

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ БІЛІМ ЖӘНЕ ҒЫЛЫМ МИНИСТРЛІГІ  
Л.Н. ГУМИЛЕВ АТЫНДАҒЫ ЕУРАЗИЯ ҰЛТТЫҚ УНИВЕРСИТЕТІ



ЖАС ҒАЛЫМДАР КЕҢЕСІ



Студенттер мен жас ғалымдардың  
**«ҒЫЛЫМ ЖӘНЕ БІЛІМ - 2016»** атты  
XI Халықаралық ғылыми конференциясының  
БАЯНДАМАЛАР ЖИНАҒЫ

---

СБОРНИК МАТЕРИАЛОВ  
XI Международной научной конференции  
студентов и молодых ученых  
**«НАУКА И ОБРАЗОВАНИЕ - 2016»**

---

PROCEEDINGS  
of the XI International Scientific Conference  
for students and young scholars  
**«SCIENCE AND EDUCATION - 2016»**

2016 жыл 14 сәуір  
Астана

**ҚАЗАҚСТАН РЕСПУБЛИКАСЫ БІЛІМ ЖӘНЕ ҒЫЛЫМ МИНИСТРЛІГІ  
Л.Н. ГУМИЛЕВ АТЫНДАҒЫ ЕУРАЗИЯ ҰЛТТЫҚ УНИВЕРСИТЕТІ**

**Студенттер мен жас ғалымдардың  
«Ғылым және білім - 2016»  
атты XI Халықаралық ғылыми конференциясының  
БАЯНДАМАЛАР ЖИНАҒЫ**

**СБОРНИК МАТЕРИАЛОВ  
XI Международной научной конференции  
студентов и молодых ученых  
«Наука и образование - 2016»**

**PROCEEDINGS  
of the XI International Scientific Conference  
for students and young scholars  
«Science and education - 2016»**

**2016 жыл 14 сәуір**

**Астана**

**ӘӨЖ 001:37(063)**

**КБЖ 72:74**

**Ғ 96**

**Ғ96** «Ғылым және білім – 2016» атты студенттер мен жас ғалымдардың XI Халық. ғыл. конф. = XI Межд. науч. конф. студентов и молодых ученых «Наука и образование - 2016» = The XI International Scientific Conference for students and young scholars «Science and education - 2016» . – Астана: [http://www.enu.kz/ru/nauka/ nauka-i-obrazovanie/](http://www.enu.kz/ru/nauka/nauka-i-obrazovanie/), 2016. – .... б. (қазақша, орысша, ағылшынша).

**ISBN 978-9965-31-764-4**

Жинаққа студенттердің, магистранттардың, докторанттардың және жас ғалымдардың жаратылыстану-техникалық және гуманитарлық ғылымдардың өзекті мәселелері бойынша баяндамалары енгізілген.

The proceedings are the papers of students, undergraduates, doctoral students and young researchers on topical issues of natural and technical sciences and humanities.

В сборник вошли доклады студентов, магистрантов, докторантов и молодых ученых по актуальным вопросам естественно-технических и гуманитарных наук.

**ӘӨЖ 001:37(063)**

**КБЖ 72:74**

**ISBN 978-9965-31-764-4**

©Л.Н. Гумилев атындағы Еуразия  
ұлттық университеті, 2016

**DRAFT UNITED NATIONS CODE OF CONDUCT ON TRANSNATIONAL  
CORPORATIONS: UNFULFILLED GRAND PROMISES**

**Kulubekova Galiya Aidarovna**

kulubekova.galiya@gmail.com

PhD student of the international law department, law faculty of the L. N. Gumilyov Eurasian  
national university, Astana, Kazakhstan

Scientific supervisor: Z. Busurmanov

The United Nations has been concerned about the question of transnational corporations' regulation from the beginning of the 1970s. In particular, in December 1974, it adopted Charter of Economic Rights and Duties of States under the Resolution 3281 (XXIX). The Charter contained several provision relating to transnational corporations [1]. In 1973, the United Nations Economic and Social Council entrusted the "Group of Eminent Persons" in order to advise on the nature and activities of transnational corporations and their role and impact on the development process [2]. This Group made recommendations, which led to the establishment of a permanent Programme on Transnational Corporations in 1974 in order to create the forum for deliberations on issues that are related to transnational corporations, and to the creation of Commission on Transnational Corporations alongside with United Nations Center on Transnational Corporations (UNCTC) [3]. At the conclusion of its meeting, in March 1975, the Commission "decided that among the various tasks it would undertake in the next few years the priority would be assigned to the formulation of the code of conduct..." [4, p. 251-252]. In March of 1976, the Commission during its second session in Lima (Peru) established the Intergovernmental Working Group on a Code of Conduct which started its work in 1977 [5].

For almost two decades till 1992 the Intergovernmental Working Group had been working on the Draft UN Code of Conduct on transnational corporations. Three executive directors presided over the UNCTC during this period [6, p. 93]. Each of the major political blocs (developed countries, lesser developed countries and socialist states) treated differently transnational corporations and, therefore, proposed diverse standards of regulation while negotiating the Draft UN Code of Conduct [7, p. 470]. Developed countries were major home countries for transnational corporations and, therefore, tried to protect the interests of business through foreign investment protection, favorable national treatment, fair compensation in case of expropriation, etc. At the same time, they insisted on a voluntary code of principles in the form of recommendations. On the contrary, the group of 77 developing countries which participated in negotiations over Draft UN Code of Conduct demanded an international instrument of rules with normative status legally binding on both transnational corporations and states [8]. This position rooted most probably in the colonial past of many developing countries, which saw transnational corporations as instruments of former colonialists to keep the influence.

The socialist bloc supported the group of 77 developing countries, however, had the specific position. The socialist countries had their corporations performing business abroad, and they insisted that these corporations should not be covered by the Code and be a subject to direct government control. However, Western countries insisted that there should be no difference between them and privately owned enterprises [9, p. 21]. Finally, in 1990, the Draft UN Code of Conduct was produced. It aimed at being an essential element in the strengthening of international economic and social cooperation [10, p. 226]. However, despite great investment made into the developing of the Draft UN Code of Conduct, the government representatives were unable to reach a consensus on the nature and legal status of it. Eventually, in 1992, upon the request of the USA, they agreed to drop discussion of one of the most burning issues of "industrial civilization" [8].

This decision seems illogical as the United Nations Organization was alarming the necessity and importance of the unified document that could regulate the activities of transnational corporations. In fact, in 1990, only 2 years before the suspension of the Draft Code discussion, the

UN General Assembly adopted the Proposed medium-term plan for the period 1992-1997 (A/45/6 (Prog.23)) which contained programme 23 dedicated to transnational corporations. The programme 23 said: 23.10 In light of ...the trends and prospects relating to the activities of transnational corporations and their role in world development, the United Nations programme on transnational corporations will consist of the following subprogrammes: (a) Securing an effective code of conduct and other international arrangements and agreements relating to transnational corporations...23.11 Among the multiple tasks entrusted to the programme, **priority** will be given to the formulation of an effective, comprehensive, generally accepted and universally adopted code of conduct on transnational corporations.

Moreover, it planned the future actions to implement the provisions of the adopted code:

The programme 23 (A/45/6 (Prog.23)): 23.16 If the code of conduct is adopted during the period 1992-1997, the Centre [UNCTC] will assist the United Nations Commission on Transnational Corporations in the implementation, follow-up and review of the code. During the first two years after its adoption, the efforts of the Commission and the Centre will concentrate on disseminating, publicizing and explaining the instrument; on working out the details of its follow-up mechanisms at the enterprise, national and international levels; and on establishing a reporting system. Once a mechanism for implementation of the code is established, the active involvement of transnational corporations, labour movements, as well as Governments is envisaged [11].

The Draft UN Code of Conduct on transnational corporations had great promises. However, contradictory positions of different political blocs were main obstacles for the approval of it and eventually led to its failure.

Nevertheless, it is still worth to review the main provisions of the Draft UN Code of Conduct, because the process of its drafting had taken the significant amount of time and effort. This document was intended to become the centerpiece in the regulation of transnational corporations. According to K. Sauvant, the Draft Code of Conduct had the umbrella nature in terms of architecture, in the fact that the draft included cross-references to a number of other documents (Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO); Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UNCTAD); Declaration on International Investment and Multinational Enterprise (OECD), International Code of Conduct on the Transfer of Technology (UN)) making these separate instruments in a sense 'chapters' of the United Nations Code [12, p. 19]. Moreover, though it did not itself achieve a UN imprimatur, it resulted in a "springboard effect", providing a template for codes that followed [13, p. 226].

As it was noticed earlier, socialist countries were insisting that their transnational corporations shall be excluded from the regulation of the UN Code of Conduct, because they are not privately owned. However, the Draft UN Code of Conduct (version 1983) did not satisfy this demand. In particular two possible definitions of a transnational corporation given in the document do not make any difference between public, private or mixed owned corporations [14]. During last years of drafting the Code position of most powerful socialist country USSR was weakening. The country was focused on economic reforms and later faced significant political changes that eventually led to its collapse. Therefore, the initial "socialist position" was not properly defended.

Other two positions of developed industrialized countries bloc and the group of 77 developing countries were quite strong. Therefore, the Draft Code attempted to maintain the balance between these two powers. The Draft Code contained the provisions regarding both the regulation of transnational corporations ' activities (Chapter "Activities of transnational corporations") and their treatment by host states (Chapter "Treatment of transnational corporations").

In general, the structure of Code of Conduct is following:

1. "Definitions and scope of application". This section defines the transnational corporations ' definition. The essential features of this definition have already been discussed earlier. Therefore, there is no need to analyze it again. However, apart from the definition of a transnational corporation the section reveals the definitions of other words used in the document. In particular, it specifies the terms "entity" (parent entity and other entities), "home country" (a country in which

the parent entity is located), “host country” (a country in which an entity other than the parent entity is located), “country in which a transnational corporation operates” (a home or host country in which an entity of a transnational corporation conducts operations). There was no unified final decision upon the scope of application of the Code. However, in general, it seems that the Code aimed to address all transnational corporations, home, and host states (“Definitions and scope of application”).

2. “Activities of transnational corporations” section, which includes two chapters, namely “General and political” and “Economic, financial and social”. These two chapters cover a broad variety of provisions, which would be analyzed further.

3. “Treatment of transnational corporations” section, which includes three chapters, namely “General treatment of transnational corporations by the countries in which they operate”, “Nationalization and compensation”, “Jurisdiction”. These chapters will also receive an analysis further.

4. “Intergovernmental co-operation”. This section of the Code declares that states agree to exchange information on the measures they have taken to give effect to the Code, consult on a bilateral or multilateral basis. Besides this states agree not to use transnational corporations as instruments to intervene in the internal or external affairs of other states (Section “Intergovernmental co-operation”).

5. “Implementation of the code of conduct” section, which includes following chapters: “Action at the national level”, “International institutional machinery”, “Review procedure”. This section contains provisions relating to the implementation of the Code by states at the national level, including publication and dissemination of the Code, implementation of the Code on the corresponding territory, reporting to the UNCTC on the action taken in the frame of the Code implementation, taking actions to reflect the support for the Code when introducing implementing and reviewing laws, regulations and administrative practices on matters dealt with in the Code. The section also recognizes that the UNCTC shall assume the functions of the international institutional machinery for the implementation of the Code and act as the focal international body within the United Nations system for all matters related to the Code. Besides this the UNCTC shall make recommendations to the General Assembly for the purpose of reviewing the Code (Section “Implementation of the code of conduct”).

As it was noticed above, section “Activities of transnational corporations” includes two chapters, namely “General and political” and “Economic, financial and social”. The first one states that transnational corporations shall respect human rights and fundamental freedoms in the countries in which they operate alongside with the right of each state to regulate and monitor accordingly the activities of their entities operating within its territory. The chapter ensured that transnational corporations shall not interfere in the intergovernmental relations as well as internal affairs of the countries in which they operate. It also prescribed Transnational corporations to refrain from activities undermining the political and social systems in host countries, to abstain from corrupt practices, not to collaborate with racist minority regimes in southern Africa, etc. (Section “Activities of transnational corporations”, Chapter “General and political”).

The great attention was paid to the economic, financial and social activities of transnational corporations. In particular, the Draft UN Code of Conduct contained the provisions dealing with the balance of payments and financing, transfer pricing, taxation, competition and restrictive business practices, transfer of technology, consumer protection, environmental protection. The important part of this chapter is paragraph “Disclosure of information”. Particularly, it stated that 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 had to include both financial and non-financial items and be made available annually, normally within six months and in any case not later than twelve months from the end of the financial year of the transnational corporation. Besides this, transnational corporations in accordance with the Draft Code had to make available a semi-annual summary of financial information. The financial information included a

range of documents, among which: a balance sheet; an income statement, including operating results and sales; a statement of allocation of net profits or net income; a statement of the sources and uses of funds; significant new long-term capital investment; etc.

The Draft UN Code of Conduct also required Transnational corporations to make available non-financial documents, including 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; the main activity of its entities; employment information; accounting policies used in compiling and consolidating the information published; etc. (Section “Activities of transnational corporations”, Chapter “Economic, Financial, and Social”).

It seems that most probably this “disclosure of information” provisions were among main causes of disputes during the preparation of Draft UN Code of Conduct. A wide range of documents that had to be disclosed would put transnational corporations in very strict frames and would leave little space for hiding certain actions.

It is necessary to point out that just like the OECD Guidelines on multinational enterprises the Draft UN Code of Conduct declared the prevailing force of domestic laws, i.e. the core obligation of Transnational corporations in all their activities are to comply with national legislation. Notably, the document declared the right of each state to regulate and monitor accordingly the activities of their entities operating within its territory. Besides this, it encouraged the introduction into the contracts between Transnational corporations and states, especially long-term ones the clauses regarding the review and renegotiation (Section “Activities of transnational corporations”, Chapter “General and Political”, Provision 11). This provision was in favor of host states especially developing ones as allowed them to vary the conditions, under which Transnational corporations operate in their territories in accordance with the changing economic situation.

The part of the Draft UN Code of Conduct concerning the treatment of transnational corporations (Section “Treatment of transnational corporations”) is relatively smaller than the part regarding the regulation of their activities. Among most prominent provisions of this part are those establishing equitable treatment for transnational corporation, which shall be not less favorable than that accorded to a domestic enterprise; free transfer of payments relating to Transnational corporations' investments; prompt, adequate and effective compensation in case of expropriation. It is important to point out that the Draft UN Code of Conduct declared states' right to nationalize or expropriate foreign-owned property in their territory for a public purpose under the condition that it is not discriminatory, is made in accordance with due process of law, contract or other agreement, and is accompanied by compensation (Section “Treatment of transnational corporations”).

The provisions regarding transnational corporations' interests in host states seem to have rather broad, not an explicit character. The part concerning states' obligations towards Transnational corporations is obviously weaker than the one regarding regulation of transnational corporations' activities. Bearing in mind the demands of different political blocs that accompanied the process of drafting the Draft UN Code of Conduct it is clear that the position of the developing countries was favored more than the one of the developed states. It is most likely, the developed countries which are generally home states for many transnational corporations could not see the adequate representation of their interests in the document.

In this regard, it is important to notice that in 1980s, the position of host countries was greatly weakened by the problems of their international debt. This made foreign investments much more attractive for developing countries. As a result, the position of Transnational corporations in comparison to host country governments became much stronger in the 1990s [15, p. 11]. Maybe this was one of the reasons, which prevented the realization of the Draft UN Code of Conduct on transnational corporations.

Many provisions that are contained in the document seem to be still relevant in the modern world, even though they have been developed several decades ago. The transnational corporations' influence in the world is growing, and the need for the regulation of their activities has become even more urgent. Therefore, the main value of the Draft United Nations Code of Conduct is in

establishing the general trend in transnational corporations' regulation and in attracting the attention to this important question.

## BIBLIOGRAPHY

1. UN General Assembly. Charter of Economic Rights and Duties of States December 12, 1974. U.N. Doc. A/RES/29/3281. 29th Sess. Available at <http://www.un-documents.net/a29r3281.htm>
2. UN Group of Eminent Persons (1974). The Impact of Multinational Corporations on Development and on International Relations. U.N. Doc. E/500/Rev. 1, St/ESA/6
3. UNCTAD (2004). List of publications on Foreign Direct Investment and transnational corporations (1973-2003). New York and Geneva. p. ii. Available at [http://unctad.org/en/Docs/ite20041\\_en.pdf](http://unctad.org/en/Docs/ite20041_en.pdf)
4. Davidow, J. and Chiles, L. (1978). The United States and the Issue of the Binding or Voluntary Nature of International Codes of Conduct Regarding Restrictive Business Practices. *American Journal of International Law*, 72(2). pp. 251-252
5. ECOSOC (1981). Work related to the formulation of a code of conduct. Fourteen session of the Intergovernmental Working Group on a Code of Conduct. UN Library, E/C.10/79. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N81/173/30/PDF/N8117330.pdf?OpenElement>
6. Moran, T. H. (2009). The United Nations and transnational corporations: a review and a perspective. *Transnational Corporations*, 18(2). p. 93
7. Thomas, R. M (1983). Host state treatment of transnational corporations: formulation of a standard for the United Nations Code of Conduct on transnational corporations. *Fordham International Law Journal*, 7(3). p. 470
8. ECOSOC. The realization of economic, social and cultural rights: the question of transnational corporations. Written statement by the Indian Movement "Tupac Amaru" and the Indigenous World Association, which are non-governmental organizations in consultative status. Un Library. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/132/70/PDF/G9813270.pdf?OpenElement>
9. Sauvart, Karl P. (2015). The Negotiations of the United Nations Code of Conduct on Transnational Corporations. Experience and Lessons Learned. *The journal of world investment & trade*, 16. p. 21
10. Keller, H. (2008). Corporate codes of conduct and their implementation: the question of legitimacy. *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht*, 194. DOI 10.1007/978-3-540-77764-9\_12. p. 226. Available at [http://www.yale.edu/macmillan/Heken\\_Keller\\_Paper.pdf](http://www.yale.edu/macmillan/Heken_Keller_Paper.pdf)
11. UN General Assembly. Medium-term plan for the period 1992-1997 (A/45/6 (Prog.23))
12. Sauvart, Karl P. (2015). The Negotiations of the United Nations Code of Conduct on Transnational Corporations. Experience and Lessons Learned. *The journal of world investment & trade*, 16. p. 19.
13. Keller, H. (2008). Corporate codes of conduct and their implementation: the question of legitimacy. *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht*, 194. DOI 10.1007/978-3-540-77764-9\_12. p. 226. Available at [http://www.yale.edu/macmillan/Heken\\_Keller\\_Paper.pdf](http://www.yale.edu/macmillan/Heken_Keller_Paper.pdf)
14. United Nations (1983). United Nations Draft Code of Conduct on transnational corporations. Available at [http://unctad.org/en/docs/dtci30vol1\\_en.pdf](http://unctad.org/en/docs/dtci30vol1_en.pdf)
15. McKern, R. B. and United Nations. Transnational Corporations and Management Division. Transnational corporations and the exploitation of natural resources / edited by Bruce McKern Routledge London; New York. 1993. p. 11