

Multinational Enterprises Programme

Working Papers

Working Paper No. 18

The Tripartite Declaration of Principles concerning
Multinational Enterprises and Social Policy
(History, contents, follow-up and relationship with
relevant instruments of other organisations)

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Geneva, International Labour Office, 1981



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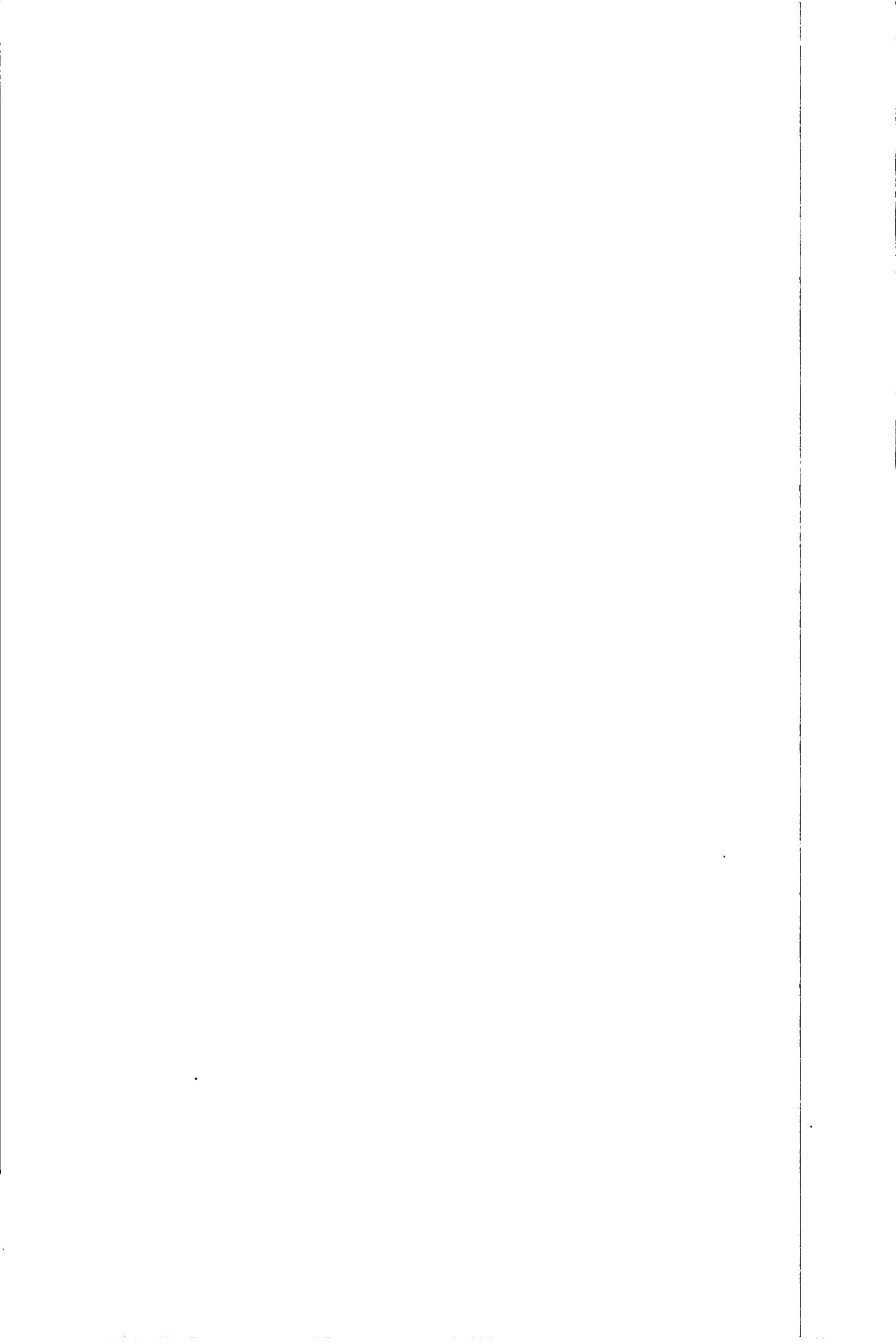
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THE TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY

(History, contents, follow-up and relationship with relevant
instruments of other organisations)

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Since approximately the mid-1970s, an increasing number of international organisations have worked on codes of conduct and similar texts concerning multinational enterprises as a result of initiatives undertaken by various host country governments (mainly from the developing world) and in part by trade union quarters. Since labour and social policy matters are among the major issues raised in connection with the activities of multinational enterprises, it would have been rather surprising had the ILO not become involved in this "code of conduct movement".

As a matter of fact, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the ILO instrument in the area, adopted by the Governing Body of the International Labour Office on 16 November 1977, during its 204th Session, is the first normative text concerned with this category of enterprises that was completed within the framework of the United Nations' system. It is also the first such instrument with which, thanks to an already functioning international follow-up procedure, experience has been gained, in practice, regarding the acceptance of the principles established.

The ILO's unique tripartite character and its more than six decades of experience in international standard setting in the labour field have considerably influenced the history, content and follow-up on the Tripartite Declaration. At the same time, the need has been perceived, in and outside the ILO, to co-ordinate the ILO activities closely with those of other organisations, in particular as regards the United Nations Code on Transnational Corporations, which is at an advanced stage of preparation. The present paper reviews briefly these various points and developments.

History of the Tripartite Declaration

Increasingly since the middle of the 1960s requests have been made for ILO action in the field of multinational enterprises, mainly through the initiative of workers' representatives, in resolutions of industrial committees, regional conferences and the International Labour Conference.¹ Certain promotional functions for ILO action, particularly research, may be attributed also to a symposium on transnational industrial relations organised, in 1967, by the International

Institute for Labour Studies², an autonomous education and research centre of the ILO. An essential stimulus for pertinent ILO work was, finally, provided by a Resolution concerning the social problems raised by Multinational Enterprises, adopted at the 1971 International Labour Conference. After recalling earlier relevant resolutions and taking note with satisfaction of a decision by the Governing Body, at its 182nd Session (March 1971), to provide funds for the holding of a technical meeting on the relationship between multinational undertakings and social policy, this resolution requested the Governing Body to decide, in the light of the conclusions of that meeting, "... what action the ILO should take on the question".³

A Tripartite Meeting on the Relationship between Multinational Corporations and Social Policy was held in October/November 1972 with the mandate "... to explore and submit recommendations to the Governing Body on the desirability and possible scope of ILO action concerning the relationship of multinational corporations⁴ and social policy ...".⁵ The discussions were to include the aspects of human resources, employment, income and security and training, conditions of work and life, and industrial relations of these corporations as well as the implementation of related ILO standards.⁶

The meeting which brought together 24 experts, plus a number of substitutes and advisors, drawn from government, employers' and workers' circles, and which had before it a comprehensive ILO working paper⁷ recommended mainly two lines of action. These were:

- (a) that the ILO undertake studies to provide the comprehensive information needed to identify and determine the special problems that may be specific to multinational enterprises on a guidance for special policy formulation; and,
- (b) that the ILO undertake a study on the usefulness and feasibility of international principles and guidelines in the field of social policy relating to the activities of multinational enterprises and the elements and implications of these, including, if it was found useful and feasible by the study, action for establishing such principles and guidelines.⁸

A second special meeting, viz. a Tripartite Advisory Meeting on Multinational Enterprises and Social Policy (similarly composed as was the 1972 meeting), was convened by the Governing Body in May 1976, to review the four empirical studies on multinational enterprises available at the time⁹ as well as the study on usefulness and feasibility of principles and guidelines and to formulate recommendations on action to be taken by the Governing Body.¹⁰ The most important recommendation which the meeting made to the Governing Body was that work on a tripartite declaration of principles concerning multinational enterprises and social policy should be introduced, with the help of a small tripartite drafting group.

It also offered several guiding considerations for that purpose.¹¹ Thus the recommendation was made that the declaration should: be non-mandatory in character; not be aimed at introducing inequalities of treatment between multinational and other enterprise; cover all multinationals whatever the ownership pattern; give due consideration to existing ILO standards; be directed to all parties involved, not only to multinational enterprises; and be flexible so as to allow for different situations. Virtually all these considerations found recognition in the later drafting work. The meeting also recommended that the ILO declaration to be prepared "... should if appropriate, be officially transmitted to the UN for incorporation in the proposed Code of Conduct".¹²

Research on social policy aspects of multinational enterprises has now become a continuous programme of the ILO.¹³ In addition to its fact-finding role, it has certainly also, through its balanced approaches, promoted trust and consensus-building during the preparation of the ILO Declaration. International research on multinational enterprises (which in the UN system is undertaken mainly by the United Nations Centre on Transnational Corporations, UNIDO, UNCTAD, UNESCO, as well as the ILO), has considerably helped to clarify the economic and social role and impact of multinationals throughout the world, despite continuing ideological controversy. The need for such research seems a permanent one in view of the dynamic nature of the phenomenon of multinational enterprises and marked continuing changes in the environment in which they operate.

The ILO Tripartite World Employment Conference held in June 1976, provided an occasion to discuss further the subject of multinational enterprises and to compare the different views existing at that time. Most government members of the industrialised market economy countries underlined the enterprises' positive effects on employment and development while other government members underscored negative development implications. Just as the worker members, the government representatives of the Group of 77 recommended that Conventions on multinational enterprises should be adopted in the areas of ILO's competence. The employer members did not share this view; however, they agreed to the usefulness of a tripartite declaration of principles of a voluntary character.¹⁴

Taking into account the varied positions and the emerging possibilities of compromise, drafting work on a set of principles was undertaken by a restricted working group (drawn from the members of the Tripartite Advisory Meeting to ensure continuity), in the first four months of 1977¹⁵; and a full draft dealing "with all areas of concern to the ILO relating to the social aspects of the activities of multinational enterprises"¹⁶ was available to the Tripartite Advisory Meeting, reconvened in April 1977 for consideration of the text prepared by the small group. An agreed text was submitted to the Governing Body,¹⁷ which adopted the Tripartite Declaration unanimously at its November 1977 Session. It was thus the "... outcome of several

years' efforts by the International Labour Office to reach agreed solutions on a highly complex and controversial area of social policy through dialogue and negotiation between governments, employers and workers".¹⁸

Contents and Nature

The Tripartite Declaration has a preamble, a section on general policies and four sections broken down by subject-areas, which denote at the same time enumeratively the areas of substantive competence of the ILO within the total activities on multinational enterprises carried out in the United Nations system. Annexed to the Declaration, is a list of 15 ILO Conventions and 19 Recommendations of the International Labour Conference.¹⁹ Reference has been made to these, through foot-notes, in the text of the Declaration. They are considered relevant general instruments also for the field of multinational enterprises and social policy in the sense that they contain general international labour standards for the four subject areas to which the Declaration relates. Where these standards are applicable, they affect equally multinational and non-multinational enterprises.²⁰

Preamble

Recalling the involvement of the ILO for many years with social issues relating to multinationals and noting the parallel activities of other bodies, in particular the United Nations and the OECD, the preamble considers that the ILO, with its unique tripartite structure, competence and long-standing experience in the social field has an essential role to play in evolving principles in that field.

Background and aims (paras. 1-7)

The Declaration notes that its aim is the encouragement of the positive contribution which multinational enterprises can make to economic and social progress and the minimising and resolution of the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the establishment of a New International Economic Order.²¹ This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments and by co-operation among the governments and the employers' and workers' organisations of all countries.

It is stated that the principles set out in the Declaration are commended to the governments, the employers' and workers' organisations of home and host countries and to the multinational enterprises themselves. The notion of "multinational enterprises" referred to in the Declaration is described in functional economic terms which cover all types of these enterprises (whether they are of public, mixed or private ownership

and irrespective of the type of activity); and it is mentioned that, for the purposes of the Declaration, no precise legal definition is required.

It is finally noted that the principles set out in it are recommended to be observed on a voluntary basis by the parties indicated.

General policies (paras. 8-12)

All the parties concerned by the Declaration should respect the sovereign rights of states, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations. Multinational enterprises should keep their activities in harmony with the development priorities and social aims and structures of the country in which they operate, and consultations on a continuous basis should be undertaken between multinational enterprises and the government and, where appropriate, the national employers' and workers' organisations to this end. The Declaration indicates that where its principles are relevant for both types of enterprises they reflect good practice for national as well as multinational enterprises.

Governments are urged by the Declaration to ratify certain basic relevant ILO Conventions in the areas of freedom of association, collective bargaining and non-discrimination in employment, where they have not been ratified; and to apply in any event to the greatest extent possible the principles embodied therein and in corresponding ILO Recommendations. In addition, all parties should refer to them for guidance in their social policy. Governments of home countries are ascribed a special role in the promotion of good social practice of multinational enterprises wherever they operate; and both host and home country governments should be prepared to consult with each other, wherever the need arises, on the initiative of either.

Employment (paras. 13-28)

The Declaration calls for active employment policy by governments particularly in the case of developing host countries, as a framework within which due attention should be given, in both home and host countries, to the employment impact of multinational enterprises. Multinational enterprises, especially when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments as well as security of employment and the long-term development of the enterprises. For this purpose, extensive and continuous tripartite consultations are recommended and should start before multinational enterprises commence operations.

Multinational enterprises should give priority to the employment and occupational development of nationals of the host country at all levels and in developing countries should have regard to the importance of using technologies which generate employment, directly and indirectly. Where possible, they should adapt technologies to the needs and characteristics of the host country, participate in the development of appropriate technology, give consideration to subcontracting to national enterprises, to the use of local raw materials and promote their local processing.

The Declaration stresses the need for policies promoting equality of opportunity and treatment in employment, both through governments and multinational management, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. Governments; as well as multinational enterprises themselves, should take suitable measures to deal with employment and labour market impacts of the operations of the enterprises. Multinational (as national) enterprises should endeavour to provide stable employment and should observe freely-negotiated obligations concerning employment stability and social security. Multinational enterprises should strive to assume a leading role in promoting security of employment. In considering changes in operation which would have major employment effects (for which mergers, take-overs or transfers of production are specifically mentioned), multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and to the workers and their organisations so that joint efforts can be made to mitigate adverse effects (in particular in the case of closures involving collective lay-offs or dismissals). Governments together with multinational (and national) enterprises should provide income protection for workers whose employment has been terminated.

Training (paras. 29-32)

Multinational enterprises should provide relevant training for all levels of their employees to meet the needs of the enterprise as well as those of the host country, within the framework of national policies for vocational training and guidance. This training should develop generally useful skills and improve career opportunities. Appropriate co-ordination and co-operation with the authorities of the country, employers' and workers' organisations, national or international institutions is recommended. In developing countries, multinational enterprises should participate in national training programmes and afford opportunities, within the enterprise as a whole, for the training of local management in suitable areas, such as industrial relations.

Conditions of work and life (paras. 33-39)

Wages, benefits and conditions of work in multinational enterprises should not be less favourable than those offered by comparable local employers. In developing countries, where comparable employers may not exist, multinationals should provide the best possible wages, benefits and conditions of work within the framework of government policies which (as a minimum) should at least satisfy basic needs of the workers and their families.

Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their experience within the enterprise as a whole. They should make available, upon request, information on safety and health standards which they observe in other countries and should make known, in particular, any special hazards and related protective measures associated with new products and processes. They, like comparable domestic enterprises should take part in relevant standard-setting activities of international organisations, fully co-operate with the competent safety and health authorities of the countries of implantation and, where appropriate, safety and health matters should be incorporated in collective agreements. Governments, especially in developing countries, should endeavour to ensure that lower income groups and less-developed areas benefit as much as possible from the activities of multinational enterprises.

Industrial relations (paras. 40-58)

Also in this area, multinational enterprises should observe the best existing practices in the countries of implantation. The principles of freedom of association and the right to organise are re-emphasised in the Declaration. Where governments of host countries offer special incentives to attract foreign investment, such incentives should not include any limitation of the workers' freedom of association, right to organise and bargain collectively. Workers' representatives in multinational enterprises should not be prevented from meeting to consult and exchange views provided that the functioning of the enterprise and the normal labour-management relations are not thereby prejudiced. Governments should not restrict the entry of representatives of both sides of industry who come from other countries and are invited for the purpose of consultation solely on the grounds that they seek entry in that capacity. Where appropriate in the local circumstances, multinational enterprises should support representative employers' organisations.

Multinational enterprises should enable authorised representatives of workers in their employment in each of the countries to conduct negotiations with representatives of management who are authorised to take decisions on the matters under negotiation. In the context of bona fide negotiations, they should not threaten to utilise a capacity to transfer

operations from a country in order to influence unfairly those negotiations or to hinder the exercise of the workers' right to organise; nor should they transfer workers from affiliates in foreign countries for either of these reasons. Multi-national enterprises should provide workers' representatives with information required for meaningful negotiations with the entity in question; and where this accords with local law and practice, also with information on the performance of the entity or, where appropriate, of the enterprise as a whole.

Finally, the Declaration contains provisions regarding regular consultation on matters of mutual concern, procedures for grievances and their settlement; and the settlement of industrial disputes.

Particular features of the Declaration

A number of particular features can be distinguished for the Tripartite Declaration.

- (i) The Declaration is a universal but specific instrument in the employment and industrial relations area, which in various respects (scope, addressees - it is addressed to governments, employers' and workers' organisations and the multinational enterprises themselves -, tripartite consultations, reference to general ILO labour standards, etc.) reflects the Organisation's particular structure, competence and experience. The Declaration relates specifically to the ILO areas of competence (according to UN usage the "employment and labour fields"). By comparison, the proposed JN Code and the OECD Guidelines are general instruments since they cover all areas relating to the activities of multinational enterprises. The ILO Declaration is a particular instrument also in that sense that it represents a "less formal"²² normative text than the traditional ILO instruments of Conventions and Recommendations of the International Labour Conference. Finally, the fact that the Declaration is jointly addressed to all industrial relations parties reflects the ILO conviction - formed during the more than 60 years of the Organisation's existence - that in labour matters a tripartite approach is the most appropriate one.
- (ii) The Declaration applies to all multinational enterprises whether they are of public, mixed or private ownership; and whether they are engaged in production, distribution, services or other facilities. A functional/economic concept of multinational enterprises is thus aimed at by the Declaration (not a legal one which, as it is stated in the Declaration, is not required in the context). No concise definition of a multinational is provided in the Declaration but a number of key economic features of such an enterprise are mentioned, which can be applied for their identification (production facilities outside the country in which the enterprise is based, distribution of responsibility among

the various entities, i.e. a transnational flow of decisions as well as the criteria of ownership and control). The ILO Survey undertaken in connection with the follow-up to the Declaration for 1978/79 has established that most countries did not have problems with this broad concept.

- (iii) The Declaration encourages the integration of multinational enterprises in the respective national, economic, social and industrial relations setting assisted by a continuous dialogue between the parties concerned,²³ recognising, however, that multinational enterprises do have a border-crossing character. And a good deal of the provisions can only be understood in the context of the particular features of the multinational enterprises.²⁴ This means that despite the integration goal and the assimilation of nationally-operating enterprises where this is possible (as noted earlier these enterprises are expected to adhere to the standards of the Declaration whenever relevant - a particular ILO formulation of the principle of non-discrimination between multinational and other enterprises²⁵), the Declaration remains a specific text on multinational enterprises and social policy. The Declaration does not contain specific recommendations for transnational consultations, or even negotiations, between workers (or their international organisations) and the multinational enterprise as a whole. It is evident that it was not possible to reach consensus in the tripartite ILO setting on these still controversial matters. However, the provisions of the Declaration would by no means be in the way of such transnational industrial relations contacts. They are left to the initiative of multinational employers and workers, i.e. in practice to the strategies and strength of the international and national unions concerned.
- (iv) The Declaration ascribes a leading role to multinational enterprises in various social fields, in particular where the enterprises operate in developing countries (e.g. in the fields of security of employment, training, and safety and health). Other provisions recommend that the enterprises furnish the best prevailing wages and benefits. Generally speaking, it can be said, therefore, that the Declaration expects multinational enterprises to be model employers wherever they operate.
- (v) Finally, the Declaration is a voluntary instrument. This was one of the conditions under which consensus on its adoption could be reached. Its voluntary character does not imply, however, that the Declaration can be easily discarded by its addressees. The Declaration has the authority of a world-wide accepted instrument adopted by all parties of the tripartite structure of the ILO. Furthermore, in a good number of cases, national governments and/or organisations of employers and workers have made additional, and often joint, statements indicating

expressly that the Declaration contains standards they expect to be applied in their countries or by their members. It may also be recalled that non-mandatory regulations in the industrial relations field have a long tradition, and play an important role, inside the ILO and in many of its member countries.²⁶ Certainly, effectiveness of standards in the context of multinational enterprises cannot be simply equated with a certain legal nature of the instrument. The follow-up on the Declaration has shown that the voluntary ILO instrument has, indeed, produced tangible results in the past few years of its existence. Still, parts of the ILO membership, the workers in general as well as certain countries, while recognising the substantive value of the provisions of the Declaration, seem in the long-term to prefer a mandatory instrument in the form of an International Labour Convention.²⁷

Follow-up on the Tripartite Declaration

Follow-up obligation at the national or at the international level, does not automatically arise from a Declaration which is a voluntary,²⁸ not legally enforceable, instrument. As regards the national level, experience has shown, however, that many of the ILO member States have endeavoured to follow-up the Declaration in various ways, such as through formally declaring its acceptance or recommending, sometimes jointly with national organisations of employers and workers, the application of its provisions.²⁹ And governments, national and international organisations of employers and workers have undertaken a variety of other promotional measures, such as translations and reprints of the Declaration, announcements in its favour, guidance of members regarding its use, the organisation of seminars on the subject and similar activities. In an appreciable number of instances, detailed tripartite consultations have been held in connection with the first reports by governments on the effect given to the Declaration in 1978/79.

It may be added that tripartite consultations regarding the Declaration by governments, employers' and workers' organisations and the multinational enterprises themselves have been especially recommended by the Governing Body committee meeting considering first government reports (September 1980).³⁰ But it is eventually up to the States (and the other addressees of the Declaration) themselves to decide if, and in which way, they may undertake follow-up measures within their competence, including a possible insertion of some of the principles in national legislation.³¹

Since no single state has legal authority over a multinational enterprise as a whole because of its border-crossing nature³², international follow-up to supplement measures at the national level is a logical step. It can be of a bilateral nature (co-operation between states on the initiative of one or the other government - as advocated in para. 12 of the Declaration) and can take place inside or outside international

institutional arrangements. International follow-up can be undertaken also by the international organisation which has adopted the underlying text. This latter type is particularly developed in the case of the ILO.³⁵ The relation between national and international follow-up measures to the Declaration (as in the case of other instruments of this nature) must be one of co-operation and should not be seen as a question of subordination.

Follow-up on ILO instruments, especially Conventions and Recommendations of the International Labour Conference (provided for in the Constitution of the International Labour Organisation), but also on resolutions or conclusions adopted by various other ILO bodies, is a firmly established procedure in the ILO. A variety of such follow-up procedures exist and a great many are based on government reports. It was, therefore, to be expected that ILO follow-up would also be undertaken in the case of the Declaration. In the circumstances, provisions for the supervision of the application of ratified Conventions (Articles 22, 24 and 26 of the ILO Constitution) and for non-ratified Conventions and Recommendations (Article 19) were neither directly nor by analogy applicable. Clearly, a non-mandatory Declaration "... cannot create a legal obligation to report".³⁴ The major precedent for ILO follow-up without a legal obligation was given by the follow-up procedure set up for conclusions and resolutions of Industrial and analogous Committees.³⁵

It is thus not surprising that already at its 205th Session (February-March 1978) the ILO Governing Body decided to request governments to report periodically on the effect given to the Declaration after full consultation with employers' and workers' organisations³⁶; and to ask for a first report to be made two years after the communication of the Declaration to governments (and through them to employers' and workers' organisations), i.e. at the end of 1979.³⁷

After clarifying discussions on the outstanding procedural matters at its 205th Session (February/March 1978) and at its 208th Session (November 1978), the Governing Body adopted at its 209th Session (February/March 1979) the questionnaire for the final reporting³⁸, established the composition of the body to consider these first reports (a fifteen member ad hoc Tripartite Governing Body committee)³⁹ and determined its terms of reference as follows:

- (a) to make a factual survey of the degree of acceptance of the terms of the Declaration and of patterns of action to give effect to it;
- (b) to consider difficulties or inadequacies which may be exposed by the survey and to suggest ways of dealing with them;

- (c) to advise on further follow-up procedures, including the frequency of further reports, the manner of considering them and procedures for the examination of disputes concerning the application of the Declaration.⁴⁰

A consensus had thus evolved that the emphasis in examining the government reports should be placed on a general survey of experience obtained with the Declaration rather than in the behaviour of individual enterprises, bearing in mind the non-mandatory nature of the underlying instrument.⁴¹ At the same time these terms of reference recognised the possible need of developing procedure for the examination of disputes regarding the application of provisions of the Declaration.

The ad hoc Governing Body committee met from 22-26 September 1980 to consider government reports on the Declaration for 1978/79. It had before it a summary of those reports prepared by the Office⁴² as well as an informal analytical review of the replies.⁴³ Fifty-six governments from all regions of the world had responded to the ILO request, including practically all major home countries of multinational enterprises and a good number of host countries from the developing regions. Three of these governments informed the Office that they were unable to draw up a report this time. A considerable number of governments indicated specifically that they had consulted in the reporting process the employers' and workers' organisations for preparing their replies.⁴⁴

There was rather wide agreement in the Committee that the first ILO follow-up had shown, on the whole, a good degree of acceptance of the Declaration, although there was some difference of opinion, especially between employer and worker members, regarding difficulties or inadequacies exposed by the survey. The workers members mentioned in particular incomplete information provided by some multinationals and highlighted certain problems experienced in the areas of employment policies and industrial relations, including consultations. Some of these were also recognised by the employers who felt, however, that the survey had not revealed any major difficulties necessitating special action at the present stage. They agreed with the workers that it was important to further advance the application of the Declaration through promotional measures at the national level, tripartite consultations and reporting on it in full consultation with the organisations. The views of the government members conformed with this general pattern.

It was generally felt that the ILO survey had produced a considerable amount of information which provided a solid basis for the Committee to fulfil its mandate. At the same time, some members were of the opinion that, in certain cases, governments had to improve their machinery to enable them to provide more complete answers.⁴⁵ As regards point (c) of its mandate (further follow-up procedures), the Committee made a number of recommendations to the Governing Body, which can be summarised in essence as follows:

- (i) Creation of a Standing Committee of the ILO Governing Body (with a similar composition as the 1980 ad hoc committee), to be entrusted with the consideration of future government reports and other functions as mentioned hereafter.
- (ii) A new round of government reports on the effect given to the Declaration to be undertaken in three years time, covering the period 1980-82.
- (iii) New studies should be conducted by the Office specifically relevant to areas covered by the Declaration, such as (to mention some illustrative examples) on manpower plans of multinational enterprises and related information/consultation on special investment incentives; and on the transfer to host countries of information on safety and health by these enterprises. The studies on the employment effects of multinational enterprises should be continued. These studies would be brought to the attention of the Standing Committee which might also provide guidance for future studies.
- (iv) Possibility for governments, and under certain circumstances, representative organisations of employers and workers in a member country, to request from the ILO an interpretation of a dispute over the application of its provisions regarding issues that cannot be considered through appropriate national machinery or other existing ILO procedures (such as those relating to the application of International Labour Conventions and Recommendations or the special ILO freedom of association machinery). Replies to such requests for interpretation would be prepared by the Office using all appropriate sources of information; and the proposed replies would be examined by the Standing Governing Body Committee preparatory to consideration by the Governing Body.⁴⁶

- (v) Promotional measures at the national level regarding the observance of the Declaration and consultative tripartite arrangements regarding follow-up of the Declaration. These include recommendations for tripartite consultation arrangements regarding follow-up of the Declaration, in accordance with national law and practices, taking into account the aims of the Tripartite Consultations (International Labour Standards) Convention, 1976 (No. 144) and the Tripartite Consultations (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).
- (vi) Sole responsibility of the ILO for the implementation and interpretation of the Declaration in appropriate co-ordination with the United Nations and other organisations.⁴⁷

These recommendations were endorsed by the Governing Body at its 214th Session (November 1980). Composition and certain procedural aspects of the proposed Standing Governing Body Committee on Multinational Enterprises were decided upon at the 216th Session (May 1981) of the Governing Body.⁴⁸ The composition of this new Standing Governing Body Committee is 18 titular members (6 from each of the three groups). Meetings of the Committee to examine proposed replies for requests for interpretation of the relevant provisions of the Declaration will be declared private and only titular members, or substitutes replacing such members, can attend. As regards other meetings, the normal practice with respect to public meetings of other Governing Body Committees will be followed.⁴⁹ The new Committee will meet for the first time in November 1981 in conjunction with the 218th Governing Body Session.

With these developments, especially with the new possibility of attending to particular issues relating to disputes regarding the application of the Declaration, the ILO has broken new ground and considerably enhanced its procedure for the implementation of the Declaration.

Relationship with instruments of other organisations

The proliferation of codes adopted or presently prepared by various international organisations raises problems of coherence and institutional co-operation in the interest of their effectiveness and usefulness. For the ILO Declaration, appropriate linkages with and demarcations to other instruments are obviously important, which cover, or may cover, provisions in the labour field, in which the ILO has a world-wide competence. This is true in particular for the United Nations Code of Conduct, which is at an advanced drafting stage,⁵⁰ and the OECD Guidelines for Multinational Enterprises⁵¹, adopted in June 1976.

As mentioned before, the ILO a specialised UN agency in the labour field, has viewed, from the outset, its Declaration as a contribution to the wider efforts of the United Nations. The ILO-preferred solution to achieve this aim was the integration of its text into the UN Code through a cross-reference, a solution by which the possible adoption of conflicting provisions for the UN Code would be avoided. This preference was stressed

in the letter⁵² transmitting the ILO Declaration to the United Nations. The letter indicated, in this connection, that the Declaration must be viewed as a whole, and taken as a whole, reflected an agreed position in the ILO. While the working paper prepared for the Intergovernmental Working Group on this matter noted also some other alternatives⁵³; the Working Group eventually followed the course of action preferred by the ILO. At its sixth Session (January 1979) it decided to use for further discussion a draft text by the Centre on Transnational Corporations⁵⁴, for a cross-reference to the ILO Declaration to cover the "employment and labour field".⁵⁵ Finally, at its fourteenth Session (May 1981), the Intergovernmental Working Group agreed on the following text to be placed in one of the introductory substantive parts of the UN 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 fields of employment, training, conditions of work and life, and industrial relations."⁵⁶

With the integration through a cross-reference of the ILO Declaration into the United Nations Code it is necessary also to arrive at an appropriate co-ordination of the follow-up activities relating to both instruments. Logically, the organisation having evolved the instrument is best equipped to develop international follow-up procedure. The Governing Body (in endorsing the recommendations for further follow-up on the ILO Declaration, proposed by the September 1980 ad hoc Governing Body Committee Meeting) therefore decided at its 214th Session (November 1980) that the ILO should retain sole responsibility for the implementation and interpretation of the Declaration, while ensuring appropriate co-ordination with the United Nations and other organisations.⁵⁷ As far as can be seen from the discussions held thus far, this seems in line with the UN's intents.⁵⁸

Similar forms of integration in the UN Code as in the case of the ILO Declaration might be later adopted also for other specialised instruments prepared in the UN system, in particular, the UNCTAD codes on Restrictive Business Practices (RBP Code) and on Transfer of Technology (TOT Code, still to be completed). In this way the UN Code would evolve an umbrella function for the various specialised texts.⁵⁹

The relationship between the ILO and the OECD Guidelines is likewise of considerable interest. These OECD Guidelines have been operational for a number of years and represent widely accepted standards in the major home countries of multinational enterprises. All of the OECD countries are ILO member States. The exchange of experience between both organisations had made it possible, fortunately, to obtain full compatibility of the overlapping provisions of the OECD Guidelines and the ILO Declaration in the labour field.

The compatibility of the texts has been recognised by the OECD in its 1979 Review of the Guidelines. It was noted that whenever the ILO principles "refer to the behaviour expected from enterprises, they parallel the OECD Guidelines and do not conflict them. They can, therefore, be of use in relation to

the OECD Guidelines to the extent that they are of a greater degree of elaboration."⁶⁰ The compatibility of both instruments was further enhanced with the introduction in the OECD Guidelines, during the 1979 review, of provisions rejecting as unfair labour practice the transfer of employees from a foreign affiliate in order to influence unfairly bona fide negotiations with employees or the right to organise. Similar provisions were already contained in the ILO Declaration. It is clear, on the other hand, that the "... responsibilities for the follow-up procedures of the OECD Guidelines and of the ILO Declaration are institutionally separate".⁶¹ And, unlike in relation between the ILO Declaration and the UN Code, certain differences and also some duplication of follow-up procedures exist.⁶²

Mention might also be made of the (some 25) "cases", i.e. claims by governments or by unions (presented by TUAC⁶³) that the behaviour of certain companies raised general issues with respect to the application of the OECD Guidelines. Issues thus considered by the OECD's IME Committee⁶⁴, which provides the related explanations of the Guidelines, were found to have existed in the following main areas: general policy objectives of member countries with respect to multinationals; responsibility of parent companies; disclosure of information; right of employees to be represented by trade unions and other bona fide organisations of employees; protection of employees; changes of operations having major effects upon the livelihood of employees; unfair influence in bona fide negotiations with employees; and access to corporate decision-makers.⁶⁵ Practically all these issues touched upon industrial relations matters and are therefore also of interest in connection with the parallel provisions in the ILO Declaration and, in particular, with the new ILO procedure for disputes concerning the application of the Declaration.

A newcomer to the scene is the draft EEC Directive on procedures for informing and consulting the employees of undertakings with a complex structure, in particular transnational undertakings, submitted (on 24 October 1980) by the Commission of the European Communities to the Council of Ministers.⁶⁶ The draft has been referred to the EEC's Economic and Social Committee and will also be discussed by the European Parliament for non-binding opinions before it can be adopted by the Council of Ministers. According to the Commission "The same objectives as those enshrined in international instruments that are not legally binding, such as the OECD Guidelines and the ILO Tripartite Declaration, will be followed with regard to the activities of transnational firms, but they will be achieved in a Community context by means of methods appropriate to the Community's peculiar circumstances and needs".⁶⁷

Thus the draft Directive indicates that the member States "... shall introduce the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification",⁶⁸ i.e. the provisions will obtain mandatory status in the EEC countries. The draft Directive

foresees that the EEC-based decision-making centre of each multinational (or complex national) enterprise, or the undertaking with the largest workforce as regards non-EEC multinationals, is to provide an information statement on major economic and labour matters to subsidiary management for communication to employee representatives. It also provides for prior consultation rights to employee representations regarding certain planned decisions of enterprises concerning all, or the main parts, of a firm or its subsidiaries if they are "liable to have a substantial effect on the interests of its workers" (Art. 12,1). The Commission sees a need to harmonise the obligations for multinationals both in and outside the EEC.⁶⁹

While the unions consider the draft Directive a major breakthrough,⁷⁰ business is critical as it feels that the Directive is unnecessary, given existing Community directives, national laws and practices, relevant OECD Guidelines and ILO Declaration provisions and the administrative costs involved for the enterprises.⁷¹ Further developments need to be awaited.

It has been observed that despite the proliferation of codes for multinationals thus far a "... remarkable degree of co-ordination and even division of labour"⁷² has been achieved by international organisations. To the extent that this statement is true, the compatibility and complementarity of the codes and related procedures is, however, not an automatic process but the result of conscious effort, learning from each other, and accommodation. This needs to continue in the interest of achieving effective standards.

Notes

¹ Among these are a resolution of the Sixth Asian Regional Conference (1968), a resolution of the Ninth Conference of American Member States (1970) and a resolution of the Ninth Session of the ILO Metal Industries Committee (No. 73, January 1971).

² Hans Günter (ed): Transnational industrial relations: The impact of multinational corporations and economic regionalism on industrial relations (London, Macmillan, 1972).

³ Resolution concerning the social problems raised by multinational undertakings, adopted unanimously on 23 June 1971 at the 56th Session of the International Labour Conference, para. 3.

⁴ To designate the type of enterprise in question, the terms "multinational undertaking", "multinational corporation" and "multinational enterprise" were used variously and with broadly the same connotation in these earlier years of ILO activity in the field. As time went on "multinational enterprise" became standard terminology in the ILO. This is also the case in the OECD while the UN, likewise after some variations of usage has eventually adopted (but not precisely defined as yet) the term "transnational corporation".

⁵ GB.185/14/31, para. 10

⁶ *ibid.*

⁷ The relationship between multinational corporations and social policy, MNC/DI, ILO, Geneva 1972, later published as Part I of Multinational enterprises and social policy (Geneva, ILO, 1973).

⁸ The conclusions of the meeting are reproduced in Multinational enterprises and social policy, op. cit., pp. 175-176.

⁹ These were a study on wages and labour conditions in these enterprises; a short survey on their employment and training; a study on industrial relations experience with multinationals in Western Europe; and a sectoral study on the labour practices of multinational enterprises in the metal industry.

¹⁰ GB.198/5/6, para. 71

¹¹ See the conclusions of the meeting in GB.200/6/17 (Appendix I).

¹² *ibid.*, para. 5.

¹³ Recent areas studied by the ILO include labour practices of multinational enterprises in metal trades, the petroleum industry and the textile and clothing industries, training practices of multinational enterprises and their effects on development, information and consultation practices of multinationals as regards their manpower plans; as well as comprehensive research on world-wide, regional and country-wide effects on employment resulting from the operation of these enterprises. A new study is concerned with the employment implications of the enterprises' technology choice. Orientation for the ILO's research programme on multinational enterprises was provided by the 1976 Tripartite Advisory Meeting mentioned before. Additional subjects for studies by the Office have been recently suggested by Governing Body ad hoc Committee considering first reports on the effect given to the Declaration, which met in September 1980 (GB.214/6/3, para. 85.III). The ILO research programme, as its other activities on multinationals, are closely co-ordinated with the United Nations Centre on Transnational Corporations (UN/CTC). For an analytical review of the ILO research programme on multinationals see Hans Günter: ILO Research on multinational enterprises and social policy: An overview, Multinational Enterprises Programme Working Paper No. 15 (Geneva, ILO, 1981). It also contains a complete list of ILO publications in the field which number more than fifty.

¹⁴ The exchange of views took place during the discussion of the agenda item "the Role of Multinational Enterprises in Employment creation in Developing Countries". The Conference was unable to reach a conclusion on this subject. For a detailed presentation of the views of the various groups see Part V of the "Declaration of principles and programme of Action" adopted by the World Employment Conference (reproduced as Appendix I to GB.201/3/2).

As regards the employers' acceptance of the need for a tripartite declaration, a leading employer participant in its preparation has noted "... I am convinced that employers made the right choice in co-operating at that stage in the production of the Declaration. Had we refused to co-operate governments would have turned hostile and at the most there would have been a highly unfavourable conference discussion, and there would have been attempts to have conventions and other regulations which would have been unproductive." (J.A.G. Coates: "ILO Tripartite Declaration concerning multinational enterprises and social policy", International codes of conduct, Confederation of British Industry, June 1981, p. 19).

¹⁵ This group held three four-day meetings in January, March and March/April 1977.

16 GB.201/5/3, para. 11.

17 Included as Appendix II to its report to the Governing Body. In Appendix I it proposed the text of a preamble for the Tripartite Declaration of Principles (see GB.203/6/2). In its report the reconvened Tripartite Advisory Meeting also addressed briefly the question of a follow-up procedure and reaffirmed the desirability for the ILO Declaration to be incorporated, in an appropriate way, in the UN Code.

18 Francis Blanchard, ILO Director-General, in his Preface to the ILO Declaration, published in late 1977 (ISBN 92-2-101896-2).

19 The list is as follows:

Conventions

- Convention (No. 29) concerning Forced or Compulsory Labour, 1930.
- Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise, 1948.
- Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949.
- Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951.
- Convention (No. 105) concerning the Abolition of Forced Labour, 1957.
- Convention (No. 110) concerning Conditions of Employment of Plantation Workers, 1958.
- Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, 1958.
- Convention (No. 115) concerning the Protection of Workers against Ionising Radiations, 1960.
- Convention (No. 119) concerning the Guarding of Machinery, 1963.
- Convention (No. 122) concerning Employment Policy, 1964.
- Convention (No. 130) concerning Medical Care and Sickness Benefits, 1969.
- Convention (No. 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971.
- Convention (No. 136) concerning Protection against Hazards of Poisoning arising from Benzene, 1971.
- Convention (No. 139) concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974.
- Convention (No. 142) concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975.

Recommendations

- Recommendation (No. 35) concerning Indirect Compulsion to Labour, 1930.
- Recommendation (No. 69) concerning Medical Care, 1944.
- Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951.
- Recommendation (No. 92) concerning Voluntary Conciliation and Arbitration, 1951.
- Recommendation (No. 94) concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking, 1952.
- Recommendation (No. 110) concerning Conditions of Employment of Plantation Workers, 1958.
- Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation, 1958.
- Recommendation (No. 114) concerning the Protection of Workers against Ionising Radiations, 1960.
- Recommendation (No. 115) concerning Workers' Housing, 1961.
- Recommendation (No. 116) concerning Reduction of Hours of Work, 1962.
- Recommendation (No. 118) concerning the Guarding of Machinery, 1963.
- Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer, 1963.
- Recommendation (No. 122) concerning Employment Policy, 1964.
- Recommendation (No. 129) concerning Communications between Management and Workers within the Undertaking, 1967.
- Recommendation (No. 130) concerning the Examination of Grievances Within the Undertaking with a View to their Settlement, 1967.
- Recommendation (No. 134) concerning Medical Care and Sickness Benefits, 1969.
- Recommendation (No. 144) concerning Protection against Hazards of Poisoning arising from Benzene, 1971.
- Recommendation (No. 147) concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974.
- Recommendation (No. 150) concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975.

²⁰ Where a Convention has been ratified, the country concerned is obliged to apply its standards to all enterprises in the country, national as well as multinational, irrespective of whether it implements the Convention by means of legislation or otherwise. The standards contained in Recommendations or in unratified Conventions may nevertheless be included, in whole or in part, in national law. Certain basic international labour standards concerning freedom of association, non-discrimination in employment and employment security are recommended by the Declaration for guidance even where they may otherwise not be complied with.

²¹ The Declaration is thus one of the first ILO instruments to mention the goal of a New International Economic Order (NIEO) as a guiding principle for the behaviour of the ILO tripartite constituents, including here multinational management.

22 Nicholas Valticos: International Labour Law (Deventer, Kluwer, 1979) includes in this category of "less formal instruments" also the resolutions adopted by the International Labour Conference, resolutions and conclusions of industrial committees, technical regional conferences and meetings, etc. (p. 59). Hans W. Baade notes in this connection that the Declaration is "... an instrument not contemplated in the Constitution of the ILO". ("The Legal Effects of Codes of Conduct for Multinational Enterprises", in Norbert Horn (ed): Legal problems of codes of conduct for multinational enterprises, (Deventer, Kluwer, 1980), p.6).

23 Such a dialogue appears needed, in particular, to work out flexible, situation-specific solutions. In view of the universal character of the Declaration, many of its provisions had to be couched in rather general terms.

24 Paragraph 17 on consultation with host country authorities and employers' and workers' organisations; para. 18 on priority to be given to the employment of host country nationals; paras. 19 and 20 on technology adaptation and subcontracting in developing countries; para. 30 on training; para. 37 on safety and health; para. 51 on authorised representatives for the conduct of negotiation and para. 54 on information provision to workers' representatives, etc.

25 The principle of non-discrimination between both types of enterprises has found detailed recognition by the OECD; the OECD Guidelines are accompanied by a particular Decision of the OECD Council on National Treatment for Multinationals.

26 Most developed in the Anglo-Saxon countries.

27 Or several International Labour Conventions.

28 This is different in the case of Recommendations adapted by the International Labour Conference, the main type of non-obligatory ILO instrument. In virtue of ILO Constitution Art. 19, paras. 5-7, member States are under the obligation to report on them.

29 Such tripartite statements have been made, for instance, in the Netherlands, the United Kingdom and in Sweden.

30 GB.214/6/3, para. 85.V and VI.

31 See in this connection, Transnational corporations: Certain modalities for implementation of a code of conduct in relation to its possible legal nature, Commission on Transnational Corporations, Intergovernmental Working Group on a Code of Conduct, Sixth Session, 8 - 9 January 1979, E/C.10/AC.2/9, para. 32.

32 *ibid.*

33 See in this context: Issues covered in the Formulation of a Code of Conduct, paper prepared by the Centre on Transnational Corporations for the Economic and Social Council, July 1976 (Doc. E/C.10/17, para. 169).

34 GB.205/10/2, para. 6.

35 Paragraph 24 of the Purpose and Functions of Industrial and Analogous Committees, adopted by the Governing Body in 1963.

36 The participation of the enterprises themselves in this procedure was thus mainly envisaged through the consultation of the employers' organisations. This would not have impeded, naturally, that governments might have wished to contact enterprises directly for that purpose. Such direct contacts appear to have been an exception as far as the first reporting on the Declaration was concerned.

37 Governing Body Record of Decisions 205/205/para. 17. The governments of the ILO member countries were informed of this decision in June 1978.

38 The questionnaire was transmitted to the governments of the ILO member countries in June 1979 with the request to complete it by the end of the year. As the Declaration is aimed at addressees in the home and host countries, it was up to the governments themselves in the first instance, to decide whether they were actually concerned. The questionnaire was modelled very much on the report form used for reporting on ratified Conventions since the Declaration is a detailed normative text composed of 58 paragraphs. It was made perfectly clear, however, that the survey was intended to provide information on the effect given and the experience gained with a voluntary instrument. It was also recognised that for the first follow-up survey complete information might not be available in all cases.

39 In line with the standard practice in the ILO, regarding Governing Body Committees, non-governmental organisations with consultative status (IOE, ICFTU, WCL, WFTU, OATUU and the International Co-operative Alliance) were entitled to be represented at the Committee meeting. As regards international organisations, the Governing Body decided to limit invitations for this first follow-up meeting on the Declaration to the two with the most directly relevant experience in the field, *viz.* the United Nations (UN/CTC) and the OECD. These organisations and the ILO have formal agreements regarding mutual representation at meetings.

40 GB.209/2/3, para. 9.

41 It was in line with this understanding that in its working documents prepared for the Committee to consider the first government reports, the Office did not mention the names of enterprises although this had been done in some of the replies received. This was confirmed by the Committee as a good practice to be continued in future. It may be noted that a similar understanding exists in the OECD. Its 1976 Decision on Intergovernmental Consultative Procedure on the Guidelines for Multinational Enterprises states that the OECD Committee in question (the IME Committee - Committee on International Investment and Multinational Enterprises) "... shall not reach conclusions on the conduct of individual enterprises". Decision of the Council on Intergovernmental Consultations on the Guidelines for Multinational Enterprises, para. 3, reproduced in OECD: International investment and multinational enterprises (Paris, 1976).

The principle was reaffirmed during the 1979 Review of the OECD Guidelines. It is thus noted in para. 84 of International investment and multinational enterprises: Review of the 1976 declaration and decisions (Paris, 1979) that the IME Committee "... was not seen as a juridicial or quasi-juridicial forum"; but that details of specific cases had been used as "... illustrations of issues arising under the Guidelines. This approach has proved to be useful for the purpose of clarifying the meaning of the Guidelines in the light of specific problems and resulted in the explanatory comments included in the present report" (ibid.). It is a fact, however, that the OECD discussions on the issues raised by cases of real or alleged non-observance of the OECD principles by certain multinationals had had in part a practical effect on the behaviour of some of the individual enterprises in question.

42 Summary of reports on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, GB/MNE/1980/D.1. The document relates to the communications of the following 52 countries: Argentina, Australia, Austria, Belgium, Burma, Byelorussian SSR, United Republic of Cameroon, Canada, the Comoros, Cuba, Cyprus, Denmark, Dominican Republic, Egypt, Ethiopie, Fiji, Finland, France, Federal Republic of Germany, Guyana, India, Iraq, Ireland, Italy, Japan, Kenya, Kuwait, Lebanon, Liberia, Malawi, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Poland, Rwanda, Seychelles, Spain, Swaziland, Sweden, Switzerland, Syria, Turkey, USSR, United Kingdom, United States and Uruguay. Four late government replies not summarised in this document were from Columbia, Ghana, Luxemburg and Portugal. These, together with two reports of workers' organisations having sent new observations otherwise than through the respective governments were likewise submitted to the Committee. The Committee provided guidance for the future treatment of such cases in Office documents. It recommended to this effect that "Observations by such employers' and

workers' organisations received by the ILO otherwise than as part of government reports could be used in the preparation of the Office documentation after they had been referred to the government concerned in accordance with the usual ILO practice" (GB.214/6/3, para. 85.I.c).

43 Analytical Review, ILO/MULTI, September 1980.

44 When this was the case governments either appended the reservations of the organisations to their own report or incorporated them. It could not be determined from the other replies whether such consultations had been undertaken or not.

45 Report of the Committee to Consider Reports on the Effect Given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Geneva, 22-26 September 1980 (GB.214/6/3).

46 A certain precedent for this new procedure for disputes concerning the application of the Declaration is given by the existing ILO interpretation procedure for Conventions and Recommendations. The ILO Constitution provides (in Art. 37) that any question or dispute relating to the interpretation of the Constitution itself or of International Labour Conventions must be submitted to the International Court of Justice (formerly the Permanent Court of International Justice). This provision has been resorted to only on a few occasions during the early years of the Organisation's existence. However, the Director-General of the International Labour Office is frequently consulted by governments concerning the interpretation of Conventions and Recommendations. In communicating the Director-General's replies to such requests the reservation is made that the ILO Constitution does not contain provisions authorising him to interpret the decisions of the Conference. The Director-General's opinions (memoranda by the International Labour Office) are submitted to the Governing Body for information and published in the Official Bulletin of the International Labour Office.

The ILO procedure for disputes concerning the application of the Declaration bears some resemblance also to the OECD procedure regarding the classification of provisions of the OECD Guidelines. These are undertaken by the Committee on International Investment and Multinational Enterprises within the framework of intergovernmental consultations (see R. Blanpain: The OECD guidelines for multinationals: Labour relations experience and reviews 1976 - 1979 (Deventer, Kluwer, 1980)). See also footnote 41 of this paper. Both the ILO and the OECD procedures focus on the issues raised by a dispute regarding the application of the respective instruments. No conclusions are to be reached on the conduct of individual enterprises.

47 For further details of these recommendations, see GB.214/6/3, para. 85.

48 GB.216/17/7.

49 *ibid.*, para. 9

50 The UN Intergovernmental Working Group on a Code of Conduct, a body created by the UN Commission on Transnational Corporations (itself reporting to the Economic and Social Council) to draft the UN Code has held fourteen sessions since January 1977. The Group consists of all the 45 members of the Commission. It is assisted in its work by 15 expert advisors with backgrounds in business, trade unions, the academic community and other interest groups. Approximately two-thirds of the text provisions (some still heavily bracketed) have been concluded by now. The group has requested three more sessions to be held in 1982 to complete its work. This request has been approved by the Seventh Session of the Commission (Geneva, 31 August - 11 September 1981) and transmitted on its behalf to ECOSOC. Some of the major outstanding questions are: the legal nature of the Code, its international follow-up and, finally, the definition of a multinational enterprise to be applied. It is expected that the UN Code will eventually take the form of a General Assembly Resolution.

51 Reproduced in OECD: International investment and multinational enterprises, op. cit.

52 Letter of 19 December 1977, reproduced in Annex 2 to document E/C.10/AC.2/3.

53 The following options were mentioned in this paper:
"(a) No mention of matters relating to employment and labour would be made in the Code, with the understanding that this area belongs to the competence of ILO and is covered by relevant instruments of that Organisation;
(b) A separate section on employment and labour would be written with due account to the work of the ILO as expressed in conventions and recommendations and the Declaration of Principles; and in effect summarise its salient features;
(c) A simple cross-reference to the ILO Declaration would be made, which text would be appended to the United Nations Code, as suggested by the Governing Body of the ILO;
(d) The Declaration would be incorporated as such in the body of the United Nations Code itself.
The first and last options reflect two positions, both of which present problems. It seems obvious that to have no mention of employment and labour would negate the discussions in the Intergovernmental Working Group so far." (E/C.10/AC.2/5, extracts from paras. 99 and 100).

54 Working Paper No. 4/Rev. 1, prepared for the January 1979 meeting of the Intergovernmental Working Group.

⁵⁵ See also Report of the intergovernmental working group on a code of conduct on its fifth, sixth and seventh sessions, E/C.10/46, 11 April 1979, para. 17.

⁵⁶ Report of the intergovernmental working group on a code of conduct at its fourteenth session, E/C.10/79, 26 June 1981, para. 17 and Annex I, p. 12.

The Working Group adopted, at its fourteenth session also a provision on information disclosure by transnational corporations to trade unions or other representatives of employers which it deemed necessary in view of the wider scope of the UN Code as compared to the ILO Declaration. This provision (para. 44a of the draft Code), which is harmonised with the Declaration and Recommendation No. 129, the relevant general ILO instrument in the context, reads as follows:

"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 practice, 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." (ibid. Add. 1, Annex I, p. 2 and Add. 2, para. 7).

⁵⁷ GB.214/6/3, para. 85.VII.

⁵⁸ Both the chairman's formulations and the proposals of the Group of 77 regarding follow-up note in this connection that: "The Commission will act as the focal international body for all matters relating to the Code. It will establish and maintain close contacts with other United Nations Organisations and specialised agencies dealing with matters relating to the Code and its implementation with a view to co-ordinating steps taken for the promotion and application of the Code. When matters covered by international agreements and arrangements which have been worked out in other United Nations forums specifically referred to in the Code arise, the Commission will

forward such matters to the competent bodies charged with the implementation of such agreements or arrangements." The question of follow-up on the UN Code together with other outstanding matters will be decided upon during the last three sessions of the UN Working Group to be held in the first half of 1982. The Working Groups' report is to be submitted to the 8th (1982) session of the Commission on Transnational Corporations. (Chairman's Formulations E/C.10/AC.2/14, para. 5.g and, Group of 77, CRP No. 26/Add. 3).

59 The development of the UN Code is, for instance, presented in Werner I. Feld: Multinational corporations and UN practices: The quest for codes of conduct (New York, Pergamon Policy Studies, 1980).

60 OECD: International investment and multinational enterprises: Review of the 1976 declaration and decision, op. cit., para. 30.

61 Ibid., para. 30.

62 For instance, while until recently the OECD, contrary to the ILO, had no formal reporting by governments on the application of its Guidelines, this is now foreseen as a periodic event as a result of the 1979 review. The first reporting of that type will be undertaken within the 1982 mid-term report on all elements of the 1976 Declaration (the Guidelines and the texts on National Treatment; and on International Investment Incentives and Disincentives. Such OECD reporting will also extend to the provisions of the Guidelines overlapping in substance with the ILO Declaration. (OECD: International investment and multinational enterprises: Review of the 1976 declaration and decision, op. cit., para. 22.) Likewise, after the 1979 Review, the OECD member countries have been asked to establish national contact points for handling enquiries and for further promotional and educational efforts to make more widely known at the national level the content of the Guidelines and the way in which they are to be implemented. (For further details, see OECD: National contact points: Action by Member Governments to promote the OECD Guidelines for multinational enterprises (Paris, Sept. 1980).) The ILO, for its part, has not recommended the creation of specific local institutions for the promotion of the Declaration. It has requested tripartite consultations in the member countries regarding follow-up of the Declaration, in accordance with national law and practice, taking into account the aims of existing international tripartite consultation norms, viz. the Tripartite Consultations (International Labour Standards) Convention, 1976 (No. 144) and the Tripartite Consultations (Activities of the International Labour Organisation) Recommendation 1976 (No. 152) (see GB.214/16/3, para. 85.V). It is left up to the governments to decide whether specific institutional arrangements would be desirable in connection with the ILO Declaration.

63 The OECD's Trade Union Advisory Committee. There exists also a Business Advisory Committee (BIAC) which in connection with the follow-up to the Guidelines has parallel functions.

64 Committee on International Investments and Multinational Enterprises (mentioned before).

65 For more information on these "cases", see OECD: Review of the 1976 Declaration and Decision, op. cit., para. 22; and for a summary account of the explanations provided by the IME Committee, paras. 28 - 39. A detailed analysis of the major "cases" is given in Roger Blanpain: The OECD Guidelines for multinationals: Labour relations experience and reports, op. cit.

66 Official Journal of the European Communities, C.297, 15 November 1980.

67 Employee information and consultation procedures, Bulletin of the European Communities, Supplement 3/80, p.6.

68 Draft EEC Directive, article 17.1.

69 It notes in this connection the following "... Finally, the Commission recalls that the OECD and the ILO are continuing their work in this field and that it intends to participate actively in these proceedings, in particular with a view to ensuring that as soon as possible multinational undertakings based outside the Community are subject to the same obligations as those based within" (Bulletin of the European Communities, op. cit., p. 6).

70 European Trade Union Congress (ETUC) press release 110/80.

71 United States Council of the International Chamber of Commerce: International Labor Affairs Report, Nov. 1980, pp. 3 - 6, referring to the viewpoints expressed by the Union of Industries of the European Community (UNICE).

72 Hans W. Baade: "Codes of conduct for multinational enterprises: An introductory survey", in Norbert Horn (ed), op. cit., p. 440.