

UN Global Compact and other ILO instruments

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This presentation is divided into three parts. First, I wish to make some observations on the evolution of the topic of multinational enterprise conduct. Second, I am summarizing different ways in which the International Labour Organization and its Secretariat, the International Labour Office, deal with core labour standards. Finally, I wish to briefly point out what in the ILO approaches might be particularly useful for the National Contact Points.

1. Changed conditions over a quarter Century

The current discussion, and activities, relating to multinational enterprises can be seen as the second round of the debate which in 1976 led to the adoption of the OECD Guidelines on Multinational Enterprises. There are some significant differences between the first and the second round, which definitely commenced with the new parameters of globalization following the end of the Cold War.

The political catalyser of the first round was multinational enterprise action in connection with the coup d'état in Chile, in 1973. The OECD Guidelines was a - successful - attempt to establish the position of the main home countries of multinationals before the then planned United Nations Code of Conduct. As things turned out, the international momentum was sufficient to encourage the ILO to adopt the Declaration on Multinational Enterprises and Social Policy in November 1977. However, despite prolonged discussions, the United Nations Code of Conduct failed to materialize. In addition, the ILO instrument was adopted by the Governing Body but there was no consensus for action in the form of a Convention or a Recommendation by the International Labour Conference. Very soon even those (particularly, but not exclusively, trade unions) who had been calling for binding instruments acquiesced with the fact that there was no political will to go further and that attention had to be concentrated on the follow-up of voluntary Guidelines.

In the 1980s, there was little real action for implementing or strengthening the observance of the principles of the OECD and ILO instruments concerned. Most countries were far more interested in obtaining multinational investment than in controlling it. What in the United Nations started as a programme to strengthen the bargaining capacity of home countries vis-à-vis multinationals became a success in terms of investment promotion, starting with the development of

special economic areas in China. The further opening of borders after the end of the Cold War also served to increase the hunger for foreign investment.

In the 1970s, the desire for a regulatory framework was based on certain premises. The multinationals were seen as potential agents of their home countries, acting against the interests of the host countries in which they established or took over subsidiaries. They were assumed to exercise a high degree of control over the activities of these subsidiaries.

The picture changes when we come to the 1990s. Technological and structural developments, combined with changes in the way in which global sourcing and distribution is done, have weakened and, in some cases, eliminated the identification of the management of a global enterprise with a given home country. The global company is not a suitable tool for aspirations which may arise in a world which no longer is based on confrontation and power struggles between socio-economic and political blocks. Neither is it the monolith it was seen to be in the 1970s. In many cases, it functions more as a conglomerate of small and medium-sized enterprises. Furthermore, it makes use of a vast array of subcontractors and partners without exercising any formal control over their commercial or, indeed, social and labour practices.

In the 1970s model, there were “controlling heights” (to borrow Lenin’s notion) of the international economy which, in turn, could be regulated. As of the early 1990s, they are more difficult to identify, and central corporate control is not as all-pervasive as it was at the time when the “global reach” of multinationals became a hot international topic. The enforcement of any given principles has to be compatible with the way in which today’s market is structured and functions.

This also explains why the original OECD Guidelines - or, indeed, the ILO Declaration on Multinational Enterprises and Social Policy - did not specifically refer to core labour standards (known as “fundamental principles and rights at work” in the ILO context). The Guidelines were drafted as a set of good management practices, as seen by industrialized countries. No-one who drafted or adopted them thought that the world’s leading companies would condone forced labour or child labour or crude forms of discrimination in employment. The ILO instrument was closely modelled on the OECD Guidelines, and in extending the scope to the developing countries, it also assumed that headquarters exercised sufficient control over subsidiaries.

The fact that child labour emerged in the first half of the 1990s as a major issue for global companies illustrates the change that has taken place. The opening up of the world economy has intensified global competition, and strong reactions by consumers and public opinion to un-ethical production have become an important economic factor. At the same time, working and living conditions in countries where global companies do their sourcing have become increasingly transparent. On the other hand, short of refusing to purchase when in doubt, multinational and national producers do not control their suppliers. Compulsory primary education is not enforced, labour inspection is weak, and the vicious circle of poverty and child labour is difficult to break.

Public opinion, concerns by both national and international business, trade union pressure and the threat of retaliatory trade measures all contributed to an unprecedented emphasis on the elimination of child labour. On the regulatory side, this led in 1999 into the unanimous adoption by the International Labour Conference of Convention No. 182 on the Worst Forms of Child Labour (already 78 registered ratifications to date and a number of decisions taken by Parliaments have not

yet officially been transmitted to the ILO). At the same time, the ILO's International Programme for the Elimination of Child Labour (IPEC) has expanded into being the Organization's biggest single technical cooperation programme.

2. The ILO and core labour standards

The debate on trade and labour standards in the first part of the 1990s crystallized the notion of core labour standards. When the OECD started its work on trade and labour standards, there still was no consensus on the contents of these standards. The early drafts of the study, which was eventually published in 1996, looked at a very wide set of standards. The consensus around four sets of standards (freedom of association and the right to collective bargaining; the abolition of forced labour; the elimination of child labour; and non-discrimination in employment and occupation) was first established by the World Summit for Social Development in Copenhagen, in March 1995. It was consolidated by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, in June 1998.

These four categories are essential for much of ILO action. Depending on the actors (countries, enterprises, trade unions, others), their enforcement, supervision and promotion takes different forms.

Through the regular standards supervisory system, countries which have ratified the eight fundamental Labour Conventions have the constitutional obligation not only to ensure their implementation but also to report every second year. Employers' and workers' organizations can make their own observations. Within the framework of the regular standards supervisory system, a Committee of independent experts and the International Labour Conference carry out an annual examination.

Representations can be made by trade unions or employers' organizations if they consider that a member State violates a ratified Convention. Extreme cases - such as forced labour in Myanmar (Burma) - can lead to conclusions and recommendations by a Commission of Inquiry and subsequent action by the International Labour Conference.

Complaints can be made on alleged violations of freedom of association and the right to collective bargaining to the Committee on Freedom of Association. This tripartite Committee, now 50 years old, reports three times a year to the Governing Body of the ILO. As freedom of association is considered to be a constitutional obligation, complaints can be made even if the relevant Conventions have not been ratified by the country concerned.

The Declaration on Fundamental Principles and Rights at Work and its Follow-up were adopted by the International Labour Conference in June 1998. It is a promotional instrument, which does not duplicate but rather complements the regular standards supervisory mechanism. Its approach is based on the agreement at the March 1995 World Summit for Social Development, which defined the four categories of core labour standards and furnished a *mode d'emploi* - those countries which have ratified the core Conventions continue to have a strong obligation to implement them, and the countries which have not ratified them should undertake efforts to live up to the principles in them.

For this second reason, the Declaration establishes an annual reporting system for all non-ratifying countries on the efforts they have made to live up to the principles. In this way, the core labour standards situation of all ILO member States is examined in one way or another. The focus is increasingly on trying to find solutions through advice and technical cooperation. If a country has not ratified a Convention, it naturally does not have legal obligations, but the Declaration furnishes a strong moral obligation, particularly as respect for the four categories of core labour standards are seen to arise from the acceptance by a member State of the Constitution of the ILO.

As part of the follow-up to the Declaration, the International Labour Conference has discussed two Global Reports, which give a picture of the overall situation in all countries. In June 2000, the theme was freedom of association and the right to collective bargaining. Just last Friday the Conference discussed a report on all forms of forced and compulsory labour, including modern forms of forced labour such as trafficking. Next year, the Global Report will be on child labour and the year thereafter on discrimination in employment and occupation.

The first Global Report led into a programme of action on freedom of association and the right to collective bargaining. At present, already up to 35 countries participate or are set to participate in this technical cooperation programme. Last Friday's discussion on forced labour will certainly lead into a new programme, which will include at least better identification of the problems and different categories of forced labour; removal and rehabilitation; support measures to prevent people falling back into bondage (for instance through microfinancing); and intensified cooperation by different authorities within societies and between international agencies.

Child labour is already tackled by the IPEC programme, which is now developing such new approaches as time-bound programmes for the complete elimination of worst forms of child labour. In such programmes, targets are set and intense technical cooperation, awareness-raising and broad national action combine to get rid of the worst abuses in, say, 5 - 10 years.

Once the Global Report of 2003 leads later that year into an action plan on discrimination, the ILO will have technical cooperation based facilities to deal with all four categories of core labour standards. Much will depend on the continued readiness of donors. The experiences of programmes on freedom of association and promises of support for a forced labour programme give rise to a degree of optimism. Also, recipient countries show growing interest, as having a programme with the ILO is one way of demonstrating their commitment to compliance with core labour standards.

A campaign for ratification of the core Conventions was started after the Copenhagen Summit in 1995 and has led to significant results. Most of the Conventions concerned are ratified by 135 - 158 out of the 175 Member States of the ILO. It is not unreasonable to say that this comes close to a situation of universal ratification. In the future, more attention will have to be paid to the implementation of ratified Conventions.

The Declaration on Multinational Enterprises and Social Policy, adopted by the ILO Governing Body in 1977, is separate from the above-mentioned processes in that it does not focus on the standards supervision and promotion systems of member States. Individual companies may be mentioned in representations, or complaints, in the regular system, but the conclusions and

recommendations are always addressed to governments. The MNE Declaration is parallel to the OECD Guidelines in addressing itself to corporate behaviour as well as to governments and workers' organizations. Its nature, as that of the Guidelines, is voluntary, but it makes cross-references to Conventions which, of course, are binding in case of ratification.

The parallelism of the Guidelines and the MNE Declaration has been recognized by the OECD since the first Review of the Guidelines. The ILO instrument can be relevant for the OECD process where it brings in more specific detail. In the process of negotiating the MNE Declaration of the ILO, in particular the employers' and workers' groups agreed to base the text largely on the Employment and Industrial Relations chapter of the already existing OECD Guidelines.

When there still was a possibility that the United Nations Code of Conduct could have become a reality (in the late 1970s), there was a high degree of consensus that the MNE Declaration of the ILO would have become the "social chapter" of such a UN code. This was reflected in later drafts of the UN code which, however, had one additional feature: A reference to information and consultation arrangements for the representatives of workers.

The Global Compact consists of 9 principles in the areas of human rights, labour rights and environmental principles. The four labour principles of the Global Compact are the same as in the ILO Declaration on Fundamental Principles and Rights at Work. The ILO organizes and supports meetings around the Global Compact, such as a meeting which took place with representatives of the International Organization of Employers (IOE) from developing countries in Geneva in June 2000 and another one for African employers in Tunis in May 2001. Another meeting is planned for Asian employers in Bangkok in November 2001.

Research work undertaken by the Management and Corporate Citizenship programme examines, among other things, the positive contributions of international labour standards to productivity and competitiveness at the enterprise level. One project studies how companies manage labour issues in their supply chain in certain sectors, of which a draft report has already been completed for the global footwear industry. Yet another project looks at socially sensitive restructuring. In addition, the ILO has developed the only existing database which is focussed exclusively on employment and labour issues in the area of corporate social responsibility.

A set of training materials - which is to be ready for testing in early 2002 - for company managers on the labour principles in the Global Compact will be aimed at convincing managers that respecting the principles of the Global Compact is in their interest as well as demonstrating how this can be done. This responds to an increased interest on the part of the corporate world to have information on core labour standards and their application.

Direct involvement of the corporate sector in eliminating child labour is a part of a number of IPEC projects. Examples of these are a project with the garment manufacturers in Bangladesh and the Sialkot Chamber of Commerce and Industry in Pakistan. In both cases, the project has teams of monitors who make unannounced visits to ensure that there is no violation of minimum age rules in the industry. Children under 14 are removed and placed in a social protection scheme, mainly non-formal education. As the industry benefits from this action, which helps their position in the global supply chain, it also shares in the costs. However, it is not possible for the ILO to give any kind of a formal guarantee, or label, that a given product would be "child labour free".

It might be noted that a survey commissioned by the ILO on *voluntary corporate codes of conduct* noted that there is a degree of variety in the actual issues covered by such codes. There are other issues than the core labour standards, which is by no means surprising. After all, the OECD Guidelines go beyond the core labour standards. In addition, codes and other policy statements reflect the specific features of any given industry. On the other hand, not all of such codes recognized freedom of association and the right to collective bargaining. This was the case where codes or other similar documents were negotiated with the trade unions, but unilateral statements more easily left this category out.

3. What conclusions for the National Contact Points?

The fact that the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy remain parallel also means that the ILO instrument can continue to be used in the OECD context in the cases where it is more specific. The follow-up procedures of both voluntary instruments have over the years not produced contradictory conclusions, and thus the danger of “forum-shopping” (or trying to get a more favourable second opinion) has been avoided.

One conclusion is that knowledge of this ILO instrument and its functioning is necessary for the National Contact Points. In the late 1970s, suggestions were made to the effect that the NCPs should in one way or another merge with the national tripartite ILO Committees. It seems that in practice, if there have been links at the national level between the OECD and ILO processes, they have been ensured by the participation of labour ministries and, from the side of the social partners, persons who have been involved in both organizations.

The following observations would seem to be relevant for assessing how the interaction between the different processes could function:

1. The ILO standards supervisory system does not address enterprises directly but it has produced a considerable amount of jurisprudence on how standards should be interpreted and enforced. This covers the expectations that national standards systems, in line with international standards, place on corporate conduct.
2. The global consensus on the contents of the core labour standards is summarized in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. These standards are further elaborated in the eight core Conventions of the ILO. (In addition to Conventions No. 29 and 105 on forced labour, 87 and 98 on freedom of association and the right to collective bargaining, 100 and 111 on discrimination and 138 on minimum age for employment, Convention No. 182 on the worst forms of child labour was added to this group when it entered force in November 2000.)
3. Technical cooperation is increasingly made available to countries which agree to make efforts for the promotion and realization of these principles and rights at work. Business organizations and trade unions are in many cases direct participants and beneficiaries of such cooperation.

4. As part of its input to the Global Compact, the ILO is developing data and training materials for companies which wish to respect the labour principles of the Global Compact; these labour principles are the four categories of the 1998 Declaration, i.e. the core labour standards.

The new element in all of this is that the ILO is in a better position than earlier to assist governments, the business sector and trade unions in identifying problems related to the observance of core labour standards. The means of action do not limit themselves to supervision and often conflictual procedures; neither do they only address law and practice issues of labour legislation. The 1998 Declaration has set out to build bridges between the identification of problems and their solution through assistance and technical cooperation. The Global Compact points out to the need to assist the corporate sector in better understanding and realizing these principles and rights at work.

The knowledge generated by these different processes is, naturally, at the disposal of national authorities who have the mandate to deal with social aspects of international investment. The core labour standards debate has concluded that the standards concerned are those identified by the Copenhagen Social Summit in 1995 and the ILO 1998 Declaration. These four categories of fundamental principles and rights at work should continue to be the benchmark for other international organizations as well. The supervision and promotion of these standards remains one of the strategic objectives of the ILO. When looking at concrete situations involving these standards, other bodies should be able to rely on the knowledge and, as the case might be, different kinds of assistance which the ILO can provide or participate in.