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LABOUR AND EMPLOYMENT PRACTICES IN TODAY'S GLOBAL ECONOMY: IMPLICATIONS FOR THE OECD GUIDELINES ON MULTINATIONAL ENTERPRISES

Report on a meeting of management experts held under the OECD Labour/Management Programme (Paris, 10 March 1999)

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OECD LABOUR/MANAGEMENT PROGRAMME

**LABOUR AND EMPLOYMENT PRACTICES IN TODAY'S GLOBAL ECONOMY:
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Report on a meeting of management experts
held under the OECD Labour/Management Programme

(Paris, 10th March 1999)

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FOREWORD

Under the OECD Labour/Management Programme for 1999, a meeting of management experts on "Labour and Employment Practices in Today's Global Economy: Implications for the OECD Guidelines on Multinational Enterprises" was held in Paris on 10th March 1999. The meeting was prepared in collaboration with the Business and Industry Advisory Committee to the OECD (BIAC).

Below you will find the Agenda of the meeting, as well as the overall report prepared by Mr. Jean-Jacques Oechslin, designated as General Rapporteur for this activity.

**THE OPINIONS EXPRESSED AND ARGUMENTS EMPLOYED IN THIS REPORT
ARE THE RESPONSIBILITY OF THE AUTHOR
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AGENDA

GENERAL INTRODUCTION

I. COMPANY PRACTICES

Cases: operating policies, practices, behaviour.
Research data: impact of MNE activities on employment in home and host countries.
Open discussion: guidelines purpose, use, value, effectiveness.

II. THE GUIDELINES CASE PRACTICE

National contact points: role, history of use, potential value.
OECD CIME: clarifications, maintaining the equilibrium.
Open discussion: the importance of company participation.

III. THE GUIDELINES TEXT

Forced labour and/or child labour.
Proposed new chapter on human rights.
Other: sustainable development, definition of an MNE, disclosure, training, safety, etc.
Open discussion: how has the context for effective private organisations changed?

IV. GUIDELINES IMPLEMENTATION

Compare OECD, ILO, NAFTA (and UN) oversight.
NCP role, and CIME – what future role?
Open discussion: practical steps.

V. CONCLUSIONS

Closing commentary of business panellists.
Conclusions by the rapporteur.

FINAL REPORT ON THE MEETING

by
Mr. Jean-Jacques Oechslin
Honorary President of the International Organization of Employers
(France)

INTRODUCTION: THE CONTEXT OF THE MEETING

The meeting was held as part of the process of regular consultations between the OECD and management experts within the framework of the Labour/Management Programme. It was chaired by Filip Hamro-Drotz, Chairman of the BIAC Committee on Employment, Labour and Social Affairs, and assisted by Robert Ley, Head of the Capital Movements, International Investment and Services Division, OECD, and Peter Tergeist, Employment Analysis and Policy Division, OECD.

The context of the meeting was the OECD's on-going review of the content and implementation of the Declaration on International Investment and Multinational Enterprises, adopted in 1976 and revised in 1979, 1984 and 1991. The objective was to ascertain the "best practices" of MNEs in the field of Employment and Industrial Relations in the light of the Declaration. To this effect, the OECD, through BIAC, had invited several representatives of MNEs to act as panellists. Members of BIAC were also represented. The meeting also considered the application and relevance of the Declaration and Guidelines as well as other international standards, in particular in the framework of the ILO.

The present report offers a synthesis of the points made during the meeting presented under the different agenda items, but it is in no way a chronological record of the interventions.

AGENDA ITEM 1: COMPANY PRACTICES

The Senior Vice President of Pfizer Inc. chaired this section of the meeting. The experience of the following companies was presented to the meeting: Pfizer, Coca-Cola, Motorola, General Motors, and British American Tobacco. Representatives of Philips and Unilever also took part in the discussion. The purpose of this section of the meeting was to give a "real life" image of the experiences of several companies.

The key concept of the presentations was "globality". The enterprises represented at the meeting are developing a global strategy in order to be competitive on the global marketplace. The traditional terminology based on the concept of "multinational" or "transnational" enterprises is now out-of-date. The distinction, for instance, between home-countries and host-countries is obsolete. For convenience sake, this report will use the traditional expression "multinational enterprise" (MNE), but it should be kept in mind that it does not reflect the reality of a "global enterprise".

The global marketplace offers a challenge and new opportunities for enterprises whose competitive strength is based on innovation. Promoting innovation means encouraging creativity, risk-taking and sharing of ideas. In a constantly changing world, adaptability is the key to success. Sustainable competitive advantage is based on people, not in technology. In the new workplace most employees occupy “knowledge jobs”. The ratio of computers to employees in some companies, for example, is greater than 1:1. The management of people is the key of a global business strategy. All panellists under various names developed this concept. MNEs are not looking for cheap labour. As a matter of fact, most investments go to countries with a high potential of skilled manpower. For example, 49% of direct investment of US-based companies goes to Europe, 12% to Canada, 20% to Latin America and other American countries, and 17% to Asia and Pacific.

MNEs are developing their own set of “Core Values” or company “Codes of Ethics” or “Statements of General Practices”. This phraseology would have looked rather strange at the time of the drafting of the Guidelines. Motorola’s Individual Dignity Entitlement Programme, for instance, aims at “virtual perfection in the match between the needs and interests of the employees and the survival needs of the corporation”. This implies constant respect for each individual person, real jobs, training, a clear picture of one’s future, and a bias free workplace. These values are common for the enterprise as a whole but have to be applied in the context of national legislation.

Training appears fundamental, as skills are recognised as the main assets of an enterprise. MNEs invest in training much more than expected. This applies in particular to local personnel, making the larger part of the staff of US-based multinationals’ subsidiaries outside the United States, for example.

MNEs have also contributed to a large extent to the development of new approaches to Health and Safety Programmes. From an individualistic methodology based on focusing solely on engineering or operator error, the global concept of health and safety focus on cultural and management systems that influence safety behaviour and on using the power of leadership to ensure that employees at all levels take responsibility for safety. Training new employees in safe practices has proven particularly effective in preventing accidents and injuries; as a result, new plants in transition or developing countries can have safety levels that are higher than old plants in the United States, for example.

Employment aspects of international investments were also mentioned in the presentations. For instance, in Poland every direct job creation was accompanied by ten indirect creations, especially by the development of small shops, an important contribution to social stability. This multiplier effect is greater in these countries than in Western Europe.

It would be wrong anyway to think that the generation of new jobs is a monopoly of big MNEs. An interesting study in the Danish Confederation of Industry shows that many small or middle-sized enterprises create subsidiaries in foreign countries and that the effect of these investments on employment are meaningful and result also in improving employment in the country of origin.¹

Following these presentations, representatives of companies were invited to highlight the purpose, use, value and effectiveness of the Guidelines or international standards in general. They all stressed that their policies as described above were not a response to the Guidelines but constitute what they consider good business practice for global enterprises. The best practices are certainly consistent with the Guidelines but are not a result of them. They considered that the document was nevertheless helpful because it represented an expression of common understanding of governments, supported by the business

¹ The full report is available in English on the internet, at <http://www.biac.org>.

community, and could generate a greater awareness of the issues. The merits of the Guidelines are their brevity and simplicity. It would be counterproductive to make them more complex and detailed. It is important that they remain voluntary.

In conclusion of this section, its chairman said that the experiences described by the panellists constitute a fair and representative sample of the practice of MNEs. It was good business strategy and therefore most companies in this category apply rather similar policies. It should be stressed however that these “best practices” should not affect the need for flexibility and adaptability in the management of all enterprises.

AGENDA ITEM 2: THE GUIDELINES CASE PRACTICE

Under this item, participants made comments on company experience with MNEs Guideline cases. One of them said the use of the word “case” does not seem appropriate because it could create a misunderstanding about the voluntary character of the Guidelines. Expressions that could imply that they constitute legal obligations should be avoided.

Anyway, the “cases” are not representative of the actual practice of MNEs. Their number is relatively small and declining. The method to deal with the cases is not quite satisfactory. The process is not transparent enough and the procedures are not well understood. National Contact Points are difficult to locate and their role is not very clear.

The relationship between the OECD Guidelines and the ILO Tripartite Declaration procedures may be the source of some inconsistencies. The existence of two mechanisms may be the source of some confusion. Differing interpretations or clarifications could lead to different results in the two bodies. Simultaneous procedures could result in forum shopping.

It was also mentioned that national legislation often goes beyond the dispositions of the Guidelines.

AGENDA ITEM 3: THE GUIDELINES TEXT

The Deputy Director of the Confederation of Danish Industries chaired this section.

An OECD representative explained that government delegations and other interested parties had expressed interest in updating the Guidelines. There is no consensus so far on textual changes but a real interest in exploring avenues for revision. The Budapest Conference, held in November 1998, collected ideas for a meaningful review process. The issues of main interest for the review are the coverage of the Guidelines, the section on Employment and Labour Relations, particularly the problem of closures, new dispositions on human rights, environment and sustainable development.

a. Geographical coverage

An OECD representative indicated that many government delegations consider that the “good practices” recommended by the Guidelines concern operations of MNEs wherever they operate, including non-member countries. The Guidelines do not give a clear and explicit answer at present. The constituents of the OECD want to know how the MNEs behave in non-member countries.

Should the Guidelines institutionalise this aspect of the text? They are based on an ethical view of the way business is done.

Participants expressed misgivings about this approach. The extra-territorial application of the Guidelines raises complicated problems of international relations. Developing countries are sensitive about issues affecting their sovereignty and may react negatively to such an initiative. Some of the provisions of the Guidelines may be in contradiction with national legislation or may lead to what they would consider interference in their national affairs.

This issue is connected with the issue of national treatment, which should have been dealt with in the discussion of the MAI. The 1976 Declaration on International Investment and Multinational Enterprises introducing the Guidelines makes it clear that the Guidelines are part of a package.

Attention was drawn to ILO standards, conventions and recommendations, and to its Tripartite Declaration of Principles concerning MNEs and Social Policy. Most countries are members of the ILO and questions of territoriality will not normally arise in a universal organisation of the UN system.

b. Information and consultation rights, reasonable notice of changes in operation

OECD representatives informed the meeting that the review could include an examination of the adequacy of current provisions on the reasonable timing of notice and of co-operation with employee's representatives so as to mitigate adverse effects of plant closing and mass dismissals. This would include the issue whether notice should be given before a final decision is given and if the management has to state the reasons for it. This issue has been raised in several requests for clarification. The European Union has also recently adopted new standards in this matter. They asked the participants to comment on their practice in these circumstances.

All of the participants explained that companies must and do act within a framework set by domestic law. Their policy was to rely on voluntary arrangements. This policy priority results in employees getting earlier notice of workforce reductions and plant closures. Considerable lead-time is given as a practical matter, because earlier notice ultimately reduces the company's costs of transition. Full use was made of re-training facilities offered to dismissed workers and of assistance given to them in finding new jobs, eventually in other countries. In case of reduction of the workforce in a particular plant, management has to prepare a plan in good time so as to facilitate the redeployment of the workers. In the case of a closedown of a site, the same procedure would apply. However the participants stressed that the decision to reduce the staff or to close a site is the sole responsibility of the management, who should ensure that such a decision is implemented in as humane a way as possible.

In the case of sale of a business, attention was drawn to the necessity of secrecy imposed by law in many countries, in particular in the United States. In the European Union, participants felt that the new regulation on the matter was a fair compromise. The discussion made it clear that, on this matter, there is a difference of approach between Europe and North America.

c. Core labour standards

OECD representatives also mentioned the "Core Labour Standards", as defined in June 1998 by the International Labour Conference in the Declaration on Fundamental Principles and Rights at Work. They are:

- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour;
- the freedom of association and effective recognition of the right of collective bargaining; and
- the elimination of discrimination in respect of employment and occupation.

The Guidelines imply the first two principles but do not explicitly cover them. The two last principles are covered.

The participants were not in favour of including the first two matters in the Guidelines. They were adequately covered by the ILO and this organisation should keep the leadership, being a world body and competent to deal with fundamental labour problems. Duplication of work should be avoided.

It is also necessary to make a distinction between the obligations of companies and governments. MNEs cannot be held responsible for the shortcomings of local authorities. Moreover, the MNEs cannot directly adhere to commitments in the ILO, which are addressed to governments who are then responsible for choosing a form of legislation to which companies must adhere. References to other international organisations or instruments may result in a shift of governmental responsibility and accountability to companies.

The companies contribute to economic development and to employment, generating better conditions of life and gradual elimination of poverty which is the primary cause of child labour. Also, some measures designed to fight child labour have been found counterproductive. As was the case in Bangladesh, for example, alternatives to work may be worse for the children and their families.

A representative of the OECD mentioned the application of company codes to the company's subcontractors. It was stressed that they are voluntary and their content highly different from one company to another. Moreover, very few companies have codes and very few of these match up in their content, so it is difficult to view company codes as the basis for a consensus on company best practices, especially in regard to the relationship of a company to subcontractors.

d. Other issues

OECD representatives mentioned other issues in the text of the Guidelines that are under review, such as corporate governance, consumer protection, environmental protection and sustainable development. The participants noted this information but did not express views on these items on which they were not technically competent.

AGENDA ITEM 4: GUIDELINES IMPLEMENTATION

An OECD representative explained that governments have recognised the importance of promoting the Guidelines in order to make them better known and applied. The updating of the text would contribute to the awareness of the document but specific measures should be made to enhance the positive role that the Guidelines can play in the relations between MNEs and their partners.

The participants agreed on the need for promotional activities like meetings or publications. The companies were aware of the Guidelines. Their business practice is consistent with the recommendations contained in its text, even if their policy is mainly inspired by what they consider to be the best practice in a globalised economy.

The role of National Contact Points was raised at various stages of the discussion. As a whole, the participants considered that the centres were not visible enough and that they could be more efficient in the promotion of the Guidelines. Responding to a question from an OECD representative, they did not consider that it would be advisable to make them tripartite in their structure or their methods. Consultation with employers and workers on joint activities has been sometimes useful in some countries but the formalisation of such practices would be counterproductive. Several MNE representatives emphasised that published clarifications of the guidelines should continue to be made in general terms and that direct reference to parties concerned in any particular matter should not be made. If there were to be a possibility of direct reference, the free flow of information to the National Contact Points would be prejudiced because the parties would control all communication so as to avoid prejudice of their legal rights. Before starting a discussion on the procedure for clarification of the Guidelines, the section chairman presented charts in order to compare this procedure with those applied in other organisations.

The ILO procedure for “interpretation” of its Tripartite Declaration is quite different from the OECD clarification procedure. After examination by the officers and plenary of its Committee on MNEs, the final decision is taken by the Governing Body, a tripartite institution. An elaborate system of control of the application of conventions is available to Member States or employers and workers organisations. ILO conventions are international treaties and binding instruments. A special procedure, based on a tripartite body of Governing Body, controls the implementation of the ILO principles on Freedom of Association, even for States which have not ratified the conventions on these matters. The ILO Declaration on Fundamental Principles and Rights at work, adopted in June 1998, includes a follow-up procedure still to be elaborated by the Governing Body, but to be applied to all Member States irrespective of their ratification of the relevant instruments. The meeting was also informed of the Labour Side Agreement of the North American Free Trade Agreement.

The relationship between corporate codes of conduct and international standards was also discussed. The codes often set higher standards than the Guidelines in specific areas. It was felt that proliferation of international guidelines would create confusion. Individual companies should be allowed the freedom to draft, if they so wish, documents suited to their own needs, without undue interference from other bodies.

The participants were opposed to the idea of incentives or incentive programs intended to promote close adherence to the Guidelines. They felt that the value of the Guidelines rests in its reflecting good business practices, and stating them simply for wide circulation and promotion to new companies, and companies of all sizes.

CONCLUSION

The Guidelines were drafted in 1976, one year before the ILO Tripartite Declaration, a quarter of a century ago. In many aspects, they may appear outdated in our era of globalisation. The global companies of today do not recognise themselves under the denomination of “multinational” or “transnational” enterprises. Their business strategy, their reliance on values and ethics, their emphasis on people make them quite different from the entities addressed in 1976. In addition, the seventies was a difficult period for international investment. Controlled or regulated economies were predominant. The UN was the theatre for a dramatic onslaught against multinationals, assimilated sometimes to organised crime. The Guidelines were in fact the first international document to adopt a more positive view.

We live in another world. We may wonder about the relevance of the Guidelines at the beginning of the next century, about the need for a substantial review, leading to a comprehensive revision of the text

and of the implementation procedure. Paradoxically, the participants of the meeting were in favour of a very prudent approach to an in-depth review of the document. The terminology of the Guidelines may be old-fashioned or ambiguous. But we cannot forget its main value. The Guidelines, similar to the ILO Tripartite Declaration, was the result of a consensus, not just between governments but also including representatives of the business community, and in particular the enterprises concerned. Any significant change should be the result of such a consensus, if it is expected to get the support of companies. They can commit themselves to a revised document if it keeps its voluntary, non-legal character.

The OECD has a role to play in these matters. The majority of MNEs have their origins in an OECD Member country (but there are a growing number of them with headquarters in developing countries). The OECD represents the part of the world with the stronger economy, but it is not a universal organisation. It cannot “legislate” for all countries. This would generate a lot of negative reactions from nations very sensitive about sovereignty issues. The ILO was often mentioned in the discussions. It is clearly the organisation mandated to deal with some of these questions. The adoption last June of an important Declaration on fundamental principles and rights at work is a signal of the commitment of its constituents, especially employers and workers. The OECD can and should bring its own expertise, and should co-operate but not duplicate these activities. Many enterprises of all sizes are more and more concerned with the content of the MNE Guidelines, although they may not be aware of the specific OECD text. The OECD can play an important role in increasing consensus by disseminating its simple and straightforward text.

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