The Importance of Standards and Corporate Responsibilities -
The Role of Voluntary Corporate Codes of Conduct

Kari Tapiola
Executive Director
Fundamental Principles and Rights at Work
International Labour Office, Geneva
The notion of codes of conduct which apply to multinational enterprises has undergone a thorough transformation since the OECD instruments on international investment and multinational enterprises were adopted in 1976. A code of conduct as an answer to perceived problems emerged from the debate in the United Nations after the coup d’état in Chile in 1973, in light of the involvement of a multinational enterprise in activities leading to the military takeover. The United Nations response was to set up a Commission and a Centre on Transnational Corporations. The list of their priority items of work was headed by a code of conduct.

This work started in 1976 - the same year the OECD instruments, including the Guidelines on Multinational Enterprises, were approved. The OECD decision had an essential influence on the debate in the United Nations, as it carried the weight of being the position of countries which overwhelmingly were home countries of the multinationals. It could be argued that this already prevented a United Nations code from ever being approved. However that may be, changes in priorities, and above all structural changes, rendered the United Nations code of conduct exercise obsolete by the late 1980s. Well before that, the OECD Guidelines had a decisive influence on the ILO, whose Governing Body adopted in November 1977 a Tripartite Declaration on Multinational Enterprises and Social Policy.

This ILO Declaration not only paralleled the OECD Guidelines. It was also to have been the social and employment chapter of the United Nations code, if such a code had emerged. In this respect the OECD countries made successfully what could be called a “pre-emptive strike” in the process of international regulation of multinational enterprises.

The approach of the 1970s was based on a number of hypotheses which seemed both obvious and simple at the time but may no longer be entirely valid. There was a perceived conflict of interest between home and host countries. Multinational enterprises were seen as potential tools of home country policies against host countries. A case in point was Chile in 1973, which triggered the international action. Multinationals seemed to be octopus-like structures, with their head in home countries, reaching out to a multitude of host countries which had insufficient capacity to cope with them.

Due to this perception, another element in the programme of action by the United Nations was the strengthening of the bargaining position of host countries vis-à-vis multinational enterprises. From today’s perspective it is intriguing that this part of the programme became a much greater success than the code of conduct approach, although possibly in quite a different way than many of its proponents thought. By the early 1980s, the desire to have multinational investment had clearly outweighed the wish to control it. Strengthening the bargaining position of host countries blended with investment promotion. One remarkable success story is that of the special economic regions in China.

Early on it became clear that binding international codes addressed directly to multinational enterprises were neither politically nor legally feasible. Not one of the OECD countries would entertain this approach. Business was adamantly against it, and by the beginning of the 1980s the trade unions in practice shifted their focus to the follow-up of the OECD Guidelines instead of their legal nature. The ILO Declaration on Multinational Enterprises and Social Policy became a special voluntary instrument, not a Convention. As to the United Nations code negotiations, the task of reconciling possible binding obligations on multinational enterprises with binding obligations on governments proved impossible.

The result was a blend of normative and voluntary approaches, with the stress on follow-up mechanisms. In the OECD, the follow-up involved not only regular reviews but also a discussion on specific situations with clarifications provided, although the Committee on International Investment and Multinational Enterprises did not specifically name the enterprises concerned. The trade unions were not inhibited from naming the enterprises in their presentations. Due to a fear of “multinational collective
bargaining”, the business side did not want to enter into a discussion on specific situations with the participation of the trade unions.

In the ILO, the follow-up mechanism of the 1977 Declaration was tripartite, due to the nature of the Organization. However, this mechanism has yielded limited results. Freedom of association, which is one of the trade unions’ main concerns, remained in a separate system. In addition, the tripartite structure has virtually ensured that in specific contentious situations it is very difficult, if not impossible, to reach consensus. Instead, the process has veered towards highly polarized votes.

A key contribution of the process which started in the mid-Seventies was the general approach consisting of a voluntary instrument with a follow-up mechanism. This approach is more promotional than normative. For instance, it is a significant feature of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference in June 1998.

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The world of the late 1990s is different from that of the Seventies. The multinationals of a quarter of a century ago were more monolithic, more hierarchical structures than those of today. They functioned in a world which was divided by the Cold War and its consequences on emerging countries. Since the 1980s, internationalization has spread with the help of new production and management technologies and made closed and command economies increasingly impossible, or at least hopelessly inefficient, thus contributing to the collapse of Communism.

This collapse led to a new situation where for the first time since 1914, there is no real alternative to the market economy. But this market economy functions in a different way than its predecessors, whose “controlling heights” the disciples of Marx wanted to conquer. Those controlling heights have turned out to be information systems into which the managers of multinational conglomerates - entities with different kind of links with one another - could plug into virtually irrespective of where in the world they were.

When corporate structures move from hierarchies to networks, the relative importance of, e.g. “home countries” fades away, and the earlier real or potential home and host country policy conflict goes with it. Structures are no longer octopus-like. The modern multinational encompasses up to hundreds of entities worldwide, with different cultures and different formal and actual linkages. There is something approaching just-in-time production on a worldwide scale.

Today’s discussion on voluntary corporate codes focuses on requirements of performance of entities within such systems. They arise out of desires of enterprises in this new global market economy to set out minimum standards of behaviour for their subcontractors and others whose production they are marketing. Consumers want to know that the products they buy are not made by children, by forced labour, in sweatshops, with miserable pay, or through otherwise ethically questionable means. Pressures for social regulation arise out of the market, not out of concerns over sovereignty felt by the political leaders of countries in which the work for a multinational enterprise takes place.

This has produced a significant change in the parameters. The debate of the Seventies was spurred by the concerns of host countries. The tone of the current one is set more by the former home countries which are the major markets. The perceived problem is not “exporting” a headquarters/home country policy which would be subversive or exploitative. Rather, the issue is to require a decent minimum level of standards from subcontractors and other parts of the corporate supply chain. The former “host” countries see themselves more on the defensive now, as they fear that the socially motivated market pressures can be used against them for protectionist purposes.
The emphasis on self-regulation mirrors yet another change of approach since the end of the Cold War. The codes of conduct addressed to multinational enterprises were drafted in a period where the United Nations was grappling with the concept of a New International Economic Order. There were profound divergencies over the NIEO, which was seen by many (including OECD countries) as a state-controlled approach to economic development. This, incidentally, was the reason why the international trade union movement had serious difficulties with the NIEO although it strongly supported measures to control multinational enterprises. The concept of a New International Economic Order was undermined by the same forces which ended the Cold War and brought about the current stage of globalization.

The discussion on regulation has also taken on a different emphasis. With globalization there has been a growing recognition of a need to establish an international minimum level of social and labour standards. This debate on “core labour standards” has been taken forward in steps by discussions in the ILO, the OECD (the 1976 report on trade and labour standards), and the WTO (Declaration of the Ministerial Meeting in Singapore in December 1996).

Two important milestones are the World Summit on Social Development, in Copenhagen, in March 1995, and the negotiations for, adoption, and consensus on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The contents of the core labour standards were determined in Copenhagen, as was the modus operandi. Countries that have ratified the ILO Conventions on freedom of association and the right to collective bargaining, forced and child labour, and non-discrimination must also fully respect them. Countries which have not ratified them must in any case respect the principles. The 1998 ILO Declaration sets out the framework in which this is done, with the emphasis on developing promotional measures to assist countries in reaching this objective.

It is to be underlined that this Declaration is on policies countries put in place - not on corporate policies. It leaves intact the 1977 Tripartite Declaration on Multinational Enterprises and Social Policy, together with its follow-up arrangements. As that Declaration and the OECD Guidelines for Multinational Enterprises are parallel, any significant changes in the Guidelines would probably have to be reflected in the ILO instrument in one way or another.

Even though the 1998 Declaration does not directly apply to multinational enterprises, it is liable to have consequences to the extent that the promotion of fundamental principles and rights at work leads to government policy changes. A relevant comparison could be with the work of the Committee on Freedom of Association of the ILO Governing Body. A complaint presented to this Committee on alleged violations of the principles of freedom of association and the right to collective bargaining may be based on specific situations involving an enterprise. The conclusions and recommendations of the Governing Body, however, are addressed to the governments as it is their task to ensure compliance with these principles.

In the long run the ILO Declaration on Fundamental Principles and Rights at Work and corporate policies should be expected to converge. This does not, however, imply that the follow-up of the Declaration, now being put into place, would directly address enterprise policy practices.

Another relevant question is, what new do the core labour standards bring to the instruments which originated in the Seventies? Freedom of association and nondiscrimination are specifically covered by the Guidelines. The fact that there is no strong emphasis on forced and child labour is due to the fact that the Guidelines were drafted by industrialized countries. In addition, the consensus on worldwide action against child labour (and particularly its worst forms) is only a couple of years old. On the other hand, this consensus against child labour has been a decisive factor for many enterprises when taking socially motivated action within their sphere of influence.

Somewhat problematic is the fact that despite the strengthened consensus on core labour standards, only a third of existing voluntary corporate codes refer to international standards generally, including
international labour or human rights standards. There is a widespread in the treatment of these standards, too. Frequently only some of the standards are addressed, and some codes explicitly discourage union organization. When codes have been drafted with a degree of labour-management cooperation, they tend more to refer to core labour standards.

Unilateral corporate codes are both statements of intent and, when monitored and followed up with subcontractors and other economic links, rules of the game for gaining the benefits of participation in a global enterprise. As such, they can complement internationally recognized labour standards. They can serve as catalysts to advance the respect of minimum labour standards which, in any event, should be a guiding principle for law and practice.

However, the very fact that such codes are deemed necessary bears witness to the fact that core labour standards are not yet universally observed. In some cases they lead to monitoring which actually should be the responsibility of national labour inspectorates or other authorities if they would exist and be sufficiently effective.

Without agreed supervision and monitoring, individual codes of conduct are not more than statements of corporate policy. Such mission statements are sometimes better known in the import markets (comparable with the earlier notion of home countries) than where production takes place. No uniform systems of monitoring such codes exist; the competence and independence of the external monitoring that exists varies greatly; and the costs of such services are not insignificant. As particularly the consumer goods sector (sporting goods, clothing, household goods etc.) is under competitive pressure to demonstrate that what is being marketed is not produced in a sub-standard manner, there is a proliferation of monitoring services - which, in fact, is a new growth area.

One alternative consists of joint implementation structures involving the enterprises and trade unions. This, of course, presumes a degree of acceptance of trade unions as partners which is not always the case. Subcontractors and other parts of the chain may be small and medium enterprises where arrangements for workers’ representation are either lacking or not very developed. There is still some distance between accepting the rights of workers to organize and actively involve their organizations in a process of improving working conditions.

Voluntary private sector initiatives will no doubt continue to play an important role, particularly as the diversification of economic activities, privatization, and deregulation continue and there are more market pressures for self-regulation. However, universally applicable solutions (which promote the “level playing field” which also many business representatives call for) will not be produced by the market alone. Equally clear is that a dirigiste approach, reminiscent of the times of the New International Economic Order, will not produce the desired framework.

A more complex approach is called for, together with a better understanding of the interaction of private entities and public policy. In January 1999, at the Davos World Economic Forum the Secretary-General of the United Nations called on the multinational investors, producers and employers to uphold human rights and decent labour and environmental standards in the conduct of their own business. Referring explicitly to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, he suggested that business leaders do not have to wait for legislation to ensure that core labour standards are respected in their own spheres.
Promotional measures by the ILO as a follow-up of the 1998 Declaration will have a positive impact on the framework, as an over-all policy corresponds with the desire to ensure a level playing field. From the point of view of corporate policies, one might think about a three-tier approach, where:

(a) compliance with core labour standards by all countries is promoted through the follow-up of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, thus creating a recognized and decent global social minimum level;

(b) there is continued agreement that expectations set for the corporate sector are contained in existing instruments and particularly the OECD Guidelines for Multinational Enterprises and the Tripartite ILO Declaration on Multinational Enterprises and Social Policy, with whatever amendments the current focus on core labour standards might call for; and

(c) relevant international organizations, such as the ILO, are ready to offer services of knowledge, advice and support to the corporate sector, upon request, for initiatives aimed at specifically promoting core labour standards and decent conditions of work.

This might also give an impetus to revisit the way in which national contact points in the OECD countries function, in order to enhance their potential for offering advice and other services to the corporate sector. Enterprises which decide to undertake action in this field - on their own, or in consultation with the representatives of workers, and/or following approaches by NGOs - should be able to benefit from information and advice on what is the “state of the art” regarding principles to be respected.

On occasions, there have been references to the thought of having a “model code” for the corporate sector. However, the consensus on the importance of the core labour standards and continued support for the contents of the OECD Guidelines and the 1977 Tripartite ILO Declaration beg the question: What new could such a model code bring in? The basic elements exist. The challenge rather is to adapt their promotion to the new global situation.

The author of this paper wishes to underline that it is not an official ILO position. Some of its observations are based on his experiences as a staff member of the U.N. Centre on Transnational Corporations 1976-197; General Secretary of the Trade Union Advisory Committee to the OECD (TUAC) 1996-1985; and chairperson of TUAC working parties on globalization, trade, and labour standards (1990 - 1996). In his current position in the ILO he has senior management responsibility for the follow-up of the Declaration on Fundamental Principles and Rights at Work.