

Hosted by:



Supported by:



Confederation of
Indian Industry

**OECD Global Forum on International Investment
Hotel Intercontinental The Grand
20-21 October 2004, New Delhi, India**

*INVESTMENT FOR DEVELOPMENT:
FORGING PARTNERSHIPS*

**Session 3:
Government Responsibility and Corporate Responsibility –
OECD and non-OECD Perspectives**

THE GLOBALISATION OF LABOUR STANDARDS

The Soft Law Track¹

Roger Blanpain,
*Universities of Leuven, Limburg (Belgium) and Tilburg (The Netherlands),
Honorary President of the International Society of Labour and Social Security Law*

§ 1. A Paradox: Globalisation of the Economy versus Re-Nationalisation of Labour Law

The economy becomes more and more globalised. This is mainly due to 1) the increased international economic integration, involving trade, foreign direct investment (FDI) and capital flow and to 2) the emergence of a knowledge society, going hand in hand with a revolution in the information and communication technology.

I. Trade and FDI. Capital flow

Many countries around the world accept – in various degrees and ways - the market economy. Free enterprise, free markets and foreign direct investment are encouraged. There is the emergence of huge cross-border financial flows. International trade is increasing.

“Trade has expanded rapidly in recent decades, with the value of manufacturing exports worldwide more than tripling in 1980-2000. In the 1990s, exports grew on average by 7% a year, although there was a decline of 4% in 2001.

In 2000, the OECD countries accounted for 79.3% of global service exports and 74.4% of global service imports.

¹ See further: Blanpain Roger & Colucci Michele, *The Globalisation of Labour Standards. The Soft Law Track*, *Bulletin of Comparative Labour Relations*, nr. 52, Kluwer Law International, 2004 (forthcoming).

Between 1950 and 2000, global exports increased three times more than global GDP (based on 1950).

Although the share of developing countries in world manufacturing exports grew from 23% in 1970 to 38% in 1997, four-fifths of this growth is attributable to just 13 economies.

International trade is indeed expanding, but unevenly three quarters of the world's total FDI goes to developed countries. The share of developing countries in global FDI inflows declined from 38% in 1997 to 24% in 1999. Of this, 80% went to only ten developing countries. The share of Africa in world FDI inflows fell below 1% in 2000.

The overall amount of US\$ spent in cross-border mergers and acquisitions has risen from approximately 110 billion in 1988 to over ten times the amount in 2000".²

II. The knowledge society and ICT

New communication and information technologies allow for worldwide networking. Storing, manipulation and distribution of knowledge are daily practice between scholars, governments, enterprises, sub-contractors, clients, family and friends, to only name some of the main actors. Networking is in. The knowledge economy favours the tertiarisation of the economy and consequently of outsourcing. Enterprises outsource research facilities and services to providers in countries, where market conditions are the most attractive.

In the information society a fundamental shift takes place as far as the source of added economic value is concerned, namely from the material (raw materials and industrial products) to the immaterial (knowledge).

Indeed, economic added value today and tomorrow relates more and more to:

- the gathering and storing information;
- the manipulation of knowledge and to
- the transfer and spreading of information worldwide.

This development – from an industrial to an information society – has an enormous impact on the nature of work and on the way enterprises are organised and function.

The information society leads, as said, to the tertiarisation of the economy, to the explosion of the big companies, to large-scale outsourcing. Enterprises become networks, federations of bits and pieces of activity, crossing the boundaries of industrial sectors and even of nations.

The employment relations are affected as well, as they become less hierarchical and more translatelateral. Social, communicative skills (emotional intelligence), are mandatory. "*Savoir faire*" (technical knowledge) as well as "*savoir être*" (relate to others in team) are a must.

The manager becomes less a "boss", but more of a coach, seeing to it that collaborators are on the right place in the undertaking that they, have access to information and the possibility to make a contribution and to grow in their jobs.

Creative jobs are in. Added value mainly comes from mainly problems finders and problem solvers; from those who see problems, analyse them and solve them in a creative way.

A number of repetitive jobs are pushed out through the introduction of new technologies.

The relevant questions for workers consequently are: what is the added value I have? What are my skills?

However, again only the best win³.

² World Commission on the Social Dimension of Globalisation, *Facts and Figures* (4th August 2002) (www.ilo.org).

III. Technology

"In 1995, the Internet had only 25 million users. Only five years later, in 2000, more than 300 million people were using it. Developing countries' share grew relatively faster than industrialized countries' share, but this growth was mainly concentrated in a few developing countries in South East Asia and Latin America. While 92% of high-income countries' population had used the Internet at some point in time in 1999, only 0.9% in low-income countries made use of this technology.

In 1910, less than 10 million people used a telephone. In 1960, this figure reached 100 million. In 2000, 1 billion people are already using telephones, with both fixed and mobile connections. Still, by 2002 more than half of the world population has never made a telephone call.

Between 1970 and 1997, the percentage of people in developing countries, who own a television rose from 1% to almost 16%.

In 1970, only 9% in developing countries had a radio. In 1997, already 25% of developing countries' population possessed one. More than half of all radios worldwide are now operating in developing countries".

IV. Employment

There is worldwide investment, creating jobs. *American* investment in *Europe* provides for 4, 1 million direct jobs and 6 million indirect jobs, more than 10 million in total. EU investment in the US creates 4.4 million direct jobs and 7 million indirect jobs: more than 11 million jobs.

In *Belgium*, a small EU country with a wide open market economy, the grip of foreign groups on the Belgian technological industry expands. Especially American enterprises are having a growing stake in Belgian enterprises or do open subsidiaries in Belgium. Agoria⁴, a Belgian sectoral employers association analysed (2002) the shareholdership of 725 of its members, active in six of the nine sectors of activity it represents: metals and materials, metal products, mechanics and mechatronics, electronics and information and communication technologies, as well as the automobile industry. Foreign ownership is important: more than 75 % of employment in these sub-sectors is generated by "foreign" enterprises, employing not less than 152,000 people. Five years ago, the share was already 68%. Foreign control is most dominant in the auto-electronics- and ICT sectors. In the automobile sector it reaches 89%; in electronics 88%, in ICT 86 %.

Especially, the Americans have a very important piece of the cake. 25% of employment in the technological enterprises is in US hands. *France* is good for 13 %, *Germany* and the *Netherlands* each for 11%. Japan employs 3,3% of the workforce.

No doubt, decision-making power regarding many jobs in Belgium lies with far away headquarters.

But also Belgian enterprises become more and more international (2002). The number of Belgian foreign subsidiaries rose over two years from 8.7% to 10.978%. Most of them are located in neighbouring countries. *France* tops the list with 2,428 subsidiaries. The *Netherlands* follows with 1,826 enterprises. Small *Luxembourg* is third with 963 subsidiaries and *Germany* follows with 686 companies. The *UK* is fifth with 546 units. In the *US*, *Belgian* enterprises control 444 enterprises. *Central and Eastern Europe* is also in demand. In *Poland*, there are 251 Belgian subsidiaries, in *The Czech Republic* 147, in *Slovakia* 53 and in *Romania* 69.

³ *Idem*.

⁴ Agoria retains as "foreign" when a foreign investor controls at least 25 % of the shares.

The Belgian Financial Group Dexia controls 206 foreign subsidiaries, especially in the *Netherlands*, *Luxemburg* and *France*. Agfa-Gevaert participates in 88 foreign enterprises, Solvay follows with 84 and Tractebel has 77.

To give another leading example: *German* Siemens (2003) is delocalising 1/3 of its software development to low wage countries, as well as part of its production and accountancy. Siemens employs world wide 30,000 software developers and has a research and development team of 50,000 people.

Moving to another continent, *India* is becoming a major base for developing new applications for finance, digital appliances and industrial plants. "By some estimates there are more engineers in Bangolere (150,000), than in Silicon Valley (120,000)"⁵. Thousands of Indians in call centres handle customer services and process insurance claims, loans, booking and credit-bill cards.

GE employs in India 16,000 back-office workers and 1,800 R&D Workers; IBM Global Services, 10,000 in IT services and software; Oracle 6,000 in Software services, EDS 3,500 in IT services and so on.

In *Italy*, the country's best and brightest are moving abroad to further their careers. 2.3% of Italian college graduates live abroad vs. 0.9% of the *UK*⁶.

By 2008, forecasts McKinsey, IT services and back-office work in *India* will swell fivefold to an annual export industry employing 4 million people and accounting for 7 % of India's gross domestic product.

V. *Multinational Enterprises*

MNEs are one of the driving forces of the globalisation process. Their number is growing. For example, in 1990 24,000,000 people were working for MNEs. In 2001, 54,000,000. Today, there are about 65,000 MNEs, which have more than 850,000 subsidiaries worldwide.

VI. *Winners and losers*

"However, some 2.8 billion people today live on less than US\$ 2 a day. About 500 million earn US \$ 1 a day or less.

Worldwide, the number of people living on less than US\$ 1 a day barely changed between 1990 and 1999, with 1.276 million slightly decreasing to 1.151 million.

By the end of 2002, the ILO estimates there will be about 120 million migrant workers and their families living outside their countries of origin, representing about 3 per cent of the world's labour force. This includes both documented and undocumented migrant workers.

In the next ten years, there will be an additional 500 million people in the world's labour force, 97% of them in developing countries"⁷.

VII. *Impact of globalisation. The Re-Nationalisation of Labour Law*

"Today we live in a global economy, but not in a global society. "The governance and rules are clearly lacking behind the economic developments"⁸. In a global economy, rules should relate to the trend of the market and at that level". This not forth coming.

⁵ Kripalani Manjeet & Engardio Pete, "The Rise of India", *Business Week*, 8 December 2003, 41.

⁶ *BussinessWeek*, 8 December, 2003.

⁷ World Commission on the Social Dimension of Globalisation, *Facts and Figures* (4th August 2002) (www.ilo.org).

Multinational enterprises are global players. They have a potential global reach. The decisions what and where to invest, not to invest, or to disinvest, are taken in headquarters and escape national government's sovereignty. MNEs invest according to market opportunities. However, employment law remains by and large national.

Moreover, governments are competing with each other for FDI and trade of goods and services. Their countries must be investment friendly. Taxes on capital shift versus taxes to those, who are not footloose and stay: SMEs and labour/consumption. Governments remain local players, even when united in regional organisations like the EU or NAFTA.

National enterprises too are putting pressure on their respective governments to keep costs down and to liberalise the labour markets. Governments are bound to oblige and gradually flex labour conditions.

This goes along with the strategies of the IMF and the World Bank which preach and apply their Washington consensus: get the public deficit down, privatise and get rid of rigidities in the labour markets.

Labour legislation, collective bargaining included, indeed remains national and/or are re-nationalised. There is no countervailing power, either regional or international to transnational economic decision-making.

This is even the case in the European Union, the most advanced regional organisation in the world. Indeed, the EU is not competent for issues like pay, freedom of association, strikes and lockout.

Other important topics like social security, job security and workers participation are subject to the unanimity rule. From May 1, 2004 on, unanimity will be even more difficult to reach than before as the European Union will be composed of 25 Member States.

As a paradox, labour and employment law in the EU, which is, let's repeat it, the most advanced regional structure in the world, has, in a sense, become re-nationalised. This has been confirmed by the Treaties of Amsterdam (1997) and Nice (2000) as well as by the failure to adopt a European Constitution (2003) and agree on a new voting system⁹.

In other words, there is neither a global nor a regional appropriate and integrated legally binding reply to transnational economic decision making. The local decision makers are peddling in empty air and bowing their heads for the multinational winds hoping that the transnational gods will be favourable to them. There is no equivalent and real countervailing power to international economic decision-making.

§ 2. Global Answer: Labour Standards

I. Core Labour Standards

On one point, however, there is a global answer, namely regarding (core) labour standards. All actors, as well international as national, seem to agree that (core) labour standards have to be respected both at international and at national levels.

It is, indeed, self-evident that the full implementation of core labour standards constitutes a *conditio sine qua non* for economic globalisation to be successful. Here, one can ascertain the beginning of a (social) countervailing power.

⁸ Tarja Halonen, November 17, 2003. (www.ilo.org).

⁹ See: Roger Blanpain, *European Labour Law*, Kluwer Law International, 2003, 9th ed., 718 p.

There is, indeed, no doubt that economic globalisation can only reap its total rewards and prosper if there are strong social systems, which provide a.o. excellent education, healthy collaborators and social peace.

FDI looks for skilled, competent and healthy workers, an appropriate infrastructure, and a developed consumers' market.

The ILO rightly observes *“the negative effects of globalisation on certain groups of workers can arise from the absence or inadequate application of labour standards. When standards – national and international – are not applied, workers do not have the basic tools they need to defend themselves, and States do not have adequate tools to ensure the balanced distribution of the benefits of development. This is often the case for temporary workers, migrant workers and workers in some export processing zones, as well as in the informal economy. Women are particularly affected, as they comprise the majority of workers in these categories.*

An increasing amount of research shows that the failure to apply labour standards is damaging to national development. For example, forced or compulsory labour is a constraint on productivity gains and on economic growth, and questions the very value of labour as the basis for development. Child labour transmits and perpetuates inter-generational poverty; releasing children from work and providing them with adequate educational opportunities goes hand in hand with providing decent work for adults”¹⁰.

No doubt, there is a crucial role for all actors (as well public as private) to promote and ensure that basic rights at work are effectively respected all over the world, without exception.

II. Consensus

Over the last decade, Important areas of consensus have emerged concerning the social dimension of globalisation in the context of the ILO.

Since the World Summit for Social Development in Copenhagen (March 1995), international consensus has been achieved on following categories of core labour standards:

- (a) freedom of association and the right to collective bargaining;
- (b) the elimination of child labour;
- (c) the abolition of forced or compulsory labour;
- (d) the elimination of discrimination in occupation and employment.

This led to the adoption by the International Labour Conference in 1998 of the *ILO Declaration on Fundamental Principles and Rights at Work* and its Follow-up.

Labour standards are not only in the forefront of the ILO's objectives and activities. They are also prominent on the agenda of other international bodies like the UN, NAFTA and the OECD.

Some multinational corporations have, on their own or together with other organisations, elaborated corporate codes of conduct in which they express their willingness to implement core labour standards in their world wide policies.

In a sense one can say that the core standards have also become globalised as they are standards to be implemented world wide and constitute a framework for the social policies of the national as well as the international economic actors, especially the MNEs.

¹⁰ ILO activities on the social dimension of globalisation: Synthesis report, 2003 (www.ilo.org).

§ 3. The Globalisation of Soft Law: Guidelines for Multinational Enterprises

Labour standards have in the first place to be implemented by corporations. They are, as employers, the actors in labour and employment *par excellence*. Indeed, they have to apply the labour standards on a daily basis.

I. Private initiatives

As already indicated, many enterprises themselves have initiated on their own initiative codes of conduct, containing also labour standards, laying down the rules which will inspire their business and contain guidelines for management, employees and eventually for their sub contractors. Companies want, in doing so, to project a positive image to the public at large and especially to the consumer.

II. Public initiatives

Enterprises have consequently been addressed, on an ongoing basis, by International organisations, Governments and NGO's, employers' associations and trade unions included, urging them to follow, wherever they operate, not only national rules but also internationally agreed upon labour standards.

Governments, united in international bodies like the UN, the ILO, the OECD and (indirectly) NAFTA have developed codes of conduct for multinational enterprises.

Consequently, legally binding international agreements addressed to multinational enterprises, also regarding labour issues, were not realistic, since the political will to do so was lacking. Governments have to rely on non-legally binding instruments, namely voluntary codes of conduct in order to see to it that labour standards are world wide respected.

These voluntary instruments carry great weight. They are not only formulated by democratically elected Governments, but also endorsed by the representatives of business themselves and thus guidelines which enterprises believe in. In particular, as these guidelines are endorsed by public opinion at large and by consumers, who more and more pay attention to the way companies behave. Consumers, who can and do often severely sanction enterprises, which do not respect fundamental social principles, where it hurts, especially in the market place by not buying their goods or services.

In this sense guidelines may even be more important than so-called legally binding instruments, which are unilaterally imposed and whose effective implementation cannot often not be guaranteed any way.

These guidelines are also helping companies doing their business in a positive way. They do indeed provide a passport of good conduct to enterprises, which often are confronted with difficult choices and do find in the guidelines a way of conduct, which if followed, lifts them above criticism, as the enterprises rightly can point out that that they behaved in a way society at large expects from them.

Guidelines, which translate fundamental social rights, do also constitute good human resources policies, which are self evidently endorsed by the employees and their representatives in the companies involved. Employees like to work for "good" employers, who enjoy public respect.

So, these voluntary guidelines have a strong appeal: they are a call from society, respond to the need of enterprises and serve the interests of the employees and communities as well.

Moreover, these guidelines constitute not only rules of appropriate behaviour for multinational enterprises, but for all employers, national companies as well. They address all employers, national as international and are relevant as well as for the formal as for the informal sector.

A. First Steps

In the 1970's steps were undertaken, as well by the OECD as by the ILO in order to maximise the benefits of international trade and investment at the one hand and to minimize their possible negative effects on the other hand.

Since a "hard" legal answer was – for the reasons indicated above impossible - governments choose the way of "soft" law, namely of voluntary guidelines and/or principles addressed to multinational enterprises.

B. Building Further

At the end of the Century these voluntary instruments were reviewed with the aim of addressing some of the issues anti-globalists were strongly putting on the agenda by adapting the text of the guidelines and, at least in the OECD, the implementation procedure.. But, by and large, the overall approach remained the same: looking for a balance between advantages and disadvantages of FDI on a voluntary basis.

In the mean time, the NAALC (1993) had seen the day light and the UN had launched its Global Compact (1999), on the initiative of Secretary general Kofi Annan.

C. Four Public Instruments

So four public instruments, emanating from Governments address multinational enterprises: the OECD Guidelines (1976, amended in 2000), the ILO Tripartite Declaration (1977, amended in 2000), the NAALC (1993) – only very indirectly - and the Global Compact (1999).

D. Business and labour

Business and Labour played an important role in the drafting of some of these public instruments, especially in the OECD, in an advisory capacity, and in an equal basis in the ILO, which is a tripartite organisation, composed and of governments and of business and labour. Lately, other NGO have become involved.

E. General and Specific Codes of Conduct

Some of the public codes of conduct, like the OECD Guidelines and the Global Compact, are more general instruments, addressing a wide variety of issues,. Other instruments, like the ILO Declaration and the NAALC, are more specific and relate only to labour standards.

F. Respect National Law and Practice

The Guidelines of the OECD as well as the principles of the ILO, underline specifically or imply that multinational enterprises have to live up to national law and practice of the State on which territory they operate.

G. Labour Standards

At the same time, the instruments (Global Compact, the OECD Guidelines and the ILO Principles) contain a list of standards, also of labour law standards, specifically addressed to multinational enterprises. It is accepted that these guidelines or principles of the OECD, the ILO and the Global Compact can add to national law. This is not the case for NAALC, which is trinational, not international. NAALC prescribes that the State parties have to see to it that their own national labour law is effectively applied.

1. Core Labour Standards

The five core labour standards advanced in the 1998 *ILO Declaration on Principles and Rights at Work*, are retained in the four public instruments.

These rights are:

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

2. Other Labour Standards

Other standards, which are retained in some or in all of the four instruments, relate to:

- * The right to strike;
- * Employment promotion;
- * Security of employment;
- * Minimum labour standards;
- * Training Health and Safety Information;
- * Consultation;
- * Notice of changes and mitigation of adverse effects;
- * No threat to transfer;
- * Access to decision makers and to
- * Migrant workers.

H. Multinational and National Enterprises. Worldwide

These various initiatives, emanating from the OECD, the ILO, and the UN are addressed to multinational enterprises, as well public as private, world wide, wherever they operate. They are also recommended to national enterprises, also to SMEs. They have global reach.

I. Voluntary. Moral

These guidelines and or principles are recommended by Governments, united in world wide-regional bodies; they are voluntary, not legally binding. They are, however, morally binding as constituting rules society at large accepts and promotes. These principles can become part of the "hard" law in as far as they constitute general principles of law, which many legal systems, including that of and the EU recognise as sources of law.

J. The Four Tracks

As such, the guidelines & principles constitute one of the four tracks or ways of advancing core fundamental rights. Tracks are like alternative ways fostering the same objective: let the core standards have a profound impact of the reality of the employment relations, world wide, as well in the formal as in the informal economy.

The four tracks are the following.

1) *The legal track*: this is the traditional way of promoting labour standards through the adoption of conventions and recommendations by the ILO International Conference and their follow up through the supervisory machinery, namely the Committee of Experts, the Committee on the Freedom of Association and the Committee on the Application of Conventions and Recommendations, examining whether Member States live up to their legal international obligations under the Conventions.

The follow up of the “labor principles”, institutionalised by NAFTA and the North American Agreement on Labor Cooperation can also be considered as containing some elements of a legal track.

2) *The voluntary track*: this is the road followed by international organisations like the ILO and the OECD, which have promulgated the so-called “voluntary guidelines” addressed to multinational enterprises. These guidelines concern also core labour standards and have each their own follow up procedures.

3) *The promotional track*: This is road the *ILO Declaration on Fundamental Principles and Rights at Work* and its Follow-up has taken to enhance the core labour standards. The Declaration aims at providing technical assistance to countries, which have difficulties attaining the goals of the core labour standards. The Declaration does not want to put countries in difficulties in “jail” as a way to punish them but to foster them in the “hospital”. Helping instead of hitting.

4) *The commercial track*: this is the approach taken by MNEs which know that consumers world wide will appreciate that products are made and services delivered in full respect of core labour standards and want to guide their employees and eventually their sub- contractors and providers along the road of decent social behaviour by elaborating codes of conduct. Some of these codes have follow up procedures, which try to guarantee the implementation of the (labour) standards they contain.

K. Links between the Tracks

The four tracks can and do go along and in doing so strengthen each other in their application. It may also be that a voluntary guideline or a corporate code of conduct may have an impact, where the “hard” legal track, national law for example, would due to lack of sufficient labour inspection resources in a given region de facto yield no results.

L. Same Meaning?

The various tracks address the same core standards as well as other important standards. The question then arises whether they have the same meaning and depth in the various instruments concerned. Is the notion “child labour” used in an ILO Convention, the 1998 Declaration, the OECD Guidelines and a Corporate Code of Conduct the same or does its meaning vary?

At first sight, the answer to that question is not evident. It is undoubtedly so that words mean what they mean. So the basic notions like child labour, forced labour and so on should be the same in the various instruments.

Certainly, when the instruments concerned emanate from the same international organisation like the Conventions, the Declaration (1998) and the Guidelines for Multinational Enterprises (1977) of the ILO, one must assume that notions used, have the same meaning¹¹. For practical purposes, this means that the notions used are those of the Conventions, where they are clearly spelled out and as they are interpreted and commented by the ILO supervisory bodies.

¹¹ For a meaning and significance of various labour standards, core and others, see: ILO, *International Labour Standards. A global approach. 75 anniversary of the Committee of Experts on the Application of Conventions and Recommendations*, Geneva, 2002, 690 p.

The same should go for the significance of the notions used in the Guidelines of the OECD since all the OECD Member States of those regional bodies are equally Member States of the ILO and have subscribed to the (core) conventions in which the (core) labour standards are elaborated and/or to the ILO 1998 Declaration on Rights and Principles at Work.

Exception could be made when a given instrument contains a specific definition or refers to a specific national context, which is e.g. the case of the NAFTA Agreement. Although in the NAALC communication procedures reference has been made to ILO Conventions 87 – 98 (freedom of association and collective bargaining)

As far as the codes of conduct of MNEs are concerned, some of them do refer to international instruments, like to the ILO Principles for Multinational Enterprises or to the OECD Guidelines. For other codes of conduct, where no specific definitions have been given to certain terms, one can assume that the general meaning as contained in the ILO core conventions is prevalent.

In case there would be a conflict of meaning between various different international instruments, the main criterion to solve this problem should be the “progressive nature of labour law”, taken in its broadest sense. The purpose of labour standards is to promote social progress. So in case, of a conflict preference should be given to the standard, which is most favourable to the workers¹².

M. Implementation

The 4 public instruments use various way of implementation, which undoubtedly enhance each other's impact.

The ILO relies mainly on **reporting**. Every three years a global survey is organised, on the basis of a questionnaire addressed to the member states as well as to the employers' associations and to the trade unions of those countries. The addressed parties are asked to answer on how the principles of the Tripartite MNE declaration are lived up to by the multinational enterprises operating in their country.

Another way of implementation of the Guidelines is by **problem solving**. This is a task given to the National Contact Points, which operate in each Member State of the OECD. There may be bilateral or even trilateral contacts to that end. The NCP may help to resolve the dispute at hand. If no solution can be agreed upon, the NCP will nevertheless express its views or make such recommendations for action as it considers appropriate.

Under the NAALC procedures anyone may introduce a communication regarding a labour matter in a given party Member State involving one of the 11 labor principles. So attention may be drawn to a case, where a multinational enterprise is reported as not living up to one or more principles and/or that the Member State in question is not appropriately dealing with the issue, The NAO involved may draw up a report, express views, describe the situation and the labour law involved. However, one of the ambiguities, which is reported for NAALC's communication procedure is the false expectations it may create as people hope that a remedy will be forthcoming, which is however not the case.

Important is, be it repeated, that the attention of public opinion is drawn on given cases, where subsidiaries of multinational enterprises are involved, which adds to transparency and to possible image related pressure on the company in question. Companies pay great attention to how their image is perceived by the public at large and will make an additional mile to correct and improve the perception where appropriate and possible. Especially consumers may punish multinationals enterprises where it hurts most, this is the market place.

A third way of implementation is the **clarification procedure**, as practiced by the OECD. The OECD's IME committee clarifies guidelines, at the request of Member States or of BIAC or TUAC, when problems arise for which a NCP has not been able to formulate an answer. Clarifications are interpretations of guidelines. Also here, the case usually involves the behaviour of a given multinational enterprise. Although, the OECD does not reach conclusions on the conduct of

¹² N. Valticos & G. von Potobsky, *International Labour Law*, IEL, 1994, KLI, 80.

individual enterprises, the content of the clarification allows to conclude whether the enterprise in question acted in conformity with the Guidelines or not. Also this is of the greatest importance as it adds, again to public awareness and scrutiny.

As said, the communications, within the NAALC procedure may lead to exploration of the law, applicable, which may guide parties for their future behaviour.

O. Impact

The most important question of all is, self evidently, does it matter? Do the instruments make a real difference? Do multinational enterprises for that matter follow the rules, respect core labour standards, and conduct proper social policies, world wide?

P. Representative Reporting

Let's first say that the ILO report (1996) shows that 100 out of 174 Member States responded to the questionnaire regarding the follow up of the ILO Declaration in their respective countries: 23 African countries, 21 American countries, 22 Asian countries and 33 European countries. This is representative, the more so that the very populous states like China, India, Indonesia, Brazil, the United States, Bangladesh, Mexico, Japan, Germany, France and others took part in the reporting. The number of countries reporting is on the increase and compares favourably with the nr of 54 countries, which participated in the first survey (1980). There were also reports from 29 employer's associations, 45 workers' organisations and 10 reports were tripartite.

Q. Do MNEs live up to the labour standards?

The reports by the countries and the social partners underline for all the covered aspects as well positive as negative points. We refer to the summary of the reports, given above.

But we can say that many responded were e.g. of the opinion

- * that "MNEs made an important contribution within the framework of *development policies*;
- * experienced *qualitative benefits from technology* by MNEs, including better job opportunities, increased skills and heightened productivity;
- * the perception that MNEs take measures to provide *secure and stable employment* was balanced;
- * MNEs were credited with playing an important role in *HRD and training*, but there was no unanimous agreement on this point;
- * *wages and conditions of work* were generally perceived to be equal or more favourable than those of comparable employers in the country.

In the views of many respondents, the activities of MNEs did not cause occupational safety and health problems.

Many respondents considered industrial relations standards (that is, policies and/or practices) in MNEs to be the same or comparable to those observed by comparable employers in the country, while a number perceived MNE standards as more favourable than comparable local employers.

Self-evidently were these views qualified by a number of respondents underlining e.g. the temporary and precarious nature of jobs; loss of jobs, concentration of power and were difficulties reported. For the NAALC procedure it was indicated that national laws were not appropriately applied in a number of cases.

But the overall view prevails that multinational enterprises by and large live up to the labour standards in the same or comparable way to those observed by local employers. Problems are reported, as follows also from the experience with problem solving under the OECD Guidelines.

R. Problem solving

Problem solving is on the agenda of the National Contact Points, which operate in each of the 30 OECD Member Countries. Not less than 60 specific instances have been raised between 2000 and 2003, mainly in the U.S., France and the Netherlands, most of them in relation to labour standards. Two-third of the cases have to do with companies activities in non-adhering countries, including problems of child labour, human rights issues and the social implications of the exploitation of national resources. *In a number of cases problems could be solved, in others the NCP could indicate what kind of course of action should be taken.*

The NAALC procedure regarding communications is not really focused on problem solving. This is leading to false expectations.

S. Clarifications

The clarification of the meaning of the guidelines has been somewhat successful in framework the OECD Guidelines. One has to note that the CIME is composed of representatives of the OECD only, which has proved to be an advantage. In the ILO, the procedure being tripartite, employers have blocked attempts to discuss issues, introduced by way of a case, as well as requests for clarifications in a rather effective way, which is of course regrettable. Only two clarifications were given. Employers shy away from discussions, which involve the behaviour of specific companies.

In the OECD some 35 cases were brought to the attention of the CIME in the period between 1977 and 2000. Since then no new clarifications have been issued, which may have to do with the fact that the NCPs play a greater role. The fact is also that most of the relevant questions have been raised and clarified so that new questions for clarifications are hard to formulate. Once a question has been dealt with, that's it.

V. Corporate Action. Global compact

Finally, some 1000 multinational enterprises participate in one way or another in the Global Compact exercise; evidently some of the largest companies are involved. This only a fraction of the 65.000 MNEs, which are active in the world economy.

CONCLUDING

There is no doubt that the UN, ILO, OECD and NAALC instruments have an impact on reality in the area of labour standards. The reasons are manifold.

First, the Guidelines are the result of consensus between governments, business and labour. In the ILO and the OECD, the two most important initiatives, the Principles and Guidelines were drawn up in close collaboration between business and labour, which support the exercise. Thus these instruments have the backing of governments, employers and unions, with all the moral weight and authority that this carries. Indeed, the chances that rules of conduct, what the Guidelines and principles in essence are, will effectively govern the daily life of the multinational enterprise, are greatly enhanced if they are considered by those to whom they are addressed as reasonable and acceptable.

Secondly, there is the political will of governments to succeed, to see to it that the guidelines are more than a mere scrap of paper and they gain in credibility. The ILO and the OECD have updated their content and the OECD has focused on the role of the NCPs. The Global Compact is trying to give synergy to initiatives multinational enterprises take to further the 9 principles contained in the compact.

Undoubtedly, points of view differ between the various Governments, trade unions and employer's associations. The employers want to stick to core standards and broad principles, leaving it up to the enterprises themselves to integrate them in the conduct of their business. Some governments and trade unions want the procedures to operate as courts, where cases can be introduced and the behaviour of enterprises discussed and remedies obtained.

As always compromises have been concluded. Reporting, partial problems solving, clarifications and concrete actions monitor the Guidelines.

The results of this approach can be compared with those of the supervisory mechanism of the ILO, monitoring how Member states live up to the International Conventions and the legal obligations they entail for them. The powers of the ILO machinery are also only moral, relying on persuasion, drawing upon the attention of public opinion and the influence this may have on the Governments concerned.

The voluntary instruments of the UN, the ILO and the OECD are not a guarantee that all companies in all places in the world will adhere to and follow labour standards in appropriate fashion. Not any more than "hard" law succeeds in doing that.

But the instruments sure help and are the best way, in the given circumstances, to address the issue of a global social answer to a transnational economy.

One point is, however, clear: the power relationship between the employer and the workers and their representatives has been tremendously changed. Guidelines do not affect that power relationship and leave it intact. Let's repeat it, the financial and economic, as well as the technological decision making escapes local actors completely. And where collective bargaining expresses the power relationship between business and labour, this has been dramatically shifted to the advantage of the MNE.

Here the guidelines and principles are of scant use. Other measures are needed to that end. But, as said, the political will to do that is lacking. So let's foster the voluntary instruments we do have and encourage by all means the contribution they can make to economic and social progress and for the reduction and resolution of the difficulties to which the operations of multinational enterprises may give rise.

Roger BLANPAIN – Curriculum Vitae

Professor, Law School, University of Tilburg, The Netherlands, (1998-°°); Visiting professor at the Economics Faculty of the University of Limburg, Belgium (2003 -)

Professor of Comparative Labour Law and Industrial Relations (1967-1998) and Dean, Law School, University of Leuven, Belgium (1984-1988);

Visiting Professor, Michigan State University (1970), University of Kentucky, (1976), INSEAD Fontainebleau (1981-); Free University of Brussels (1985); Sophia University, Tokyo (1988), University of Florida (1989); University of Paris-Sorbonne (1993); Illinois (2000)

President of the Belgian Association of Industrial Relations (1967-1997).

President of the International Industrial Relations Association (1986-89); -President of the International Society for Labour and Social Security Law (2001- 2003)

Editor in Chief of the International Encyclopaedia for Labour Law and Industrial Relations (1975-); the Bulletin of Industrial Relations;

Editor in Chief of the International Encyclopaedia of Laws (1989-); more than 1100 collaborators worldwide.

Member of the Belgian Senate (1987- 1989).

Chairman of the Belgian Social Security Cross Point Data Bank (1990-1996);

Member of the Belgian Royal Academy of Sciences (1992-);

Doctor honoris causa University of Szeged, Hungary (1997)

President of the Association of Scientific and Educative Authors (1997-)

President of Repobel, Belgian Society for Reprograhy (2001-2003)

Member of the Core Team of the Labor Market Working Group of the World Bank (2003 -).