly that of developing countries, and to protect and promote social welfare in general, and in particular the interests of consumers in both developed and developing countries,

Affirming also the need to eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries,

Affirming further the need that measures adopted by the States for the control of restrictive business practices should be applied fairly, equitably, on the same basis to all enterprises and in accordance with established procedures of law; and for States to take into account the principles and objectives of the Set of Multilaterally Agreed Equitable Principles and Rules,

Hereby agrees on the following Set of Principles and Rules for the control of restrictive business practices, which take the form of recommendations:

A. Objectives

Taking into account the interests of all countries, particularly those of developing countries, the Set of Multilaterally Agreed Equitable Principles and Rules are framed in order to achieve the following objectives:

1. To ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries;
2. To attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through:

- (a) The creation, encouragement and protection of competition;
 - (b) Control of the concentration of capital and/or economic power;
 - (c) Encouragement of innovation;
3. To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries;
4. To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries;
5. To provide a Set of Multilaterally Agreed Equitable Principles and Rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.

B. Definitions and scope of application

For the purpose of this Set of Multilaterally Agreed Equitable Principles and Rules:

(i) Definitions

1. Restrictive business practices means acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, or which through formal, informal, written or unwritten agreements or arrangements among enterprises, have the same impact.
2. Dominant position of market power refers to a situation where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control the relevant market for a particular good or service or group of goods or services.
3. Enterprises means firms, partnerships, corporations, companies, other associations, natural or juridical persons, or any combination thereof, irrespective of the mode of creation or control or ownership, private or State, which are engaged in commercial activities, and includes their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them.

(ii) Scope of application

4. The Set of Principles and Rules applies to restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries. It applies irrespective of whether such practices involve enterprises in one or more countries.
5. The "principles and rules for enterprises, including transnational corporations" apply to all transactions in goods and services.
6. The "principles and rules for enterprises, including transnational corporations" are addressed to all enterprises.

7. The provisions of the Set of Principles and Rules shall be universally applicable to all countries and enterprises regardless of the parties involved in the transactions, acts or behaviour.

8. Any reference to "States" or "Governments" shall be construed as including any regional groupings of States, to the extent that they have competence in the area of restrictive business practices.

9. The Set of Principles and Rules shall not apply to intergovernmental agreements, nor to restrictive business practices directly caused by such agreements.

C. Multilaterally agreed equitable principles for the control of restrictive business practices

In line with the objectives set forth, the following principles are to apply:

(i) General principles

1. Appropriate action should be taken in a mutually reinforcing manner at national, regional and international levels to eliminate, or effectively deal with, restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries.

2. Collaboration between Governments at bilateral and multilateral levels should be established and, where such collaboration has been established, it should be improved to facilitate the control of restrictive business practices.

3. Appropriate mechanisms should be devised at the international level and/or the use of existing international machinery improved to facilitate exchange and dissemination of information among Governments with respect to restrictive business practices.

4. Appropriate means should be devised to facilitate the holding of multilateral consultations with regard to policy issues relating to the control of restrictive business practices.

5. The provisions of the Set of Principles and Rules should not be construed as justifying conduct by enterprises which is unlawful under applicable national or regional legislation.

(ii) Relevant factors in the application of the Set of Principles and Rules

6. In order to ensure the fair and equitable application of the Set of Principles and Rules, States, while bearing in mind the need to ensure the comprehensive application of the Set of Principles and Rules, should take due account of the extent to which the conduct of enterprises, whether or not created or controlled by States, is accepted under applicable legislation or regulations, bearing in mind that such laws and regulations should be clearly defined and publicly and readily available, or is required by States.

(iii) Preferential or differential treatment for developing countries

7. In order to ensure the equitable application of the Set of Principles and Rules, States, particularly developed countries, should take into account in their control of restrictive business practices the development, financial and trade needs of developing countries, in particular of the least developed countries, for the purposes especially of developing countries in:

- (a) Promoting the establishment or development of domestic industries and the economic development of other sectors of the economy, and
- (b) Encouraging their economic development through regional or global arrangements among developing countries.

D. Principles and rules for enterprises, including transnational corporations

1. Enterprises should conform to the restrictive business practices laws, and the provisions concerning restrictive business practices in other laws, of the countries in which they operate, and, in the event of proceedings under these laws, should be subject to the competence of the courts and relevant administrative bodies therein.

2. Enterprises should consult and co-operate with competent authorities of countries directly affected in controlling restrictive business practices adversely affecting the interests of those countries. In this regard, enterprises should also provide information, in particular details of restrictive arrangements, required for this purpose, including that which may be located in foreign countries, to the extent that in the latter event such production or disclosure is not prevented by applicable law or established public policy. Whenever the provision of information is on a voluntary basis, its provision should be in accordance with safeguards normally applicable in this field.

3. Enterprises, except when dealing with each other in the context of an economic entity wherein they are under common control, including through ownership, or otherwise not able to act independently of each other, engaged on the market in rival or potentially rival activities, should refrain from practices such as the following when, through formal, informal, written or unwritten agreements or arrangements, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

- (a) Agreements fixing prices, including as to exports and imports;
- (b) Collusive tendering;
- (c) Market or customer allocation arrangements;
- (d) Allocation by quota to sales and production;
- (e) Collective action to enforce arrangements, e.g. by concerted refusals to deal;
- (f) Concerted refusal of supplies to potential importers;
- (g) Collective denial of access to an arrangement, or association, which is crucial to competition.

4. Enterprises should refrain from the following acts or behaviour in a relevant market when, through an abuse^{*} or acquisition and abuse of a dominant position of market power, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

^{*} Whether acts or behaviour are abusive or not should be examined in terms of their purpose and effects in the actual situation, in particular with reference to whether they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, and to whether they are:

- (a) Appropriate in the light of the organizational, managerial and legal relationship among the enterprises concerned, such as in the context of relations within an economic entity and not having restrictive effects outside the related enterprises;

- (a) Predatory behaviour towards competitors, such as using below-cost pricing to eliminate competitors;
- (b) Discriminatory (i.e. unjustifiably differentiated) pricing or terms or conditions in the supply or purchase of goods or services, including by means of the use of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;
- (c) Mergers, takeovers, joint ventures or other acquisitions of control, whether of a horizontal, vertical or a conglomerate nature;
- (d) Fixing the prices at which goods exported can be resold in importing countries;
- (e) Restrictions on the importation of goods which have been legitimately marked abroad with a trademark identical with or similar to the trademark protected as to identical or similar goods in the importing country where the trademarks in question are of the same origin, i.e. belong to the same owner or are used by enterprises between which there is economic, organizational, managerial or legal interdependence and where the purpose of such restrictions is to maintain artificially high prices;
- (f) When not for ensuring the achievement of legitimate business purposes, such as quality, safety, adequate distribution or service:
 - (i) Partial or complete refusals to deal on the enterprise's customary commercial terms;
 - (ii) Making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods;
 - (iii) Imposing restrictions concerning where, or to whom, or in what form or quantities, goods supplied or other goods may be resold or exported;
 - (iv) Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his designee.

E. Principles and rules for States at national, regional and subregional levels

1. States should, at the national level or through regional groupings, adopt, improve and effectively enforce appropriate legislation and implementing judicial and administrative procedures for the control of restrictive business practices, including those of transnational corporations.

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- (b) Appropriate in light of special conditions or economic circumstances in the relevant market such as exceptional conditions of supply and demand or the size of the market;
 - (c) Of types which are usually treated as acceptable under pertinent national or regional laws and regulations for the control of restrictive business practices;
 - (d) Consistent with the purposes and objectives of these principles and rules.

2. States should base their legislation primarily on the principle of eliminating or effectively dealing with acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on their trade or economic development, or which through formal, informal, written or unwritten agreements or arrangements among enterprises have the same impact.

3. States, in their control of restrictive business practices, should ensure treatment of enterprises which is fair, equitable, on the same basis to all enterprises, and in accordance with established procedures of law. The laws and regulations should be publicly and readily available.

4. States should seek appropriate remedial or preventive measures to prevent and/or control the use of restrictive business practices within their competence when it comes to the attention of States that such practices adversely affect international trade, and particularly the trade and development of the developing countries.

5. Where, for the purposes of the control of restrictive business practices, a State obtains information from enterprises containing legitimate business secrets, it should accord such information reasonable safeguards normally applicable in this field, particularly to protect its confidentiality.

6. States should institute or improve procedures for obtaining information from enterprises, including transnational corporations, necessary for their effective control of restrictive business practices, including in this respect details of restrictive agreements, undertakings and other arrangements.

7. States should establish appropriate mechanisms at the regional and subregional levels to promote exchange of information on restrictive business practices and on the application of national laws and policies in this area, and to assist each other to their mutual advantage regarding control of restrictive business practices at the regional and subregional levels.

8. States with greater expertise in the operation of systems for the control of restrictive business practices should, on request, share their experience with, or otherwise provide technical assistance to, other States wishing to develop or improve such systems.

9. States should, on request, or at their own initiative when the need comes to their attention, supply to other States, particularly developing countries, publicly available information and, to the extent consistent with their laws and established public policy, other information necessary to the receiving interested State for its effective control of restrictive business practices.

F. International measures

Collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices, including those of transnational corporations, through strengthening and improving controls over restrictive business practices adversely affecting international trade, particularly that of developing countries, and the economic development of these countries. In this regard, action should include:

1. Work aimed at achieving common approaches in national policies relating to restrictive business practices compatible with the Set of Principles and Rules.

2. Communication annually to the Secretary-General of UNCTAD of appropriate information on steps taken by States and regional groupings to meet their commitment to the Set of Principles and Rules, and information on the adoption, development and application of legislation, regulations and policies concerning restrictive business practices.

3. Continued publication annually by UNCTAD of a report on developments in restrictive business practices legislation and on restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, based upon publicly available information and as far as possible other information, particularly on the basis of requests addressed to all member States or provided at their own initiative and, where appropriate, to the United Nations Centre on Transnational Corporations and other competent international organizations.

4. Consultations:

- (a) Where a State, particularly of a developing country, believes that a consultation with another State or States is appropriate in regard to an issue concerning control of restrictive business practices, it may request a consultation with those States with a view to finding a mutually acceptable solution. When a consultation is held, the States involved may request the Secretary-General of UNCTAD to provide mutually agreed conference facilities for such a consultation;
- (b) States should accord full consideration to requests for consultations and, upon agreement as to the subject of and the procedures for such a consultation, the consultation should take place at an appropriate time;
- (c) If the States involved so agree, a joint report on the consultations and their results should be prepared by the States involved and, if they so wish, with the assistance of the UNCTAD secretariat, and be made available to the Secretary-General of UNCTAD for inclusion in the annual report on restrictive business practices.

5. Continued work within UNCTAD on the elaboration of a model law or laws on restrictive business practices in order to assist developing countries in devising appropriate legislation. States should provide necessary information and experience to UNCTAD in this connection.

6. Implementation within or facilitation by UNCTAD, and other relevant organizations of the United Nations system in conjunction with UNCTAD, of technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries:

- (a) Experts should be provided to assist developing countries, at their request, in formulating or improving restrictive business practices legislation and procedures;
- (b) Seminars, training programmes or courses should be held, primarily in developing countries, to train officials involved or likely to be involved in administering restrictive business practices legislation and, in this connection, advantage should be taken, *inter alia*, of the experience and knowledge of administrative authorities, especially in developed countries, in detecting the use of restrictive business practices;
- (c) A handbook on restrictive business practices should be compiled;

- (d) Relevant books, documents, manuals and any other information on matters related to restrictive business practices should be collected and made available, particularly to developing countries;
- (e) Exchange of personnel between restrictive business practices authorities should be arranged and facilitated;
- (f) International conferences on restrictive business practices legislation and policy should be arranged;
- (g) Seminars for an exchange of views on restrictive business practices among persons in public and private sectors should be arranged.

7. International organizations and financing programmes, in particular the United Nations Development Programme, should be called upon to provide resources through appropriate channels and modalities for the financing of activities set out in paragraph 6 above. Furthermore, all countries are invited, in particular the developing countries, to make voluntary financial and other contributions for the above-mentioned activities.

G. International institutional machinery

(i) Institutional arrangements

1. An Intergovernmental Group of Experts on Restrictive Business Practices operating within the framework of a Committee of UNCTAD will provide the institutional machinery.

2. States which have accepted the Set of Principles and Rules should take appropriate steps at the national or regional levels to meet their commitment to the Set of Principles and Rules.

(ii) Functions of the Intergovernmental Group

3. The Intergovernmental Group shall have the following functions:
- (a) To provide a forum and modalities for the multilateral consultations, discussion and exchange of views between States on matters related to the Set of Principles and Rules, in particular its operation and the experience arising therefrom;
 - (b) To undertake and disseminate periodically studies and research on restrictive business practices related to the provisions of the Set of Principles and Rules, with a view to increasing exchange of experience and giving greater effect to the Set of Principles and Rules;
 - (c) To invite and consider relevant studies, documentation and reports from relevant organizations of the United Nations system;
 - (d) To study matters relating to the Set of Principles and Rules and which might be characterized by data covering business transactions and other relevant information obtained upon request addressed to all States;
 - (e) To collect and disseminate information on matters relating to the Set of Principles and Rules to the over-all attainment of its goals and to the appropriate steps States have taken at the national or regional levels to promote an effective Set of Principles and Rules, including its objectives and principles;

(f) To make appropriate reports and recommendations to States on matters within its competence, including the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules;

(g) To submit reports at least once a year on its work.

4. In the performance of its functions, neither the Intergovernmental Group nor its subsidiary organs shall act like a tribunal or otherwise pass judgement on the activities or conduct of individual Governments or of individual enterprises in connection with a specific business transaction. The Intergovernmental Group or its subsidiary organs should avoid becoming involved when enterprises to a specific business transaction are in dispute.

5. The Intergovernmental Group shall establish such procedures as may be necessary to deal with issues related to confidentiality.

(iii) Review procedure

6. Subject to the approval of the General Assembly, five years after the adoption of the Set of Principles and Rules, a United Nations Conference shall be convened by the Secretary-General of the United Nations under the auspices of UNCTAD for the purpose of reviewing all aspects of the Set of Principles and Rules. Towards this end, the Intergovernmental Group shall make proposals to the Conference for the improvement and further development of the Set of Principles and Rules.

RESOLUTION ADOPTED BY THE CONFERENCE STRENGTHENING THE IMPLEMENTATION OF THE SET

The Second United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Having reviewed all aspects of the Set, 10 years after its adoption,

Reaffirming the importance of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices ("the Set") adopted by the General Assembly in its resolution 35/63 of 5 December 1980,

Further reaffirming the need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries,

Recalling the agreement in the Final Act of the seventh session of the United Nations conference on Trade and Development, paragraph 105 (18), to continue and strengthen the ongoing work in UNCTAD in respect of restrictive business practices, particularly with a view to ensuring transparency and to defining consultation procedures, and to continue the UNCTAD technical assistance programme in the field of restrictive business practices,

Decides that the implementation of the Set should be strengthened and to this end:

1. Expresses concern at the continued existence of restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, and calls upon States to implement fully all provisions of the Set in order to ensure its effective application;

2. Considers that one of the important means of achieving this goal is the adoption and effective enforcement of national restrictive business practices legislation and that the increasing number of countries which have taken such action since the First Review Conference is an encouraging development, and therefore calls upon all States to adopt, improve and effectively enforce appropriate legislation and to implement judicial and administrative procedures;

3. Suggests to this end that:

(a) States without any legislation to control restrictive business practices may wish to request information on restrictive business practices legislation and seek consultations with developed and developing countries which have experience of introducing such laws, as well as appropriate technical assistance. The latter may consist of introductory seminars directed at an audience which would include government officials and academics, as well as business and consumer-oriented circles;

(b) States which are in the process of drafting restrictive business practice legislation or have recently done so may wish to request information on restrictive business practice legislation and consultations with countries having experience of such laws, as well as technical assistance. This may consist of advisory services and assistance, training

workshops and seminars for national officials for implementing restrictive business practice control legislation and on-the-job training with restrictive business practice control authorities in countries having experience in restrictive business practice control;

(c) States which have already adopted such legislation and seek to enforce those laws more effectively, as well as all other States, may wish to seek information or consultations with other countries on general matters of restrictive business practice legislation, issues of importance to restrictive business practice authorities in actual enforcement and specific restrictive business practices cases. Such States may also seek appropriate technical assistance;

(d) Any State so addressed should give full and sympathetic consideration to such requests and supply such publicly available information, and, to the extent consistent with their laws and established public policy, other information;

Information

4. Considers that, in the light of States' needs for information, a list of RBP authorities through which requests for information should be channelled is a useful device for increasing the flow of information, and requests the Secretary-General of UNCTAD to issue a directory of restrictive business practices authorities and to update it regularly;

5. Considers further that it would be helpful for States requesting information to have guidance and requests the Secretary-General of UNCTAD to prepare an indicative checklist of items which may include *inter alia*:

- (a) A description of the restrictive business practice case in question;
- (b) The enterprises involved;
- (c) The legal basis for instituting proceedings;
- (d) The reasons for requesting the information;
- (e) The specific information sought;
- (f) The intended use of the information.

6. Requests, on the basis of paragraphs 2 and 3 of section F of the Set, that:

- (a) States supply to the UNCTAD secretariat annually or as the information becomes available if appropriate, preferably in one of the official languages of the United Nations:
 - (i) Information concerning new restrictive business practice legislation or amendments to existing laws, with a copy of the legislation or amendments;
 - (ii) A report on their activities concerning the control of RBPs including details of the more important cases dealt with, as provided for in section F, paragraph 3 of the Set;
 - (iii) Any relevant studies, guidelines or reports on restrictive business practices matters or details thereof which they may have published;

(b) The UNCTAD secretariat, on the basis of the information received and of other available information:

- (i) Maintain its data base and make it available to States upon request;
- (ii) Disseminate this information through appropriate publications;
- (iii) Complete and update the Handbook on restrictive business practices legislation.

Consultations

7. Considering that the existing provisions of the Set provide a good basis for consultations, emphasizes the importance of section F, paragraph 4 of the Set and, in order to improve implementation of the Set in this respect, requests the UNCTAD secretariat to prepare a checklist of possible steps which countries may wish to follow in the preparation of a case, and in their request for consultation. Such a checklist could include, *inter alia*, explaining the reasons for the request for consultations, and indicating the specific details of the behaviour or activity about which the consultation is

8. Recommends that, following a request for consultation, the state addressed should take whatever action it considers appropriate, including action under its legislation on restrictive business practices or administrative measures, on a voluntary basis and considering its legitimate interests;

9. Considers that the multilateral consultations, discussions and exchanges of views that have taken place under section G, paragraph 3 (a) of the Set among restrictive business practices experts at sessions of the Intergovernmental Group of Experts on Restrictive Business Practices have provided a useful forum for consideration of particular restrictive business practices issues and have served to establish important contacts between experts from interested countries, and requests the Intergovernmental Group of Experts to serve as a forum for exchanges of information and consultations at each of its sessions. Topics should be selected in advance of each session and time made available for the discussions;

Technical assistance

10. Recognizes the importance of both bilateral and multilateral technical assistance as an important way to secure the implementation of the Set. Both types of technical assistance are especially effective in introducing large groups of officials from several countries to basic restrictive business practices control principles and have been very effective in providing in-depth technical co-operation between restrictive business practice control authorities, particularly where it can be tailored to specific needs;

11. Notes the commitment of States members of Group B to continue to provide technical assistance on both a bilateral and multilateral basis, subject to the availability of resources and tailored to the requirements of individual countries or groups of countries;

12. Concludes that the UNCTAD secretariat's proposals for a framework for technical assistance in its report TD/RBP/CONF.3/4 contain useful elements. In order to facilitate a meaningful evaluation of the secretariat's proposed framework, the secretariat should suggest priorities from among the different types of technical assistance set out in paragraph 71 of its report and taking into account the three categories of countries requesting assistance identified in paragraph 3 above;

13. Requests the UNCTAD secretariat to take into account the costs of the various types of technical assistance and the most effective use of resources and to undertake a regular evaluation of its technical assistance activities in order to determine their effectiveness;

14. Invites the UNCTAD secretariat to continue organizing national, regional and subregional seminars, workshops and symposia, as appropriate, including with respect to regional grouping of States willing to adopt restrictive business practices control systems;

15. Urges intergovernmental organizations and financing programmes, in particular the United Nations Development Programme (UNDP), to provide the necessary resources for the activities mentioned above;

16. Appeals to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of the activities mentioned above;

Review procedure

17. Recommends to the General Assembly that a Third Review Conference be convened in 1995.

*6th (closing) meeting
7 December 1990*

ANNEX 4

**DRAFT INTERNATIONAL CODE OF CONDUCT ON THE TRANSFER OF
TECHNOLOGY***

[1985 VERSION]

The Draft International Code of Conduct on the Transfer of Technology was negotiated under the auspices of the United Nations Conference on Trade and Development between 1976 and 1985. The text reproduced in this volume is that the Draft Code as it stood at the close of the sixth session of the Conference on an International Code of Conduct on the Transfer of Technology on 5 June 1985. The Draft Code includes a number of appendices that reflect outstanding issues and alternative wording proposed for portions of the Draft Code. The appendices have not been reproduced in this volume. The Draft Code has not been adopted by the United Nations General Assembly.

Preamble

The United Nations Conference on an International Code of Conduct on the Transfer of Technology,

1. Recognizing the fundamental role of science and technology in the socio-economic development of all countries, and in particular, in the acceleration of the development of the developing countries;
2. Believing that technology is key to the progress of mankind and that all peoples have the right to benefit from the advances and developments in science and technology in order to improve their standards of living;
3. Bearing in mind relevant decisions of the General Assembly and other bodies of the United Nations, in particular UNCTAD, on the transfer and development of technology;
4. Recognizing the need to facilitate an adequate transfer and development of technology so as to strengthen the scientific and technological capabilities of all countries, particularly the developing countries, and to co-operate with the developing countries in their own efforts in this field as a decisive step in the progress towards the establishment of a new international economic order;
5. Desirous of promoting international scientific and technological co-operation in the interest of peace, security and national independence and for the benefit of all nations;

* Source: United Nations Conference on Trade and Development (1985). "Draft International Code of Conduct on the Transfer of Technology", Note by the UNCTAD Secretariat to the United Nations Conference on an International Code of Conduct on the Transfer of Technology, Document TD/CODE TOT/47 (New York: UNCTAD). The Appendices A, B, C, D, E and F referred to in the text and the endnotes can be found in the source document. In the present text, the following key is used to identify the sponsorship of a text, where the text is not an agreed one: Group of 77 text: *; Group B: **; Group D and Mongolia: ***. [Note added by the editor].

6. Striving to promote an increase of the international transfer of technology with an equal opportunity for all countries to participate irrespective of their social and economic system and of their level of economic development;

7. Recognizing the need for developed countries to grant special treatment to the developing countries in the field of the transfer of technology;

8. Drawing attention to the need to improve the flow of technological information, and in particular to promote the widest and fullest flow of information on the availability of alternative technologies, and on the selection of appropriate technologies suited to the specific needs of developing countries;

9. Believing that a Code of Conduct will effectively assist the developing countries in their selection, acquisition and effective use of technologies appropriate to their needs in order to develop improved economic standards and living conditions;

10. Believing that a Code of Conduct will help to create conditions conducive to the promotion of the international transfer of technology, under mutually agreed and advantageous terms to all parties;

11. 1/

12. 1/

Chapter 1

Definitions and scope of application

1.1. For the purposes of the present Code of Conduct:

(a) "Party" means any person, either natural or juridical, of public or private law, either individual or collective, such as corporations, companies, firms, partnerships and other associations, or any combination thereof, whether created, owned or controlled by States, Government agencies, juridical persons, or individuals, wherever they operate, as well as States, Government agencies and international, regional and subregional organizations, when they engage in an international transfer of technology transaction which is usually considered to be of a commercial nature. The term "party" includes, among the entities enumerated above, incorporated branches, subsidiaries and affiliates, joint ventures or other legal entities regardless of the economic and other relationships between and among them. 2/

(b) "Acquiring party" means the party which obtains a licence to use or to exploit, purchases or otherwise acquires technology of a proprietary or non-proprietary nature and/or rights related thereto in a transfer of technology.

(c) "Supplying party" means the party which licenses, sells, assigns or otherwise provides technology of a proprietary or non-proprietary nature and/or rights related thereto in a transfer of technology.

1.2. Transfer of technology under this Code is the transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods.

1.3. Transfer of technology transactions are arrangements between parties involving transfer of technology, as defined in paragraph 1.2 above, particularly in each of the following cases:

(a) The assignment, sale and licensing of all forms of industrial property, except for trade marks, service marks and trade names when they are not part of transfer of technology transactions;

(b) The provision of know-how and technical expertise in the form of feasibility studies, plans, diagrams, models, instructions, guides, formulae, basic or detailed engineering designs, specifications and equipment for training, services involving technical advisory and managerial personnel, and personnel training;

(c) The provision of technological knowledge necessary for the installation, operation and functioning of plant and equipment, and turnkey projects;

(d) The provision of technological knowledge necessary to acquire, install and use machinery, equipment, intermediate goods and/or raw materials which have been acquired by purchase, lease or other means;

(e) The provision of technological contents of industrial and technical co-operation arrangements.

1.4. International transfer of technology transactions. 3/

1.5. The Code of Conduct is universally applicable in scope and is addressed to all parties to transfer of technology transactions and to all countries and groups of countries, irrespective of their economic and political systems and their levels of development.

1.6. Regional groupings of States. 4/

Chapter 2

Objectives and principles

2. The Code of Conduct is based on the following objectives and principles:

2.1. Objectives

- (i) To establish general and equitable standards on which to base the relationships among parties to transfer of technology transactions and governments concerned, taking into consideration their legitimate interests, and giving due recognition to special needs of developing countries for the fulfilment of their economic and social development objectives.
- (ii) To promote mutual confidence between parties as well as their governments.
- (iii) To encourage transfer of technology transactions, particularly those involving developing countries, under conditions where bargaining positions of the parties to the transactions are balanced in such a way as to avoid abuses of a stronger position and thereby to achieve mutually satisfactory agreements.
- (iv) To facilitate and increase the international flow of technological information, particularly on the availability of alternative technologies, as a prerequisite for the

assessment, selection, adaptation, development and use of technologies in all countries, particularly in developing countries.

- (v) To facilitate and increase the international flow of proprietary and non-proprietary technology for strengthening the growth of the scientific and technological capabilities of all countries, in particular developing countries, so as to increase their participation in world production and trade.
- (vi) To increase the contributions of technology to the identification and solution of social and economic problems of all countries, particularly the developing countries, including the development of basic sectors of their national economies.
- (vii) To facilitate the formulation, adoption and implementation of national policies, laws and regulations on the subject of transfer of technology by setting forth international norms.
- (viii) To promote adequate arrangements as regards unpackaging in terms of information concerning the various elements of the technology to be transferred, such as that required for technical, institutional and financial evaluation of the transaction, thus avoiding undue or unnecessary packaging.
- (ix) To specify restrictive [business] practices from which parties to technology transfer transactions [shall] [should] refrain. 5/
- (x) To set forth an appropriate set of responsibilities and obligations of parties to transfer of technology transactions, taking into consideration their legitimate interests as well as differences in their bargaining positions.

2.2. Principles

- (i) The Code of Conduct is universally applicable in scope.
- (ii) States have the right to adopt all appropriate measures for facilitating and regulating the transfer of technology, in a manner consistent with their international obligations, taking into consideration the legitimate interests of all parties concerned, and encouraging transfers of technology under mutually agreed, fair and reasonable terms and conditions.
- (iii) The principles of sovereignty and political independence of States (covering, *inter alia*, the requirements of foreign policy and national security) and sovereign equality of States, should be recognized in facilitating and regulating transfer of technology transactions.
- (iv) States should co-operate in the international transfer of technology in order to promote economic growth throughout the world, especially that of the developing countries. Co-operation in such transfer should be irrespective of any differences in political, economic and social systems; this is one of the important elements in maintaining international peace and security and promoting international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences. Nothing in this Code may be construed as impairing or derogating from the provisions of the Charter of the United Nations or actions taken in pursuance thereof. It is understood that special treatment

in transfer of technology should be accorded to developing countries in accordance with the provisions in this Code on the subject.

- (v) The separate responsibilities of parties to transfer of technology transactions, on the one hand, and those of governments when not acting as parties, on the other, should be clearly distinguished.
- (vi) Mutual benefits should accrue to technology supplying and recipient parties in order to maintain and increase the international flow of technology.
- (vii) Facilitating and increasing the access to technology, particularly for developing countries, under mutually agreed fair and reasonable terms and conditions, are fundamental elements in the process of technology transfer and development.
- (viii) Recognition of the protection of industrial property rights granted under national law.
- (ix) Technology supplying parties when operating in an acquiring country should respect the sovereignty and the laws of that country, act with proper regard for that country's declared development policies and priorities and endeavour to contribute substantially to the development of the acquiring country. The freedom of parties to negotiate, conclude and perform agreements for the transfer of technology on mutually acceptable terms and conditions should be based on respect for the foregoing and other principles set forth in this Code.

Chapter 3

National regulation of transfer of technology transactions

3.1. In adopting, and in the light of evolving circumstances making necessary changes in laws, regulations and rules, and policies with respect to transfer of technology transactions, States have the right to adopt measures such as those listed in paragraph 3.4 of this chapter and should act on the basis that these measures should:

- (i) Recognize that a close relationship exists between technology flows [and] the conditions under which such flows are admitted and treated;
- (ii) Promote a favourable and beneficial climate for the international transfer of technology;
- (iii) Take into consideration in an equitable manner the legitimate interests of all parties;
- (iv) Encourage and facilitate transfers of technology to take place under mutually agreed, fair and reasonable terms and conditions having regard to the principles and objectives of the Code;
- (v) Take into account the differing factors characterizing the transactions such as local conditions, the nature of the technology and the scope of the undertaking;
- (vi) Be consistent with their international obligations.

3.2. Measures adopted by States including decisions of competent administrative bodies should be applied fairly, equitably, and on the same basis to all parties in accordance with established

procedures of law and the principles and objectives of the Code. Laws and regulations should be clearly defined and publicly and readily available. To the extent appropriate, relevant information regarding decisions of competent administrative bodies should be disseminated.

3.3. Each country adopting legislation on the protection of industrial property should have regard to its national needs of economic and social development, and should ensure an effective protection of industrial property rights granted under its national law and other related rights recognized by its national law.

3.4. Measures on regulation of the flow and effects of transfer of technology, finance and technical aspects of technology transactions and on organizational forms and mechanisms may deal with:

Finance

- (a) Currency regulations of foreign exchange payments and remittances;
- (b) Conditions of domestic credit and financing facilities;
- (c) Transferability of payments;
- (d) Tax treatment;
- (e) Pricing policies;

Renegotiation

(f) Terms, conditions and objective criteria for the renegotiation of transfer of technology transactions;

Technical aspects

(g) Technology specifications and standards for the various components of the transfer of technology transactions and their payments;

(h) Analysis and evaluation of transfer of technology transactions to assist parties in their negotiations;

- (i) Use of local and imported components;

Organizational forms and mechanisms

- (j) Evaluation, negotiation, and registration of transfer of technology transactions;

- (k) Terms, conditions, duration, of transfer of technology transactions;

- (l) Loss of ownership and/or control of domestic acquiring enterprises;

(m) Regulation of foreign collaboration arrangements and agreements that could displace national enterprises from the domestic market;

(n) The definition of fields of activity of foreign enterprises and the choice of channels, mechanisms, organizational forms for the transfer of technology and the prior or subsequent approval of transfer of technology transactions and their registration in these fields;

(o) The determination of the legal effect of transactions which are not in conformity with national laws, regulations and administrative decisions on the transfer of technology;

(p) The establishment or strengthening of national administrative mechanisms for the implementation and application of the Code of Conduct and of national laws, regulations and policies on the transfer of technology;

(q) Promotion of appropriate channels for the international exchange of information and experience in the field of the transfer of technology.

Chapter 4 6/

[The regulation of practices and arrangements involving the
transfer of technology] [Restrictive business practices]
[Exclusion of political discrimination and restrictive
business practices] 7/

Section A: (Chapeau) 8/

Section B: (List of practices) 9/

1. [Exclusive] ** Grant-back provisions 10/

Requiring the acquiring party to transfer or grant back to the supplying party, or to any other enterprise designated by the supplying party, improvements arising from the acquired technology, on an exclusive basis [or]* without offsetting consideration or reciprocal obligations from the supplying party, or when the practice will constitute an abuse of a dominant market position of the supplying party.

2. Challenges to validity 10/

[Unreasonably] ** requiring the acquiring party to refrain from challenging the validity of patents and other types of protection for inventions involved in the transfer or the validity of other such grants claimed or obtained by the supplying party, recognizing that any issues concerning the mutual rights and obligations of the parties following such a challenge will be determined by the appropriate applicable law and the terms of the agreement to the extent consistent with that law. 11/

3. Exclusive dealing

Restrictions on the freedom of the acquiring party to enter into sales, representation or manufacturing agreements relating to similar or competing technologies or products or to obtain competing technology, when such restrictions are not needed for ensuring the achievement of legitimate interests, particularly including securing the confidentiality of the technology transferred or best effort distribution or promotional obligations.

4. Restrictions on research 10/

[Unreasonably] **/** restricting the acquiring party either in undertaking research and development directed to absorb and adapt the transferred technology to local conditions or in initiating research and development programmes in connection with new products, processes or equipment.

5. Restrictions on use of personnel 10/

[Unreasonably] ** requiring the acquiring party to use personnel designated by the supplying party, except to the extent necessary to ensure the efficient transmission phase for the transfer of technology and putting it to use or thereafter continuing such requirement beyond the time when adequately trained local personnel are available or have been trained; or prejudicing the use of personnel of the technology acquiring country.

6. Price fixing 10/

[Unjustifiably] ** imposing regulation of prices to be charged by acquiring parties in the relevant market to which the technology was transferred for products manufactured or services produced using the technology supplied.

7. Restrictions on adaptations 10/

Restrictions which [unreasonably] ** prevent the acquiring party from adapting the imported technology to local conditions or introducing innovations in it, or which oblige the acquiring party to introduce unwanted or unnecessary design or specification changes, if the acquiring party makes adaptations on his own responsibility and without using the technology supplying party's name, trade or service marks or trade names, and except to the extent that this adaptation unsuitably affects those products, or the process for their manufacture, to be supplied to the supplying party, his designates, or his other licensees, or to be used as a component or spare part in a product to be supplied to his customers.

8. Exclusive sales or representation agreements

Requiring the acquiring party to grant exclusive sales or representation rights to the supplying party or any person designated by the supplying party, except as to subcontracting or manufacturing arrangements wherein the parties have agreed that all or part of the production under the technology transfer arrangement will be distributed by the supplying party or any person designated by him.

9. Tying arrangements 10/

[Unduly] ** imposing acceptance of additional technology, future inventions and improvements, goods or services not wanted by the acquiring party or [unduly] ** restricting sources of technology, goods or services, as a condition for obtaining the technology required when not required to maintain the quality of the product or service when the supplier's trade or service mark or other identifying item is used by the acquiring party, or to fulfil a specific performance obligation which has been guaranteed, provided further that adequate specification of the ingredients is not feasible or would involve the disclosure of additional technology not covered by the arrangement.

10. Export restrictions 8/

11. Patent pool or cross-licensing agreements and other arrangements

Restrictions on territories, quantities, prices, customers or markets arising out of patent pool or cross-licensing agreements or other international transfer of technology interchange arrangements among technology suppliers which unduly limit access to new technological developments or which would result in an abusive domination of an industry or market with adverse effects on the transfer of technology, except for those restrictions appropriate and ancillary to co-operative arrangements such as co-operative research arrangements.

12. Restrictions on publicity 10/

Restrictions [unreasonably] ** regulating the advertising or publicity by the acquiring party except where restrictions of such publicity may be required to prevent injury to the supplying party's goodwill or reputation where the advertising or publicity makes reference to the supplying party's name, trade or service marks, trade names or other identifying items, or for legitimate reasons of avoiding product liability when the supplying party may be subject to such liability, or where appropriate for safety purposes or to protect consumers, or when needed to secure the confidentiality of the technology transferred.

13. Payments and other obligations after expiration of industrial property rights

Requiring payments or imposing other obligations for continuing the use of industrial property rights which have been invalidated, cancelled or have expired recognizing that any other issue, including other payment obligations for technology, shall be dealt with by the appropriate applicable law and the terms of the agreement to the extent consistent with that law. 11/

14. Restrictions after expiration of arrangement. 8/

Chapter 5

Responsibilities and Obligations of Parties

Common provision on negotiating as well as contractual phase

5.1. When negotiating and concluding a technology transfer agreement, the parties should, in accordance with this chapter, be responsive to the economic and social development objectives of the respective countries of the parties and particularly of the technology acquiring country, and when negotiating, concluding and performing a technology transfer agreement, the parties should observe fair and honest business practices and take into account the specific circumstances of the individual case and recognition should be given to certain circumstances, mainly the stage of development of technology, the economic and technical capabilities of the parties, the nature and type of the transaction such as any ongoing or continuous flow of technology between the parties.

Negotiating phase

5.2. In being responsive to the economic and social development objectives mentioned in this chapter each party should take into account the other's request to include in the agreements, to the extent technically and commercially practicable and for adequate consideration, when appropriate, such as the case in which the supplying party incurs additional costs or efforts, items clearly related to the official economic and social development objectives of the country of the requesting party as enunciated by its government. Such items include, *inter alia*, where applicable:

(a) Use of locally available resources

- (i) specific provisions for the use for the tasks concerned of adequately trained or otherwise suitable local personnel to be designated and subsequently made available by the potential technology recipient including managerial personnel, as well as for the training of suitably skilled local personnel to be designated and subsequently made available by the potential technology recipient;
- (ii) specific provisions for the use of locally available materials, technologies, technical skills, consultancy and engineering services and other resources to be indicated and subsequently made available by the potential technology recipient;

(b) Rendering of technical services

Specific provisions for the rendering of technical services in the introduction and operation of the technology to be transferred;

(c) Unpackaging

Upon request of the potential acquiring party, the potential supplying party should, to the extent practicable, make adequate arrangements as regards unpackaging in terms of information concerning the various elements of the technology to be transferred, such as that required for technical, institutional and financial evaluation of the potential supplying party's offer.

5.3. Business negotiating practices

When negotiating a technology transfer agreement, the parties should observe fair and honest business practices and therefore:

(a) Both potential parties(i) Fair and reasonable terms and conditions

(i) Should negotiate in good faith with the aim of reaching, in a timely manner, an agreement containing fair and reasonable commercial terms and conditions, including agreement on payments such as licence fees, royalties and other considerations;

(ii) The price or consideration to be charged should be fair and reasonable, it should be clearly indicated and, to the extent practicable, specified in such a manner that the acquiring party would be able to appreciate its reasonableness and fairness by comparing it to the price or consideration for other comparable technologies transferred under similar conditions, which may be known to him;

(ii) Relevant information

Should consider requests to inform each other, to the extent appropriate, about their prior arrangements which may affect the contemplated technology transfer;

(iii) Confidential information

Should keep secret, in accordance with any obligation, either legal or contractual, all confidential information received from the other party and make use of the confidential information

received from a potential party only for the purpose of evaluating this party's offer or request for other purposes agreed upon by the parties;

(iv) Termination of negotiations

May cease negotiations if, during the negotiations, either party determines that a satisfactory agreement cannot be reached;

(b) The potential acquiring party

Relevant information

Should provide the potential technology supplier in a timely manner with the available specific information concerning the technical conditions and official economic and social development objectives as well as legislation of the acquiring country relevant to the particular transfer and use of the technology under negotiation as far as such information is needed for the supplying party's responsiveness under this chapter;

(c) The potential supplying party

Relevant information

- (i) Should disclose, in a timely manner, to the potential technology acquiring party any reason actually known to him, on account of which the technology to be supplied, when used in accordance with the terms and conditions of the proposed agreement, would not meet particular health, safety and environmental requirements in the technology acquiring country, already known to him as being relevant in the specific case or which have been specifically drawn to his attention, as well as any serious health, safety and environmental risks known by the supplier associated with the use of the technology and of products to be produced by it;
- (ii) Should disclose to the potential technology acquiring party, to the actual extent known to him, any limitation, including any pending official procedures or litigation which adversely concerns, in a direct manner, the existence or validity of the rights to be transferred, on his entitlement to grant the rights or render the assistance and services specified in the proposed agreement;

Provision of accessories, spare parts and components

- (iii) Should to the extent feasible, take into account the request of the acquiring party to provide it for a period to be specified with accessories, spare parts and components produced by the supplying party and necessary for using the technology to be transferred, particularly where alternative sources are unavailable.

Contractual phase - Chapeau

5.4. The technology transfer agreement should, in accordance with 5.1., provide for mutually acceptable contractual obligations, including those relating to payments and, where appropriate, *inter alia*, the following:

(i) Access to improvements

Access for a specified period or for the lifetime of the agreement to improvements to the technology transferred under the agreement;

(ii) Confidentiality 12/

(iii) Dispute settlement and applicable law 12/

(iv) Description of the technology

The technology supplier's guarantee that the technology meets the description contained in the technology transfer agreement;

(v) Suitability for use

The technology supplier's guarantee that the technology, if used in accordance with the supplier's specific instructions given pursuant to the agreement, is suitable for manufacturing of goods or production of services as agreed upon by the parties and stipulated in the agreement;

(vi) Rights to the technology transferred

The technology supplier's representation that on the date of the signing of the agreement, it is, to the best of its knowledge, not aware of third parties' valid patent rights or similar protection for inventions which would be infringed by the use of the technology when used as specified in the agreement;

(vii) Quality levels and goodwill

The technology recipient's commitment to observe quality levels agreed upon in cases where the agreement includes the use of the supplier's trade marks, trade names or similar identification of goodwill, and both parties' commitment to avoid taking actions primarily or deliberately intended to injure the other's goodwill or reputation;

(viii) Performance guarantees

Specification to technical performance parameters which the supplying party has agreed to guarantee, including specification of requirements for the achievement of such parameters, details of the manner of determining whether the performance has been met and the consequences of failure to meet that performance;

(ix) Transmission of documentation

The supplying party's commitment that relevant technical documentation and other data required from him for a particular purpose defined in terms directly specified in the agreement will be transferred in a timely manner and as correctly and completely for such purpose as agreed upon;

(x) Training of personnel and provision of accessories, spare parts and components

Where negotiations under paragraphs 5.2 (a) (i) and 5.5 (c) (iii) have taken place, suitable provisions for training of personnel and supply of accessories, spare parts and components would be made, consistent with the results of the negotiations;

(xi) Liability

Disposition concerning liability for the non-fulfilment by either party of its responsibilities under the technology transfer agreement including questions of loss, damage or injury.

Chapter 6

Special treatment for developing countries

6.1. Taking into consideration the needs and problems of developing countries, particularly of the least developed countries, governments of developed countries, directly or through appropriate international organizations, in order to facilitate and encourage the initiation and strengthening of the scientific and technological capabilities of developing countries so as to assist and co-operate with them in their efforts to fulfil their economic and social objectives, should take adequate specific measures, *inter alia*, to:

- (i) facilitate access by developing countries to available information regarding the availabilities, description, location and, as far as possible, approximate cost of technologies which might help those countries to attain their economic and social development objectives;
- (ii) give developing countries the freest and fullest possible access to technologies whose transfer is not subject to private decisions; 13/
- (iii) facilitate access by developing countries, to the extent practicable, to technologies whose transfer is subject to private decisions; 13/
- (iv) assist and co-operate with developing countries in the assessment and adaptation of existing technologies and in the development of national technologies by facilitating access, as far as possible, to available scientific and industrial research data;
- (v) co-operate in the development of scientific and technological resources in developing countries, including the creation and growth of innovative capacities;
- (vi) assist developing countries in strengthening their technological capacity, especially in the basic sectors of their national economy, through creation of and support for laboratories, experimental facilities and institutes for training and research;
- (vii) co-operate in the establishment or strengthening of national, regional and/or international institutions, including technology transfer centres, to help developing countries to develop and obtain the technology and skills required for the establishment, development and enhancement of their technological capabilities including the design, construction and operation of plants;
- (viii) encourage the adaptation of research and development, engineering and design to conditions and factor endowments prevailing in developing countries;
- (ix) co-operate in measures leading to greater utilization of the managerial, engineering, design and technical experience of the personnel and the institutions

of developing countries in specific economic and other development projects undertaken at the bilateral and multilateral levels;

- (x) encourage the training of personnel from developing countries.

6.2. Governments of developed countries, directly or through appropriate international organizations, in assisting in the promotion of transfer of technology to developing countries - particularly to the least developed countries - should, as a part of programmes for development assistance and co-operation, take into account requests from developing countries to:

- (i) contribute to the development of national technologies in developing countries by providing experts under development assistance and research exchange programmes;
- (ii) provide training for research, engineering, design and other personnel from developing countries engaged in the development of national technologies or in the adaptation and use of technologies transferred;
- (iii) provide assistance and co-operation in the development and administration of laws and regulations with a view to facilitating the transfer of technology;
- (iv) provide support for projects in developing countries for the development and adaptation of new and existing technologies suitable to the particular needs of developing countries;
- (v) grant credits on terms more favourable than the usual commercial terms for financing the acquisition of capital and intermediate goods in the context of approved development projects involving transfer of technology transactions so as to reduce the cost of projects and improve the quality of technology received by the developing countries;
- (vi) provide assistance and co-operation in the development and administration of laws and regulations designed to avoid health, safety and environmental risks associated with technology or the products produced by it.

6.3. Governments of developed countries should take measures in accordance with national policies, laws and regulations to encourage and to endeavour to give incentive to enterprises and institutions in their countries, either individually or in collaboration with enterprises and institutions in developing countries, particularly those in the least developed countries, to make special efforts, *inter alia*, to:

- (i) assist in the development of technological capabilities of the enterprises in developing countries, including special training as required by the recipients;
- (ii) undertake the development of technology appropriate to the needs of developing countries;
- (iii) undertake R and D activity in developing countries of interest to such countries, as well as to improve co-operation between enterprises and scientific and technological institutions of developed and developing countries;

- (iv) assist in projects by enterprises and institutions in developing countries for the development and adaptation of new and existing technologies suitable to the particular needs and conditions of developing countries.

6.4. The special treatment accorded to developing countries should be responsive to their economic and social objectives vis-à-vis their relative stage of economic and social development and with particular attention to the special problems and conditions of the least developed countries.

Chapter 7

International collaboration

7.1. The States recognize the need for appropriate international collaboration among governments, intergovernmental bodies, and organs and agencies of the United Nations system, including the international institutional machinery provided for in this Code, with a view to facilitating an expanded international flow of technology for strengthening the technological capabilities of all countries, taking into account the objectives and principles of this Code, and to promoting the effective implementation of its provisions.

7.2. Such international collaboration between governments at the bilateral or multilateral, subregional, regional or interregional levels may include, *inter alia*, the following measures:

- (i) Exchange of available information on the availability and description of technologies and technological alternatives;
- (ii) Exchange of available information on experience in seeking solutions to problems relating to the transfer of technology, particularly restrictive [business] ** practices in the transfer of technology; 14/
- (iii) Exchange of information on development of national legislation with respect to the transfer of technology;
- (iv) Promotion of the conclusion of international agreements which should provide equitable treatment for both technology supplying and recipient parties and governments;
- (v) Consultations which may lead to greater harmonization, where appropriate, of national legislation and policies with respect to the transfer of technology;
- (vi) Promotion, where appropriate, of common programmes for searching for, acquiring and disseminating technologies;
- (vii) Promotion of programmes for the adaptation and development of technology in the context of development objectives;
- (viii) Promotion of the development of scientific and technological resources and capabilities stimulating the development of indigenous technologies;
- (ix) Action through international agreements to avoid, as far as possible, imposition of double taxation on earnings and payments arising out of transfer of technology transactions.

Chapter 8

International Institutional Machinery

8.1. Institutional arrangements

(a) 15/

(b) 15/

(c) States which have accepted the Code of Conduct on the Transfer of Technology should take appropriate steps at the national level to meet their commitment to the Code.

8.2. Functions of the International Institutional Machinery

8.2.1. The International Institutional Machinery shall have the following functions:

(a) To provide a forum and modalities for consultations, discussion, and exchange of views between States on matters related to the Code, in particular its application and its greater harmonization, and the experience gained in its operations;

(b) To undertake and disseminate periodically studies and research on transfer of technology related to the provisions of the code, with a view to increasing exchange of experience and giving greater effect to the application and implementation of the Code;

(c) To invite and consider relevant studies, documentation and reports from within the United Nations system, particularly from UNIDO and WIPO;

(d) To study matters relating to the Code and which might be characterized by data covering transfer of technology transactions and other relevant information obtained upon request addressed to all States;

(e) To collect and disseminate information on matters relating to the Code, to the over-all attainment of its goals and to the appropriate steps States have taken at the national level to promote an effective Code, including its objective and principles;

(f) To make appropriate reports and recommendations to States on matters within its competence including the application and implementation of the Code;

(g) To organize symposia, workshops and similar meetings concerning the application of the provisions of the Code, subject to the approval of the Trade and Development Board where financing from the regular budget is involved;

(h) To submit reports at least once a year on its work to the Trade and Development Board.

8.2.2. In the performance of its functions, the International Institutional Machinery may not act like a tribunal or otherwise pass judgement on the activities or conduct of individual Governments or of individual parties in connection with a specific transfer of technology transaction. The International Institutional Machinery should avoid becoming involved when parties in a specific transfer of technology transaction are in dispute.

8.2.3. The International Institutional Machinery shall establish such procedures as may be necessary to deal with issues related to confidentiality.

8.3. Review procedure 15/

8.4. Secretariat

The secretariat for the International Institutional Machinery shall be the UNCTAD secretariat. At the request of the International Institutional Machinery the secretariat shall submit relevant studies, documentation and other information to the International Institutional Machinery. It shall consult with and render assistance, by the relevant services, to States, particularly the developing countries, at their request, in the application of the Code at the national level, to the extent that resources are available.

8.5. General provisions 15/

Chapter 9

Applicable law and settlement of disputes 16/

ENDNOTES

- 1/ For texts under consideration, see appendices A and F.
- 2/ Group 2 accepts inclusion of this sentence subject to agreement to be reached on qualifications relating to the application of the Code to the relations of these entities in relevant parts of the Code.
- 3/ For texts under consideration, see appendices A and C.
- 4/ Text under consideration. See proposal in appendix C.
- 5/ Text under consideration. See also appendix A.
- 6/ In view of continuing negotiations on the chapter, no attempt has been made to number the provisions of this chapter consistently with the other chapters.
- 7/ Title of Chapter 4 under consideration.
- 8/ For texts under consideration, see appendices A and D.
- 9/ With regard to practices 15 to 20, see appendix A.1 for text of agreed statement for inclusion in the report of the Conference, and for texts under consideration see appendix D.
- 10/ Text under consideration. See appendix A.
- 11/ The spokesman for the regional groups noted that their acceptance of agreed language which makes reference to the term "applicable law" is conditional upon acceptable resolution of differences in the group texts concerning applicable law and national regulation of this Code.
- 12/ For text under consideration, see appendix A.
- 13/ The term "private decision" in the particular context of this chapter should be officially interpreted in the light of the legal order of the respective country.
- 14/ Text under consideration; see also appendix A.
- 15/ For texts under consideration, see appendices A and E.
- 16/ For texts under consideration, see appendices A and F.
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