The International Labour Office Declaration of Multinational Enterprises and the International Code of Conduct Movement

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I. INTRODUCTION

Since the mid-1970s international organizations have started to concern themselves with the drafting of codes of conduct for multinational enterprises. As more and more organizations have become involved in this process, it is perhaps not exaggerating to speak of an international code of conduct movement. The movement has been initiated by pressures from a number of governments that host multinationals, especially in the Third World, and from trade union organizations, which have succeeded in establishing the political alliances necessary to have international organizations act on the matter.

Today, virtually the whole membership of the international organizations concerned has become convinced that although these new instruments are not all legally binding, they can nonetheless play a useful role, both in the relations between multinational enterprises and the parties with which they deal at the national level, and for international relations in general.1 The United States has prominently participated in the preparation of the existing and evolving codes of conduct, especially in the preparation of the International Labour Office (ILO) Declaration on Multinational Enterprises and Social Policy.2 The various motives for this active involvement in-

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1. Business circles, initially hesitant to accept the idea of codes, now argue that they constitute international legitimation of multinational enterprises. See Garelli, Perspectives et structures d'un code de conduite des Nations Unies sur les sociétés transnationales, 3 Revue économique et sociale 145 (1977).

clude the belief "that such voluntary agreements can enhance a lib-
eral international investment climate if they establish, in a clear and balanced manner, the rights and obligations of both companies and governments."3

More generally, the wide acceptance of the international code movement can be explained by the recognition that given the border-crossing phenomenon of multinational enterprises, purely national, and therefore differing, standards applying to these enterprises are insufficient regulating devices, so that it is in the interest of all parties to be able to complement them by agreed international orientation norms.4

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is the first normative text concerned with this category of enterprises that was adopted within the framework of the United Nations' system. In existence since 1977, it was endowed with a special international follow-up procedure, which allowed the gathering of data on its acceptance in practice. The recent examination of government reports on this data by an ad hoc ILO Governing Body expert committee has led to a further development of the follow-up procedure, which marks a new phase in the organization's treatment of the field of multinational enterprises and social policy. These new procedures, the origin and nature of the Declaration, and recent developments regarding other codes of interest in connection with the Declaration, are the subjects of the present article.

II. ORIGINS OF THE ILO DECLARATION

As labor matters are among the major issues raised in connection with the activities of multinationals, it is not surprising that the International Labour Office (ILO) has become specifically concerned with these enterprises. Clearly, with its unique tripartite structure, its special competence in the United Nations system, and its longstanding experience in the social field, the ILO has the capacity to play an essential role in the international code movement.5

Since the middle of the 1960s, specific reference has increas-


4. Schwamm, Pourquoi des codes de conduite à l'intention des entreprises multinationales, SKEPSIS, Jan. 1980, 4-8. Another possible line of action, namely harmonization of national legislation, would be a very long-term, if not illusionary, proposition.

5. A point stressed in the Preamble. See TRIPARTITE DECLARATION, supra note 2, at 5.
ingly been made to multinational enterprises in the work of the ILO, mainly through the initiative of workers' representatives, resolutions of industrial committees, regional conferences, and the International Labour Conference. Certain “curtain-raising” functions, mainly regarding research on multinational enterprises, may be attributed also to a symposium on transnational industrial relations organized in 1967 by the International Institute for Labour Studies (an autonomous educational and research center of the ILO). Finally an important stimulus for ILO work on multinational enterprises was given by a Resolution adopted at the 1971 International Labour Conference, which invited the Governing Body to decide “what action the ILO should take on the question. . . .”

Following this request, the Governing Body in October and November of 1972 convened a Tripartite Meeting on the Relationship between Multinational Enterprises and Social Policy, with the mandate to clarify how the ILO could contribute, in its area of competence, to the solution of problems that might result from the operations of multinational enterprises. The meeting recommended two main lines of action: (a) that the ILO undertake studies to provide comprehensive information to identify and determine the unique social problems posed by multinational enterprises in order to formulate social policy, and (b) that the ILO undertake a study on the usefulness and feasibility of developing international social policy principles and guidelines relating to the activities of multinational enterprises and the elements and implications of these, including possible action to establish such principles and guidelines.

A second special meeting, the Tripartite Advisory Meeting on Multinational Enterprises and Social Policy, was convened by the Governing Body in May 1976 to formulate recommendations on ILO action and review the four empirical studies on multinational enterprises available at the time, as well as the study on the usefulness and feasibility of principles and guidelines. The most important recommendation of the Governing Body was to introduce ILO

8. These were a study on wages and labor 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 labor practices of multinational enterprises in the metal industry.
work on a tripartite declaration of principles concerning multinational enterprises and social policy, for which it also offered several guiding considerations.

Research on social policy aspects of multinational enterprises has now become a continuous program of the ILO. In addition to its fact-finding role, the ILO has, through its balanced approach, promoted trust and consensus-building during the preparation of the Declaration. More generally, international research on multinational enterprises (which is undertaken mainly by the United Nations Center on Transnational Corporations, UNIDO, UNCTAD, UNESCO, as well as the ILO) has helped clarify the economic and social role and impact of multinationals throughout the world. This has facilitated the adoption of practical approaches in the code preparations, despite continuing ideological controversy.

Another more important factor has been the emergence of joint-venture arrangements, non-capital linkages between multinationals and enterprises in other countries (enterprise-to-enterprise cooperation or management contracts), and the appearance of Third World multinationals, such as those from Brazil, India, and Hong Kong. This has tended to erode the idea held in some quarters that multinationals are by definition agents of neo-colonialism and economic imperialism.

Recent areas studied by the ILO include labor practices of multinational enterprises in the petroleum industry and in the textile and clothing industries; training practices of multinational enterprises and their effect on development; and world-wide, regional, and country-wide effects on employment of these enterprises, as well as on the employment implications of their choice of technology. The Governing Body suggests other topics from time to time.

At the ILO Tripartite World Employment Conference held in June 1976, most government members of the industrialized market economy countries underlined the positive effects of multinational enterprises on employment and development, although others underscored their negative impact. Like the worker members, the government representatives of the group of seventy-seven recommended that conventions on multinational enterprises should be adopted in the areas of the 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.

Taking into account the varied positions and the emerging pos-
sibilities of compromise, a restricted working group began drafting a set of principles in the first four months of 1977 and made a full draft available to the members of the Tripartite Advisory Meeting, reconvened in April 1977, who in turn submitted an agreed text to the Governing Body. The Tripartite Declaration of Principles was finally adopted by the ILO Governing Body at its November 1977 session,9 as the “outcome of several years’ efforts by the International Labour Office to reach agreed solutions in a highly complex and controversial area of social policy through dialogue and negotiation between governments, employers, and workers.”

III. STRUCTURE AND CONTENT OF THE DECLARATION

The ILO Declaration has a preamble, a section on the background and aims, a section on general policies, and four sections broken down by subject area, which enumerate the areas of substantive competence of the ILO in relation to other activities concerning multinational enterprises carried out by the United Nations system. In the annex to the Declaration, fifteen ILO Conventions and nineteen Recommendations of the International Labour Conference are listed.11 Reference to these has been made in footnotes to the

10. See preface to TRIPARTITE DECLARATION, supra note 2.
11. The following is a list of International Labour Conventions and Recommendations referred to in the TRIPARTITE DECLARATION, supra note 2, at 15-16:

Conventions:
- Convention (No. 29), concerning Forced or Compulsory Labour, 1930.
- 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. 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. 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.
text of the Declaration. These conventions and recommendations are considered relevant general instruments for the field of multinational enterprises and social policy because they contain general international labor standards for the four subject areas to which the Declaration relates. Where applicable, these conventions and recommendations affect both multinational and national enterprises.¹²

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 Cooperation between Employers and Workers at the Level of the Undertaking, 1952.
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. 118), concerning the Guarding of Machinery, 1963.
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.

¹² 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 labor standards concerning freedom of association, non-discrimination in employment, and employment security are
Labour Office Declaration

A. 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 Organization for Economic Co-operation and Development (OECD), the preamble considers that the ILO, with its unique tripartite structure, competence, and extensive experience in the social field has an essential role to play in evolving principles in that field.

B. Background and Aims: Paragraphs One Through Seven

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 minimizing and resolving 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. This aim will be furthered by appropriate laws and policies, by measures and actions adopted by the governments concerned, and by cooperation among the governments and the employers’ and workers’ organizations of all countries.

The principles set out in the Declaration are commended to governments, employers’ and workers’ organizations of home and host countries, and to multinational organizations themselves. “Multinational enterprises,” as referred to in the Declaration, are defined in functional economic terms which cover all types of enterprises (whether they are of public, mixed, or private ownership, and irrespective of the type of activity they engage in), and for the purposes of the Declaration, no precise legal definition is required.

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13. 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 behavior of the ILO tripartite constituents, including here multinational management. TRIPARTITE DECLARATION, supra note 2, at 6-7.

14. As an operational guide, Paragraph 6 of the Declaration indicates that “unless otherwise specified, the term ‘multinational enterprise’ is used in this Declaration to designate the various entities (parent companies or local entities or both or the organisation as a whole) according to the distribution of responsibilities among them, in the expectation that they will co-operate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.” The ILO survey undertaken in connection with the follow-up to the Declaration has established that most countries did not
The Declaration then recommends voluntary observance of its principles by the parties concerned.

C. General Policies: Paragraphs Eight Through Twelve

All the parties affected by the Declaration should respect the sovereign rights of states, obey national laws and regulations, give due consideration to local practices, and respect relevant international standards. They should also honor commitments which they have freely entered into, in conformity with national law and accepted international obligations. Multinational enterprises should keep their activities in harmony with the development priorities and social aims and structure of the country in which they operate, and consultations on a continuous basis should take place between multinational enterprises and the government, with the participation, where appropriate, of the national employers’ and workers’ organizations. The Declaration indicates that where its principles are relevant to both national and multinational enterprises, they should apply to both.15

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, or in any event to apply, to the greatest extent possible, the principles embodied in these Conventions and in corresponding ILO Recommendations. In addition, all parties should refer to them for guidance in setting their social policy. Governments of home countries are ascribed a special role in the promotion of good social practice by multinational enterprises wherever they operate, and both host and home country governments should be prepared to consult with each other on the activities of multinationals, whenever the need arises.

D. Employment: Paragraphs Thirteen Through Twenty-eight

The Declaration calls on governments to articulate an active
policy concerning the employment practices of multinationals, particularly in developing host countries, and urges that due attention be given, in both home and host countries, to the impact of the operations of multinational enterprises on employment. Such companies, especially when operating in developing countries, should endeavor to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as the security of employment and the long-term goals of the enterprises. For this purpose, extensive and continuous tripartite consultations are recommended, to commence before multinational businesses begin 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 they should recognize 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 evolution of appropriate technology, give consideration to subcontracting to national enterprises, promote the use of local raw materials, and encourage their local processing.

The Declaration stresses the need for policies establishing equality of opportunity and treatment in employment, through the efforts of both governments and the management of multinationals, in order to eliminate any discrimination based on race, color, sex, religion, political opinion, national extraction, or social origin. Having a stake in the welfare of their host countries, multinational enterprises should endeavor to provide stable employment and should observe freely-negotiated obligations concerning employment and social security. In considering changes in operations which would have a major impact on employment (mergers, takeovers, or transfers of production), multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and to the workers and their organizations, so that joint efforts can be made to mitigate adverse effects, particularly in the case of closures involving collective layoffs or dismissals. Together with multinational and national enterprises, governments should provide income protection for terminated workers.
E. Training: Paragraphs Twenty-Nine Through Thirty-two

Utilizing national, host country policies for vocational training and guidance, multinational enterprises should provide relevant training for all levels of their employees, in order to meet their own needs as well as those of the host country. Multinationals should develop programs that emphasize useful skills and improve career opportunities. In developing countries, they should participate in national training programs and afford opportunities, within the enterprise as a whole, for the training of local management in suitable areas, such as industrial relations.

F. Conditions of Work and Life: Paragraphs Thirty-three Through Thirty-nine

Wages, benefits, and conditions of work in multinational enterprises should not be less favorable 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 work conditions within the framework of government policies and should at least satisfy the basic needs of the workers and their families.

Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements. 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. Like comparable domestic enterprises, they should take part in relevant standard-setting activities by international organizations, cooperate fully with the local safety and health authorities, and where appropriate, incorporate safety and health matters in collective agreements. Governments, especially in developing countries, should endeavor to insure that lower income groups and less-developed areas benefit as much as possible from the activities of multinational enterprises.

G. Industrial Relations: Paragraphs Forty Through Fifty-eight

In this area as well, multinational enterprises should observe the best existing practices in the countries in which they are located.
The principles of freedom of association and the right to organize are emphasized in the Declaration. Where governments of host countries offer special incentives to attract foreign investment, such incentives should not include any limitation of the worker's freedom of association, right to organize, or power to 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 normal labor-management relations are not thereby inhibited. Governments should not refuse entry to representatives of both sides of industry who come from other countries for the purpose of consultation simply because they seek entry in that capacity. Where appropriate under local conditions, multinational enterprises should support representative employees' organizations.

In each country in which they operate, multinational businesses should permit authorized representatives of their workers to conduct negotiations with representatives of management who are capable of making decisions on the matters under negotiation. In the context of bona fide negotiations, they should not threaten to transfer operations from another country in order to influence unfairly the talks then occurring or to hinder the exercise by the workers of their right to organize, nor should they transfer workers from affiliates in foreign countries for either of these reasons. Multinational enterprises should provide workers' representatives with information required for meaningful negotiations with the entity in question and with information on the performance of this entity or of the enterprise as a whole, where this accords with local law and practice.

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

IV. SUMMARY OF THE DECLARATION'S PRINCIPLES AND PURPOSES

The Declaration is a specific instrument in the employment and industrial relations area which in various ways reflects the ILO's particular character and experience. It aims at a continuous dialogue between the parties concerned, in the belief that this fosters effective, flexible, situation-specific solutions. In view of the universal context in which the Declaration will have to be applied, many
provisions are couched in rather general terms. In essence, the Declaration encourages the integration of multinational enterprises into the particular national, economic, social, and industrial relations setting of each host country, recognizing, however, that multinationals do have a border-crossing character, and many of the provisions can only be understood in the context of the unique features of transnational enterprises. Despite the goal of including exclusively national enterprises in its aims, therefore, the Declaration remains a specific text on multinational enterprises and social policy. It does not contain detailed recommendations for transnational consultations or for negotiations between workers (or their international organizations) and the multinational enterprise as a whole, and there is no consensus in the tripartite ILO setting on these still controversial matters. However, the provisions of the Declaration would by no means inhibit such transnational industrial relations contacts. They are left to the initiative of multinational employers and workers, utilizing the power of international and national unions. Finally, the Declaration is purely a voluntary instrument. This does not imply, however, that it can be easily discarded by the addressees. The Declaration has the authority of a world-wide, accepted instrument endorsed by the tripartite structure and membership of the ILO, and in certain cases national governments and/or organizations of employers and workers have expressly indicated that the Declaration contains standards they expect to be applied. Non-binding regulations in the industrial relations field have long been honored by the ILO and many of its member countries. The effectiveness of standards in the context of multinational enterprises cannot be measured purely by the legal structure of the instrument, particularly given the border-crossing character of multinationals, which tends to minimize the impact of most legislation confined to national boundaries. The follow-up to the Declaration has shown that its voluntary nature has not prevented the production of encouraging tangible results.

V. FOLLOW-UP TO THE DECLARATION: PROCEDURE, RESULTS, AND EVOLUTION

A follow-up obligation at the national or the international level

16. Particularly, but not exclusively, in Anglo-Saxon countries.
17. Still, some ILO members (especially workers, certain developing countries, and the socialist countries in general) would in the long run prefer a mandatory instrument.
does not automatically arise from the voluntary, non-binding Declaration. On the national level, experience has shown, however, that many of the ILO member states have endeavored to follow up the Declaration in various ways, such as through formally accepting it or recommending jointly with national organizations of employers and workers the application of its provisions. Such statements, therefore, reinforce the authority of the Declaration. States, together with national and international organizations of employers and workers, have disseminated knowledge of the Declaration through reprints and translations of the text, which recommend its use to relevant authorities or affiliates; through seminars; and through efforts to increase knowledge on the application of the principles via studies or surveys. Tripartite consultations have frequently been held in connection with the first reports by governments to the ILO on the effect given to the Declaration in 1978 and 1979, and in certain instances courts have referred to its provisions in deciding cases. The tripartite consultations have proven very useful in clarifying the intent of the Declaration and in preparing comprehensive, well-documented reports of the ILO.

While some of these and other national follow-up possibilities were mentioned as examples in an ILO letter enclosing a questionnaire designed to obtain an initial report on the Declaration’s status, the states and other addressees of the Declaration must themselves decide if, and in what manner, they will undertake follow-up measures within their competence, including possible insertion of some of the principles in national legislation. Tripartite consultations regarding the Declaration at the national level and promotion of the observance of the Declaration by governments, employers’ and workers’ organizations, and the multinational enterprises themselves have been recommended by the Governing Body committee meeting considering first government reports (September 1980).

However, since no single state has legal authority over a multinational enterprise as a whole because of its border-crossing nature, international follow-up to complement measures at the

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18. This has been the case, for instance, in Sweden, the United Kingdom, the Netherlands, and India.
19. Follow-up action can also be undertaken in the ILO case by international organizations of employers and workers, and certain efforts to this effect have indeed been undertaken, for instance, by the International Organization of Employers (IOE) and the International Confederation of Free Trade Unions (ICFTU).
20. Transnational Corporations: Certain Modalities for Implementation of a Code of
national level is necessary. This procedure may be bilateral, involving cooperation between states on the initiative of one of them, as advocated in paragraph twelve of the Declaration, and can take place in the absence of or outside of any international institutional arrangement. International follow-up can also be undertaken by any international organization which has adopted the underlying text. This latter possibility is particularly developed in the case of the ILO and is the focus of the following paragraphs. Finally, the relationship between national and international follow-up measures to the Declaration must involve cooperation, rather than subordination.21

Follow-up on ILO instruments, especially Conventions and Recommendations of the International Labour Conference (provided for in the Constitution of the International Labour Organization), but also resolutions or conclusions adopted by the various other ILO bodies, is an established procedure in the Organization. A variety of follow-up procedures exists, and a great many are based on government reports. There was, therefore, little doubt that ILO follow-ups would also occur in the case of the Declaration although the method to be used was in doubt. The procedures established for the supervision 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 indirectly applicable. A special decision had to be taken on this matter by the Governing Body, which has played the central role in the development of the Declaration. The major precedent for ILO follow-up in the absence of legal obligation, to which the Governing Body referred, was the follow-up procedure for conclusions and resolutions of industrial and similar committees (paragraph twenty-four of the Purpose and Functions of Industrial and Analogous Committees), adopted by the Governing Body in 1963.

At its 205th session, in February and March of 1978, the first session following the adoption of the Declaration, the ILO Governing Body decided to request governments to report periodically on the effect given to the Declaration after full consultation with

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employers’ and workers’ organizations, and to ask for a first report to be made at the end of 1979, two years after the communication of the Declaration to governments. Institutional and procedural details of the follow-up were left open at the time, to give sufficient flexibility in the consideration of these matters and the reconciliation of divergent views.\textsuperscript{22}

Covering the years 1978 and 1979, the questionnaire drawn up for the first reporting by governments of home or host countries of multinationals was adopted by the 209th session of the Governing Body in February and March of 1979 and transmitted to the governments of all ILO member countries that June. At the same session the Governing Body also decided on the composition of the body which was to consider these first reports (a fifteen member Governing Body Committee—five from each of the tripartite groups)\textsuperscript{23} and determined its terms of reference as follows:

\begin{enumerate}
\item to make a factual survey of the degree of acceptance of the terms of the Declaration and of patterns of action to give it effect;
\item to consider difficulties or inadequacies exposed by the survey and to suggest ways of dealing with them;
\item 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.
\end{enumerate}

It can be inferred from these terms of reference that a consensus had evolved that, at least regarding the consideration of first reports, the emphasis should be placed on a general survey of experience obtained with the Declaration, focussing on issues rather than on the behavior of individual enterprises, bearing in mind the

\textsuperscript{22} The participation of the enterprises themselves in this procedure was thus mainly envisaged through consultation with employers’ organizations, notwithstanding the possibility that states might also wish to contact enterprises for the purposes of the follow-up. Initially, the union members of the Governing Body considered that there should be annual reporting. They accepted, however, that for the first reporting a period of at least two years was required, so as to obtain sufficient data on the Declaration’s application.

\textsuperscript{23} In line with standard ILO practice, non-governmental organizations with consultative status (IOE, ICFTU, World Confederation of Labour (WCL), World Federation of Trade Unions (WFTU), and the International Cooperative Alliance) were entitled to representation at the Committee meeting. As regards international organizations, the Governing Body decided to limit invitations to the two with the most directly relevant experience, the U.N. (UNCTC) and OECD, which have agreements with the ILO regarding mutual representation at meetings.
non-binding character of the Declaration.\textsuperscript{24} At the same time, the terms of reference recognized the possible need to develop procedure for the examination of disputes concerning the application of provisions of the Declaration.\textsuperscript{25}

The ad hoc Governing Body committee met in September 1980, to consider government reports on the Declaration for 1978 and 1979. 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 selection of host countries from the developing regions. Three additional countries informed the Office that they were then unable to draw up a report. A considerable number of governments indicated specifically that in the reporting process they had consulted with the employers' and workers' organizations in preparing their replies.\textsuperscript{26} Where this was the case, governments either appended the observations of those organizations to their own reports or incorporated them.

There was rather wide agreement in the committee that the ILO follow-up had generally revealed substantial acceptance of the Declaration, despite the relatively short first reporting period of two years, although there was some difference of opinion, especially between employer and worker members, regarding the application of certain individual provisions. Among the difficulties mentioned particularly by workers were the inadequate information provided by some multinationals and certain problems in the areas of employment policies and industrial relations, including industrial disputes. Some of these were also recognized by the employers, who felt, however, that the survey had not revealed any major problems necessitating special action at that time. They agreed with the workers that it was important to advance further the application of the Declaration through tripartite consultations and reporting, in conjunction with the organizations. The views of the government members conformed with this general pattern. It was recognized that the ILO survey had produced a considerable amount of new informa-

\textsuperscript{24} It was in line with this understanding that in the working documents prepared for the Committee to enable it to consider the first government reports, the Office did not mention the names of enterprises although names had appeared on some of the replies received. This was confirmed by the Committee as a good practice to be continued in future.

\textsuperscript{25} The ILO has recognized that the voluntary character of the Declaration, in particular the fact that it is up to the individual enterprise to apply it, may not be compatible with an enforcement of the standards set out in the Declaration vis-à-vis such enterprises.

\textsuperscript{26} It could not be determined from the other replies whether such consultations had been undertaken.
tion which allowed the committee effectively to fulfill its mandate. At the same time, some members were of the opinion that certain governments had to improve their machinery to enable them to provide more complete answers to the questionnaire.\textsuperscript{27}

Regarding point (c) of the mandate, the committee made a number of major recommendations to the Governing Body, which can be summarized as follows:

(1) Transformation of the present \textit{ad hoc} Committee on Multinationals into a Standing Committee of the ILO Governing Body (with a composition similar to that of the \textit{ad hoc} committee), to be entrusted with the consideration of future government reports and other functions, as mentioned hereafter.\textsuperscript{28}

(2) Institution of a new round of government reports on the effect given to the Declaration in three years, for the period 1980-82. Consideration of these reports might be expected to take place in the last quarter of 1983.

(3) Initiation of new studies by the Office on particular aspects highlighted by the Declaration, such as manpower plans of multinational enterprises, consultation with workers, and transfer to host countries of information on safety and health by these enterprises. These studies would be brought to the attention of the Standing Committee.

(4) Study of the possibility for governments, and under certain circumstances, representative organizations of employers and workers in a member country, to request from the ILO an interpretation of the provisions of the Declaration 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,\textsuperscript{29} and the


\textsuperscript{28} Details about the composition, membership, and procedure of the new Standing Committee were to be decided by the Governing Body at its session in February/March and May/June, 1981, so the Committee could become operational during 1981.

\textsuperscript{29} A certain precedent is given by existing ILO interpretation of procedures for conventions and recommendations. In Article 37, the ILO Constitution provides that any question or dispute relating to the interpretation of the Constitution itself or of international labor Conventions must be submitted to the International Court of Justice (formerly the Permanent Court of International Justice). This provision has been resorted to only occa-
proposed replies would be submitted to the Standing Governing Body Committee preparatory to consideration by the Governing Body.

(5) Establishment of 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 practice, 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 Organization) Recommendation, 1976 (No. 152). Governments, employers' and workers' organizations, and the multinational enterprises themselves should continue their efforts to promote adherence to the principles of the Declaration.

(6) Recognition of the obligation of the ILO to initiate implementation and interpretation of the Declaration, in coordination with the United Nations and other organizations.30

These recommendations were endorsed by the Governing Body at its 214th session in November of 1980. Thus, the ILO has been able to break new ground with respect to the implementation of the Declaration.31 Now sanctioned with the responsibility of attending to problems peculiar to its member countries, the ILO has reached a new stage in its activities in the area of multinational enterprises and social policy. The Declaration has come of age.

VI. THE ILO DECLARATION AND OTHER INTERNATIONAL INSTRUMENTS

The last years have seen a proliferation of both general and

30 For further details of these recommendations, see Report on Effect Given to the Tripartite Declaration, supra note 27, at para. 85.

31 A review of the Declaration's principles as such was not within the mandate of the September 1980 meeting. There is a consensus that such a review should only take place after a couple years of further experience.
specific international and regional codes for multinational enterprises, reflecting the variety of intergovernmental organizations with different memberships that are concerned with these enterprises.\textsuperscript{32} Such diversity raises problems of coherence, conflict, and effectiveness of the various texts and constitutes an increasing burden on their addressees, primarily the multinational enterprises. For the ILO the relationship between the Declaration and other instruments pertaining to labor is critical. There are mainly two texts in this category, the United Nations Code of Conduct on Transnational Corporations,\textsuperscript{33} which has reached an advanced drafting stage,\textsuperscript{34} and the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, adopted in June, 1976, less than a year before the ILO text. While the former has a universal and the latter a regional scope, both are general instruments which cover all areas of activity of the multinationals.

From the outset the ILO, a specialized United Nations agency in the labor field, has viewed its Declaration as a contribution to the wider efforts of the United Nations. The ILO has advocated the integration of its text through cross-reference into the United Nations Code, to avoid the adoption of conflicting provisions for the United Nations Code and to maintain the authority of the ILO Declaration as the only labor instrument dealing with multinationals in the United Nations system. This was stressed in a letter\textsuperscript{35} transmitting the ILO Declaration to the United Nations. In placing the ILO

\textsuperscript{32} In addition to the codes emanating from intergovernmental organizations, there are codes established by a variety of non-governmental institutions, such as the International Chamber of Commerce, the International Confederation of Free Trade Unions (ICFTU), and many multinational enterprises themselves. These are not considered here.

\textsuperscript{33} It is United Nations usage to refer to the enterprises as “transnational corporations.” As of this date, no definition of these enterprises has been adopted by the U.N. The possible semantic and conceptual differences between this term and the ILO and OECD term “multinational enterprises” cannot be assessed.

\textsuperscript{34} The United Nations Intergovernmental Working Group on a Code of Conduct, a body created to draft the United Nations Code by the U.N. Commission on Transnational Corporations, which itself reports to the Economic and Social Council, has held twelve sessions since January 1977. Approximately two-thirds of the text provisions, some still heavily bracketed, have been concluded by now. The last session of the Working Group was scheduled for April 1981, but it is likely that an additional session will be held. Should it not be possible to finalize the draft Code at these sessions, since major questions relating to the legal nature of the Code, follow-up to it, and the definition of a multinational enterprise must still be resolved, the Commission, which will consider the results of the Working Group’s deliberations, will have to decide how to complete the Code.

text at the disposal of the United Nations, the ILO Governing Body (having already adopted the Declaration) insisted on the understanding that the ILO text should neither be altered nor reproduced piecemeal, but should be considered in its entirety. Any partial acceptance would have virtually amounted to a renegotiation of the terms of the Declaration by the United Nations.\(^{36}\) Although the working paper prepared for the Intergovernmental Working Group on this matter also noted other, less satisfactory alternatives,\(^{37}\) the Working Group eventually followed the course of action proposed by the ILO. At its sixth session in January of 1979, it tentatively decided on applying a cross-reference system to the ILO Declaration, thereby renouncing the drafting of its own provisions in the “employment and labour field”;\(^ {38}\) and at its tenth session in May 1980, it adopted the final text of the cross-reference, according to which, within the framework of the U.N. Code, multinational enterprises were to adhere to the principles set out in the ILO Declaration which related to employment and labor.\(^ {39}\)

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36. A proper incorporation of the ILO Declaration into the United Nations Code has always been supported by the United States government, even during the period of temporary withdrawal of the U.S. from the ILO, from November 6, 1977, to February 18, 1980. See 79 DEP'T STATE BULL. 33 (1979), which states that “[a]lthough the United States no longer belongs to the ILO, we support the incorporation of the tripartite declaration into a future U.N. Code of Conduct to cover employment and industrial relations.”

37. The following options were mentioned in the relevant U.N. document:
   (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 ILO as expressed in conventions and recommendations and the Declaration of Principles; and in effect summarize 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 ILO;
   (d) The Declaration would be incorporated as such in the body of the United Nations code itself.


38. The Working Group’s denomination of the ILO’s areas of competence within the United Nations system.

With the integration through cross-reference of the ILO Declaration into the United Nations Code, appropriate coordination of the follow-up activities to both instruments became indispensable. Logically, the organization that evolved the instrument should be best equipped to develop international follow-up procedure. The Governing Body, which endorsed the recommendations for further follow-up on the ILO Declaration proposed in the September, 1980, Committee meeting, decided at its 214th session two months later that the ILO should retain sole responsibility for the implementation and interpretation of the Declaration, while maintaining appropriate coordination with the United Nations. This would mean, in practice, U.N. participation in relevant ILO meetings and transmission of ILO follow-up results to the United Nations Commission on Transnational Corporations for use in its evaluation of the United Nations Code as a whole. Following the integration of the ILO Declaration into the United Nations Code, other specialized instruments in the United Nations system may well become similarly integrated, particularly the UNCTAD codes on restrictive business practices (RBF Code) and on technology transfers, still to be completed. In this way the United Nations Code would serve as a universal, general umbrella assimilating these specialized texts.

The ILO is also concerned with the OECD Guidelines and their relationship to the Declaration. These Guidelines have been operational for a number of years and have become widely accepted standards in the OECD countries, which include the major home countries of multinational enterprises. All of the OECD countries are ILO member states. When the OECD Guidelines were estab-
lished, numerous work contacts were set up with the ILO, allowing the OECD to draw on the long ILO experience in the labor field. Conversely, when the ILO Declaration was drawn up, the OECD Guidelines, already in existence, were a source of reference for the ILO drafting group. This exchange has made it possible, fortunately, to obtain full compatibility between those labor provisions of the Guidelines and those of the Declaration which overlap. In some instances, both instruments use even the same formulations; however, as a specialized labor instrument, the ILO text is more detailed than the OECD Guidelines.

The OECD recognized this compatibility in its 1979 review of the Guidelines, and the ILO text may be useful in the OECD context. The relevant OECD report states the following in this connection:

>[T]he ILO Tripartite Declaration, which OECD Member Countries as well as business and trade union representatives have supported, has a different geographical scope than the Guidelines. Also, while the OECD Guidelines cover all major aspects of corporate behaviour, the ILO Declaration sets out principles only in the fields of employment, training, conditions of work and industrial relations which governments, employers and workers, as well as multinational enterprises, are recommended to observe. Wherever these principles refer to the behaviour expected from enterprises, they parallel the OECD Guidelines and do not conflict with 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.42

The compatibility of both instruments has increased with the introduction into the OECD Guidelines, during the 1979 revision, of provisions rejecting as unfair labor practice the transfer of employees from a foreign affiliate in order to influence unfairly bona fide negotiations with employees or the right to organize. 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."43 And, unlike the relationship between the


43. Id.
ILO Declaration and the United Nations Code, some duplication of follow-up procedures may be unavoidable although it can be minimized through coordination of unrelated activities.

For example, while until recently the OECD, unlike the ILO, had no formal system for the reporting by governments on the application of its Guidelines, the 1979 review will lead to regular acquisition of this information.\textsuperscript{44} Such reporting will extend to provisions similar in substance to the ILO Declaration. Furthermore, in line with measures decided after the 1979 review, the OECD member countries will create national contact points for handling inquiries and will establish promotional and educational facilities to enhance knowledge of the content of the Guidelines and the way in which they are to be implemented. The ILO, for its part, has not recommended that specific local institutions be created for the promotion of the Declaration. It has simply 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.\textsuperscript{45} It is up to the governments to decide whether particular institutional arrangements would be desirable.\textsuperscript{46}

There have been some twenty-five "cases," or claims by governments or unions, presented by TUAC,\textsuperscript{47} that the behavior of certain companies has created problems relating to the application of the Guidelines. The issues thus considered by the OECD (or, more precisely, by its IME Committee,\textsuperscript{48} which provides explanations of the Guidelines) deal with 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 \textit{bona fide} organizations of employees; protection of employees; changes in operations having major effects upon the livelihood of employees; un-
fair influence in *bona fide* negotiations with employees; and access to corporate decision-makers.\textsuperscript{49} Practically all these issues involve industrial relations, and they are therefore of interest to the ILO, which has recently adopted somewhat similar procedures to those of the OECD for the consideration of problems arising in the national context with the application of the ILO Declaration and the treatment of connected disputes.\textsuperscript{50} Thus, in similar cases, determinations by either organization will certainly need to take into account those made by the other.

A newcomer to the multinational enterprise code movement is the draft European Economic Community (EEC) directive on procedures for consultation with the employees of organizations with a complex structure, in particular transnational enterprises, which was submitted by the Commission of the European Communities to the Council of Ministers on October 24, 1980.\textsuperscript{51} The draft will have to be referred to the European Parliament and the EEC's Economic and Social Committee for a non-binding advisory opinion before it can be adopted by the Council of Ministers, then the member states "shall introduce the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification."\textsuperscript{52} This procedure will give the directive mandatory status in the EEC countries. The draft requires the top management of EEC multinational and complex national enterprises, along with that of non-EEC multinationals with large work forces, to provide to their subsidiary management an information statement on major economic and labor matters, for ultimate communication to employee representatives. It also provides employee representatives with prior consultation rights regarding certain planned decisions of enterprises which concern the entire firm or its subsidiaries, or major parts thereof, if they are "liable to have a substantial effect on the interests of its workers" (Art. 12, 1). According to the EEC, the


\textsuperscript{50} In the ILO case interpretations of the provisions in question (in response to requests by governments, and where appropriate, by employers' and workers' organizations) will be prepared by the Office, and the proposed replies will be submitted to the Standing Committee of the Governing Body on Multinational Enterprises prior to consideration by the Governing Body itself. See U.N. Doc. GB/214/6/2, para. 85 IV.

\textsuperscript{51} 297 J.O. COMM. EUR. 51 (1980).

\textsuperscript{52} Draft, E.E.C. Directive, art. 17.1.
draft directive is to some extent founded on the two existing, voluntary codes, namely the OECD Guidelines and the ILO Declaration.\textsuperscript{53}

**VII. CONCLUSION**

It should be remembered, in conclusion, that the currently existing high degree of compatibility and coordination among the different codes for multinational enterprises is not an automatic process, but the result of conscious effort and accommodation, on the part of functionally independent entities voluntarily working together. Their continued interaction in the development of codes of conduct should enhance the solution of problems to which the activities of multinational enterprises give rise and should foster the establishment of "mechanisms for cooperation and conflict resolution not found in traditional legal concepts."\textsuperscript{54}


\textsuperscript{54} Legal Problems of Codes of Conduct for Multinational Enterprises v. (N. Horn ed. 1980).