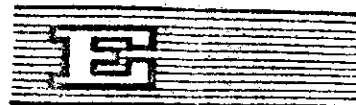


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**PRELIMINARY REVIEW OF THE WORK RELATED TO THE  
FORMULATION OF A CODE OF CONDUCT FOR TRANS-  
NATIONAL CORPORATIONS**

**(A note by the ECA secretariat)**

### Introduction

1. The work on a Code of Conduct for Transnational Corporations is derived from the United Nations General Assembly resolutions 3201(S-VI) and 3202 (S-VI) of 1 May 1974 containing the Declaration and the Programme of Action on the establishment of a New International Economic Order; 3362(S-VII) of 16 December 1975 on Development and International Economic Co-operation; and 35/56 of 5 December 1980 containing the International Development Strategy for the third United Nations Development Decade, which inter alia, emphasize the need to regulate the activities of transnational corporations and to formulate, adopt and implement an international code of conduct for such transnational corporations.<sup>1/</sup>
2. Subsequently, ECOSOC resolution 180(LXI) accorded high priority to the code and established an Intergovernmental Working Group on a Code of Conduct whose main task is to prepare a draft code of conduct to be submitted to ECOSOC for its consideration.<sup>2/</sup> The purpose of this note is to outline for information of the Conference, the progress made in implementing the above decision.<sup>3/</sup>

<sup>1/</sup> Deliberations on the definition of a "transnational corporation" have not yet been concluded by the Inter-governmental Working Group on a Code of Conduct but it is expected that such definition will be presented to the eighth session of the Commission on Transnational Corporations to be held in Manila in September 1982.

<sup>2/</sup> Further reference to the work on the Code of Conduct is to be found in the work by other bodies of the United Nations system relating to transnational corporations, especially "Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" adopted by the General Assembly in its resolution A/RES/35/63; the "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy" adopted by the Governing Council of the International Labour Organization (ILO); "International Code of Conduct on the Transfer of Technology" of the United Nations Conference of Trade and Development (UNCTAD); ECOSOC resolution 2041(LXI) establishing an Inter-Governmental Working Group on the Problems of Corrupt Practices and the Committee on Illicit Payment; and ECOSOC resolution 1979/44 establishing an Inter-governmental Group of Experts on International Standards of Accounting and Reporting.

<sup>3/</sup> The Commission on Transnational Corporations, assisted by the United Nations Centre on Transnational Corporations (UNCTC) is the organ, within the United Nations system entrusted with the issues related to transnational corporations. In Africa, the ECA/UNCTC Joint Unit on Transnational Corporations is responsible for providing the regional focus to the work of the Commission. The following countries are members of the Commission: Algeria, Argentina, Brazil, Canada, China, Costa Rica, Cuba, Egypt, France, German Democratic Republic, Federal Republic of Germany, Guatemala, Guinea, India, Iran, Iraq, Italy, Ivory Coast, Jamaica, Japan, Kenya, Libyan Arab Jamahiriya, Mexico, Netherlands, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Sierra Leone, Somalia, Swaziland, Sweden, Switzerland, Thailand, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia, Zaire. (documents E/1981/49; E/C.10/92).

Objectives of the Code

3. The basic objective of the code, which is consistent with the Lagos Plan of Action, is to provide an internationally agreed machinery within which the countries can institute measures for regulating and controlling the activities of transnational corporations. This is based on several principles which inter alia, include:

(a) Contribution to the implementation of the New International Economic Order and to the individual and collective self-reliance of developing countries;

(b) Reaffirmation that transnational corporations shall respect national sovereignty, jurisdiction, laws and regulations of the host countries in which they operate and the rights of States to adopt regulatory measures to control the activities of transnational corporations;<sup>4/</sup>

(c) To prevent the collaboration of transnational corporations with the racist apartheid regime in South Africa and its continued illegal occupation of Namibia;<sup>5/</sup>

(d) To ensure that the activities of transnational corporations conform with and positively contribute to the development objectives and priorities of the countries in which they operate; and

(e) To contribute to the strengthening of the bargaining powers and the negotiating capacity of developing countries with transnational corporations so as to maximize the advantages to be derived from their presence while minimizing their adverse effects.<sup>6/</sup>

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<sup>4/</sup> See General Assembly resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States.

<sup>5/</sup> See General Assembly resolutions 35/206 F of 16 December 1980 on the Role of Transnational Corporations in South Africa and 35/227 A of 6 March 1981 on the Situation in Namibia resulting from the illegal occupation of the Territory by South Africa; and Security Council resolution 301 (1971) of 20 October 1971 calling upon States to abstain from entering into economic relations with South Africa in respect of Namibia and declaring that rights, titles or contracts granted to individuals or corporations by South Africa after the termination of the mandate are not subject to protection or espousal by their home states against the claims of a future lawful government of Namibia.

<sup>6/</sup> See United Nations, Report of the Seventh Session of the Commission on Transnational Corporations (E/1981/49; E/C.10/92) Supplement No. 9, 1981.

Implications of the Code for Africa

4. The full implications of the Code of Conduct for the African countries would be assessed when the final draft code is presented. For the moment, it is useful to point out that the Code needs to be seen within the purview of the concern of the African countries expressed in the Lagos Plan of Action that the development efforts over the past three decades have fallen short of the expectations and that efforts should be intensified to generate a faster rate of development using internally generated resources and technology outside the influence of external factors including transnational corporations. This concern arises out of the realization of the dominant position of transnational corporations in the key economic sectors, including the exploitation and utilization of natural resources. The role of transnational corporations in the mobilization, allocation and utilization of capital, and human resources and how this affects the African development process and possibilities of implementing the Lagos Plan of Action should be fully recognized and assessed.<sup>7/</sup>

5. At the same time, the problems associated with the purchase, transfer and acquisition of technology and related development of local technical and managerial capabilities need to be considered globally through a recognized machinery within the United Nations system. Other matters of concern to Africa relating to the Code include the balance of payments; transfer pricing and inter-firm transfers; corporate taxation; restrictive and illicit business practices; environmental protection; and disclosure of information to Governments by transnational corporations.

6. The usefulness of the Code of Conduct for transnational corporations to the African countries cannot therefore be emphasized. In the first place, Africa has the largest number of small countries as well as the least developed countries. Many African countries, including the more economically advanced countries, do not have the techniques for effectively organizing negotiations with transnational corporations.<sup>8/</sup> The Code of Conduct will strengthen the collective bargaining powers of the developing African countries. Essentially, therefore, the African countries stand to gain from the proposed code if this is properly conceived and implemented.

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<sup>7/</sup> See also ECOSOC resolutions 1721(LIII), 1908(LVII) and 1913(LVII) on the Impact of Transnational Corporations on the Development Process and on International Relations.

<sup>8/</sup> Unlike some Asian and Latin American countries (e.g. India, Indonesia, Brazil, Mexico) which have instituted some forms of control of the activities of transnational corporations, the majority of the African countries have not yet done so.

Follow-up action

7. The ECA secretariat gives high priority to the work relating to the code and intends to monitor its progress very closely.<sup>9/</sup> The report of the Inter-governmental Working Group on a Code of Conduct, together with the draft code, will be submitted to the eighth session of the Commission on Transnational Corporations to be held in Manila, Philippines, in September 1982. A full report on the Code, together with an assessment of its implications for the African countries, will be presented to the next meeting of the Conference of Ministers in April 1983.

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<sup>9/</sup> ECA's Programme of Work and Priorities for 1982-1983 provides for a study on strengthening the negotiating capacities of member States vis-à-vis transnational corporations and for a seminar on the framework and problems of implementation of a code of conduct from the African perspectives.