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David Blake

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International Labor and the Regulation of Multinational Corporations: Proposals and Prospects

DAVID H. BLAKE*

INTRODUCTION

Much has been written recently about the fantastic expansion of multinational corporations as one of the most important vehicles promoting the internationalization of the world's economy. The figures are familiar; the names and size of some of the largest corporations are well-known; and numerous analysts, journalists and ideologues have done their best to provide us with arguments regarding the impact and implications of these corporations on both host and parent states. Consequently, it is not necessary to repeat these figures or the changes or justifications emerging from these discussions. Instead, I would like to turn immediately to the question of the consequences of these firms for workers and their trade unions. More narrowly, after a short introduction, this article seeks to examine some of the legal and non-legal regulatory schemes which have been advanced as mechanisms by which
labor unions might be able to achieve their objectives regarding the control of multinational enterprises. Within this general concern, the paper focuses on international, regional and foreign efforts to establish regulations, purposefully neglecting American labor's support of the Burke-Hartke bill about which so much has been written already. However, before beginning this effort, one caveat is in order. I am not a lawyer and as will be seen do not approach the subject from the perspective of a lawyer. The information upon which much of this article is based has been obtained from a close monitoring and analysis of trade union documents and from extensive interviews conducted with international and non-American trade union officials during the past several years. Thus, forewarned, the editors of the San Diego Law Review and the readers themselves assume complete responsibility for reading further.

Among all the statistics offered regarding the size of multinational corporate activity, the area least stressed is that of worldwide employment. However, it stands to reason that extensive direct foreign investment results in many workers being employed by foreign headquartered multinational corporations. Unfortunately, though, there are no readily available aggregate statistics to show the amount of employment generated by multinational enterprises around the world. A hint of the size of this employment is provided by data collected by the International Metalworkers' Federation (IMF) for twenty-seven major multinational electrical and electronic companies and twelve major international automobile manufacturers.¹ In the former industry, the firms employed 3,940,833 persons and in the latter 2,401,223 with the per firm averages being 109,000 employees in the electrical industry and slightly more than 200,000 workers in the auto industry. Breakdowns are not generally available regarding the percentage of the work force employed by foreign subsidiaries, but suffice it to say that for a number of firms, foreign employment comprises more than a third of their total workforce. Representative companies in this category would be Ford, General Motors, Philips, Nestle, Proctor and Gamble, International Telephone and Telegraph (IT&T), International Business Machines and, of course, many others.

From the point of view of the host countries, the importance of foreign direct investment in such fields as chemicals, vehicular manufacturing, electrical machinery and office equipment means that in certain industries and for specific industrial unions associated with these industries the foreign employer component is of a critical size. As an example, a report of 1967 employment patterns in the Belgian metalworking industry revealed that 35 percent of all workers in this industry were employed by foreign-headquartered multinational corporations. It is readily understandable why the president of Belgium's largest metalworking union is so concerned about the multinationals and their impact on labor.

THE CONCERNS OF LABOR

In several other articles, I have discussed some of the concerns of host country trade unions regarding their relationships with multinational corporations, but perhaps a brief review is in order. One of the major functions of trade unions is to protect and advance the interests of their members through interaction with management and appropriate governmental bodies. Trade union officials feel quite strongly that their ability to pursue successfully these functions is somewhat reduced because of the international nature of the employer. From the union perspective, top management, the place where important decisions are made, goals established and standards set, is located in some foreign country in a headquarters which is physically, psychologically, culturally and politically distant from the subsidiary in the host country.


3. See the following: Blake, Corporate Structure and International Unionism, Col. J. W. Bus. 19-26 (1972); Blake, The Internationalization of Industrial Relations, 3 J. Int'l Bus. Stu. 17-32 (1972); and Blake, Trade Unions and the Challenge of the Multinational Corporation, 403 Annals, 34-45 (1972).

4. Management protests this view, arguing instead that subsidiary management is the locus of decision-making power. A recent study I undertook indicates that international executives of large American multinationals feel that the involvement of headquarters in industrial relations activities at the subsidiary level is very rare on such things as local contract administration, subsidiary grievance procedure, and general relations.
result of these factors, and others, it is exceptionally difficult for a trade union, essentially limited in influence and membership to one state, to have the ability to exert effective pressure on a management which is essentially beyond the union’s reach in another country.

Moreover, the large size and international nature of the multinational employer means that management may be able to absorb pressures and even strikes directed toward one particular subsidiary with very little harm to the whole corporation. Other facilities and profit centers located around the world will continue to work largely unaffected by the industrial dispute. Consequently, the corporation is not as susceptible to the various influence tactics in the arsenal of the trade union. In contrast, a solely domestic manufacturer is likely to feel more sharply the various pressures mounted by a union and may well be more responsive to the union demands. Furthermore, the existence of multiple facilities in several different countries may allow the multinational corporation to shift production in a way which insures the continuous servicing of important markets and production processes. Again, the domestic manufacturer is not able to do this.

Trade union officials are also concerned about the ability of multinational corporations to shut down operations in one state regardless of the cost to the host state work force or economy. These rather basic investment decisions and their consequences for job security are also thought to be more difficult to influence when an international firm is involved. What makes matters even more irritating is the feeling that management of multinational firms act purposefully or clumsily in ways which are quite contrary to established procedures and practices. Questions of union recognition and consultation, employment practices and work rules are frequently cited by union officials as the type of issues where multinational corporations are prone to try to introduce new practices or are unaware of the established industrial customs and traditions.

Trade union officials also feel that their ability to develop sound and factually supported arguments for bargaining with multinational corporations is hindered by the difficulty of obtaining appropriate financial information. Consolidated accounts, transfer pricing, and cost and profit allocations among subsidiaries often mean that the true financial structure of a particular subsidiary is

with unions. However, by their own admission, headquarters is much more frequently involved in collective bargaining issues and the settlement of strikes.
not only hidden from the unions but also arranged in a fashion to support the corporate point of view in industrial relations and tax matters. Consequently, union officials support vigorously efforts to require full and fair disclosure of corporate financial information.

Then, too, and finally in this brief examination, trade union officials join with many others in the host state to express concern about the economic, social, cultural and political power wielded by the multinational enterprises and the consequences for the host state. As such, the trade unions are voicing an opinion for which there is much popular support and, of course, many potential allies for future actions regarding international enterprises.

**Union Counterstrategies**

Before examining in some depth regulation as a possible union counterstrategy to the challenges posed by multinational corporations, brief consideration of other types of union responses may be useful in terms of providing a general perspective for the succeeding discussion. One approach adopted by union organizations at the national, regional and international levels involves what I have called elsewhere union strengthening. Essentially, union strengthening activities are designed to build up the strength and the abilities of the unions and their officials in their confrontations with multinational management. Consequently, organizational drives to recruit more members at the work place, educational activities to convey to members the seriousness and pervasiveness of the problems engendered by multinational enterprises, and training programs to help union officials become more effective spokesmen and negotiators are undertaken by all types of union organizations.

National industrial unions are the focus of these activities because it is at this level that the conflict between labor and management is joined. However, they receive extensive support from their national comprehensive unions like the AFL-CIO and the Trades Union Congress (TUC) in the United Kingdom and also from the industrially organized International Trade Secretariats (ITS).\(^5\) For example, the IMF has organized numerous “travel-

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5. The International Trade Secretariats are somewhat equivalent to but
"ing" seminars in Latin America and Asia which seek to upgrade the skills and knowledge of local union officials about multinational corporations in a specific industry.

Union strengthening has also involved attempts to consolidate different unions or reduce ruinous competition among rival union organizations at the national level. Inter-union conflict stemming from religious, ideological, historical and trade differences are being reduced in a number of countries such as Italy, Japan, Mexico and the Netherlands with the result that employers are confronted with a more united and therefore stronger union adversary. Sometimes these efforts are undertaken primarily by the competing unions themselves, but in other cases the help of a third party union organization at the national or international level has been found to be useful.

The union strengthening activities discussed above will certainly aid the unions in their confrontations with both domestic and international employers. However a large, united and committed membership supporting a skilled and able leadership will be an effective front-line actor in conflicts with multinational corporations. After all, with very few exceptions, much of the contest between management and union takes place at the subsidiary to national industrial union level.

A second type of union response to the challenges of the multinational corporation involves cross-national cooperative activities among unions from several different countries. This has been examined at some length in other articles, and while it is the most difficult of the three types of counter measures to implement, it is also potentially the most important one with wide-ranging implications for industrial relations and international interactions. There are three different types of cross-national cooperation; information exchange, consultation, and inter-union coordination. An analysis of such activities indicates that they have occurred with just about equal frequency during the last five years.

not necessarily affiliated with the International Confederation of Free Trade Unions (ICFTU). The communist counterparts are called Trade Union Internationals (TUI), and the confessional, largely Catholic counterparts, are Trade Internationals (TI). However, the ITS are most active regarding multinational corporations because so many of their affiliates are in states where these enterprises exist.

Information exchange involves efforts to collect and disseminate information about multinational employers which is thought to have some potential use for national unions in their struggle with management. The information collected may be concerned with such matters as wage rates, fringe benefits, working conditions, collective bargaining practices and agreements or specific developments which may be helpful to know in labor’s representation efforts. Management is certainly aware of what is happening with its various subsidiaries, and where unions do not have similar information their effectiveness can only be lessened. Consequently, both ad hoc and permanent and institutionalized efforts at information exchange have been developed by union organizations at all levels. A few ITS have been very active in organizing the systematic collection and dissemination of data for their affiliates.

Another type of cross-national cooperative strategy is consultation or the meeting of union officials from several different countries to exchange views on problems, to provide a basis for joint action in the future, or to plan for such actions. Again the objective of this activity is cooperation leading to a stronger union presence in relations with a specific multinational firm. Some of the ITS have established world company councils which periodically bring together labor representatives from the subsidiaries of large multinational enterprises. This has occurred particularly with respect to firms engaged in automotive manufacturing, electrical machinery and the chemical industry.

The third type of cross-national cooperative activity has been termed inter-union coordination, where unions from different countries coordinate their efforts regarding a specific firm. Unlike the first two categories, the actions here are more likely to be ad hoc in nature as opposed to continuing institutionalized efforts. This reflects the fear on the part of many national union leaders of becoming so deeply involved in a relationship with unions from other countries that it inhibits their freedom of action. This concern is fostered by feelings of distrust, suspicion, and awareness of great differences among the union movements of different countries. While there are several forms of inter-union coordination, solidarity actions are overwhelmingly the most prevalent. Cross-national solidarity means that a union in conflict with a multinational employer is aided by unions associated with the same firm
but in different countries. Solidarity may take the form of mone-
tary support, pressure on local subsidiaries or headquarters, sym-
pathy strikes, refusal to work overtime to make up the lost pro-
duction caused by a work stoppage elsewhere and other similar ac-
tivities. The objective, then, of inter-union coordination is to uti-
lize the strength and efforts of a number of unions associated
with different country subsidiaries in support of the objectives of
another union. Consequently, the corporation is faced with a more
multinational union adversary than without such coordination.

Having provided some basic background material regarding the
nature of the multinational corporate challenge and the response
of trade unions, it is now appropriate to begin an examination of
the third type of union strategy—regulation and restriction of the
multinational corporation.

**Regulations and Codes of Conduct**

In beginning this section of the article, it is appropriate to indi-
cate that there are very few examples of concrete and compre-
hensive regulatory schemes either existing or proposed. However,
it is instructive to discuss what is being considered by various
union and non-union organizations as it relates to the protection
and advancement of worker and trade union interests with respect
to the multinational corporation. First to be considered will be
the efforts of union organizations at the national, regional and in-
ternational levels to develop regulatory schemes. This will be fol-
lowed by a discussion of the implications of proposals advanced
by various non-union related organizations. In addition to report-
ing upon various developments in these areas, a subjective assess-
ment based on extensive interviews with foreign and international
union officials will be offered regarding the amount of union
leader support for these efforts as well as the prospects for success.

Trade unions in many countries have traditionally turned to
their national governments in their struggles with employers. In
addition to enacting favorable social legislation, government has
also been sought as an ally by unions because of its ability to enact
measures which protect the interests of workers and unions in
confrontations with management. Because of these functions of
government and the successes unions have had in influencing gov-
ernmental actions, particularly in Europe, it is quite natural for
many union officials to seek government’s help in facing the chal-
lenges of the multinational corporations. However, in dealing with
international enterprises, a critical question is at what level such
regulation should be enacted and is obtainable. For example, it

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is not at all clear what international organization is the appropriate mechanism for developing and enforcing an international set of rules prescribing the conduct of multinational corporations. Consequently, union organizations have advanced proposals to seek national, bilateral, regional and/or international control of these enterprises.

Issues

Union efforts to obtain governmental aid in their struggles with multinational corporations have concentrated on a number of specific issues. Unions are striving for governmental regulations which will insure that multinational corporations abide by existing industrial relations customs and practices in various states, particularly those concerning job security. In addition to the protection of fringe benefits, patterns of operations and consultation relationships, many European union officials are particularly bothered by the thought that out of ignorance or design the management of these firms often seems to be insensitive to the need to provide employment security for workers. Decisions to layoff workers or close down operations appear to be made too cavalierly, whereas domestic firms are seen as far more concerned about the implications of such actions. The famous, or infamous, examples of the lay-offs by General Motors and Remington Rand in France in 1962 are well known by European union officials and each can add other instances where similar moves were undertaken by foreign firms in their states. Several officials interviewed expressed the desire for laws which would require corporations to forewarn and consult with the union prior to decisions to reduce, change or eliminate production.

Another important problem mentioned by most union officers involves the refusal of some multinational corporations to recognize and deal with trade union organizations. A survey by the International Confederation of Free Trade Unions (ICFTU) revealed that International Business Machines, Kodak, Gillette, Caterpillar Tractor, Nestle, Air Canada, and a number of other American and non-American firms were guilty of refusing to recognize unions. Consequently, regulations designed to require recognition of trade unions and their rights and privileges are principal objectives sought through pressures on governments to impose restrictions. It should
be pointed out, though, that union recognition is not a universal occurrence in many states even by domestically owned and managed firms. Indeed, some union leaders in the Netherlands, Belgium, France and Great Britain have suggested that the smaller, often family-owned operation exhibits more resistance to unionization of the workers than the international enterprises. However, the multinational corporation tended to employ many more workers, was highly visible, and as a result, set a bad example or precedent where recognition was resisted.

In addition to the general problem of trade union rights, regulations were felt to be necessary to overcome the reluctance on the part of many international firms to accept the unionization of white-collar employees. Many firms, particularly United States-based ones, have little or no domestic experience with unionized clerical and professional help, and even though such a practice may be widely accepted in the host country environment, great resistance is often exhibited by the foreign firm.

Another problem associated with the very existence of unions, which is the subject of pressures for regulation, is concerned with the status of unions and union recognition in less developed countries where there is not a strong tradition of industrial unionism. Multinational corporations are often accused of deliberate union-busting strategies in their operations in less-developed countries, and sometimes host country governments are partners—whether willingly or not.7 Such practices are obviously decried by unions in the host country, but strong and vociferous complaints also emerge from unions in the more advanced industrial states which hold such actions to be a mechanism enabling firms to transfer production to a cheaper and unfettered labor market without effective unions. Governmental prohibition of such negative corporate policies is therefore pursued by various union organizations.

The specification by governments of requirements with respect to a variety of intra-company trading and financial practices is also an objective of many unions. Among other things, transfer-pricing, tax payment strategies, dividend expatriation and financial reporting customs need to be controlled by government regulation according to many union leaders. It is generally thought by union leaders that the various and limited financial accounting and reporting practices of states allow multinational corporations

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7. An example of this is South Korea where the government has prohibited strikes against the subsidiaries of foreign corporations because of its desire to attract increasing amounts of foreign investment.
to engage in financial manipulations that obscure the appropriate facts for the needs of the union. Thus, unions feel that governmental control of such practices is necessary.

Demands for the establishment of precise and consistent rules for financial reporting are also frequently linked to the more nationalistic and immensely popular concerns over the nature of the impact of such firms on host country plans, objectives and policies. These too are supported by many union leaders.

**Host Government Arrangements**

Union efforts to seek more formal and legal controls over multinational corporations are focused upon a number of different governmental bodies. One thrust is directed toward the host countries which are recipients of direct foreign investments. The objective is to establish rules of good conduct or regulations which must be subscribed to by any foreign firm with operations in the state. A number of national unions have initiated efforts to pressure their governments in this direction, particularly in Germany and the United Kingdom. In Australia, the Labor Party Conference recently passed a resolution urging studies to be undertaken of the impacts of these enterprises with subsequent regulation a possibility. The ICFTU and several international trade secretariats have also supported activities of this sort, and indeed this tactic was felt to be the most appropriate move by a majority of the national union officials interviewed. Other national and international union leaders have expressed sympathy for these pressuring activities, but a number have also exhibited doubt and cynicism about the chances for meeting with success.

The specific nature of the controls varies somewhat and in most cases are ill-defined in terms of content and particularly procedure. However, recognition of trade unions, acceptance of prevailing industrial relations practices, corporate sensitivity to and union-management consultation on job security and production decisions, and appropriate financial reporting were the most frequent subject areas proposed for host government control.

Understandably, national unions prefer to seek regulations from their own states since they are experienced in such interest representation activities and have achieved some successes in the past.
Their own members and fellow unionists may well wield an important degree of political power. However, some union leaders are well aware that by approaching the problem on a state-by-state basis further problems are raised. Stringent controls imposed on multinational corporations in one state can often be easily circumvented by transferring existing or directing future investment to another state not similarly hampered by regulations. Consequently, the national union movement which successfully establishes rules or guidelines may suffer from loss of current and future investment and, therefore, employment to other countries where similar constraints on the enterprises do not exist. In essence, the work forces of various countries are competing against each other for jobs. This problem is particularly acute for unions when their state is part of a common market since multinational corporations may find it as easy to serve the broader market from one state as another. The content of national regulations could be a deciding factor in a firm's investment location decision.

To overcome this problem, common market arrangements themselves could harmonize labor laws to ensure that advantages at the expense of labor were not achieved. The European Economic Community is considering the adoption of common rules regarding, for example, employment and dismissal practices, but any such action appears to be a long way off.

Unfortunately, it is difficult to gather information about the existence of governmental rules or regulations designed to aid unions in their relations with multinational corporations, but exhaustive investigation of various reports and publications concerning European labor law indicates that this tactic has not been pursued vigorously or with much success. It is instructive to observe that the report on multinational companies submitted to the ICFTU World Economic Conference in June, 1971, offered, as the only example of host state guidelines for multinational enterprises, the "Guiding Principles of Good Corporate Behavior for Subsidiances in Canada of Foreign Companies." None of the twelve principles are in the least concerned with the treatment of Canadian unions and labor, though Principle 9 does urge "a Canadian outlook within management." Union efforts in European countries are not noteworthy either by their objectives, their efforts or their successes. While a few more officials from European national unions expressed interest in obtaining government restrictions, it seems that only the DGB of Germany and the TUC in the United Kingdom were conscientiously seeking governmental regulations. Most of
the officials associated with other European unions indicated that their organizations were not actively pursuing such controls, and some were very skeptical of efforts to do so. The TUC, though, has called for union pressure to obtain legislation which will require multinational corporations to disclose more financial information and to act responsibly in industrial relations matters. The DGB is seeking to obtain government assurances that agreements with foreign investors do not undermine existing trade union rights.

A variation of the more formal, universally applicable type of regulation within a state involves the negotiation of rules of conduct for a specific multinational corporation which establishes operations in a state. For instance, interested Belgian unions were able to move the government to require Westinghouse Electric Corporation to agree to a set of conditions regarding labor and employment matters prior to the approval by the government of the acquisition of ACEC, the large Belgian electrical equipment manufacturer, by the Pittsburgh based firm.

Bilateral Arrangements

Some union organizations, including the ICFTU, have suggested that bilateral agreements between capital exporting and capital importing states be arranged to regulate and monitor the activities of multinational corporations. In addition to the extreme difficulty of achieving such agreements particularly with the United States, this tactic does not alleviate the problem of competition with other states not party to similar bilateral agreements. This tactic was not at all popular with most of the union officials interviewed.

Parent Country Regulatory Arrangements

Legal regulation of multinational corporations can also be undertaken by the parent country of the firm, the capital exporting nation. By having guidelines imposed at the source of multinational enterprises, the problem of competition among potential host states and their work forces may be diminished or eliminated. In its place, there will probably emerge claims of “unfair” competition between corporations from various parent countries. If the capital exporting nations establish different sets of rules which their firms
must follow, it is likely that those firms which feel disadvantaged as a result of having to operate under a more onerous set of guidelines will attempt to have their severity reduced. In other words, unless the regulation of all the capital exporting countries are similar in content and remain so, competition among multinational enterprises and their headquarter countries will lead to an inevitable watering-down of guidelines. Another possibility is that multinational corporations will formally be chartered in small and sympathetic countries willing to offer regulations havens, and therefore, for legal purposes, abandoning the erstwhile parent country. An analogy exists in the shipping industry where a number of ships owned by United States citizens are formally and legally registered in Panama or Liberia. Similarly, some countries are offering tax shelters presenting companies with the opportunity to escape onerous parent country taxes. Thus, for several reasons, regulations by capital exporting countries will be difficult to achieve in a meaningful sense unless there is widespread agreement and acceptance of the rules. Even then the existence of refuge states like the Netherlands, Antilles or Panama may make possible successful evasion by the “stateless” multinational corporation.

While efforts of this sort seem unlikely in the long run without coordination among capital exporting states, there does exist a regulatory scheme similar to this is Sweden. Swedish firms which apply for Swedish government guarantees for investments in a few developing countries are required to meet a set of specified social conditions, some of which are specifically concerned with worker and trade union rights. It is important to note, however, that these guidelines are relevant only to Swedish foreign investment in some few developing countries; the vast amount of investment in the more advanced industrial states is unencumbered by these or similar rules. The guidelines established are certainly the most detailed and precise regulatory effort heretofore introduced, and as shall be discussed shortly, they are far more specific than the general calls for regulation initiated by the ICFTU and various international trade secretariats. Therefore, because of their inherent importance and their potential as a model for other regulatory schemes, the Swedish social conditions are reproduced in full.

SOCIAL CONDITIONS ATTACHED TO THE SWEDISH INVESTMENT GUARANTEE SCHEME

Introduction
1. The Swedish investment guarantee system seeks to further development objectives. It is therefore selective. Guarantees are
given only for investments in the countries given priority for
public aid; only investments which are expected to add to the
economic development of the host country may be guaranteed.
The developmental effect criterion is elaborated upon in one re-
spect which is vital from a Swedish viewpoint: according to the
preparatory work for the legislation, the company in the host
country must give its employees satisfactory working and em-
ployment conditions and must show a positive attitude towards
union activities.

2. In this memo an attempt is made to specify these "social
conditions". The memo is based on ideas and suggestions pro-
duced by representatives from wage earners' organisations and
companies in a working party organised by the Swedish Export
Credits Guarantee Board (EKN), which is charged with the ad-
ministration of the Swedish investment guarantee scheme.

3. Social conditions can be attached to a guarantee only if the
investor is able to exert sufficient influence on the activities of
the foreign company. Influence does not necessarily mean that
the investor has a majority interest in the foreign company. The
investor may instead gain sufficient control over the foreign com-
pany's administration through a management agreement.

The Meaning of the Social Conditions

4. The social conditions can be divided into two groups: (1) "be-
havioural conditions" concerning specific action required by the
company in favour of its employees.

Behavioural Conditions

5. First among the behavioural conditions is a general require-
ment on the company not to encourage discrimination in employ-
ment, promotion or work distribution. When considering the is-
sue of discrimination it will be taken into account that foreigners
("expatriates") usually have higher salaries than local employees
with similar jobs. When it comes to the employment of indige-
nous staff, social attitudes will make it necessary to apply the
non-discrimination principle with caution. The company should,
however, as far as practicable, try to break existing discrimination
patterns which counteract economic and social development.

6. Other behavioural conditions relate to the attitude towards
trade union activities. The foreign company should, with due re-
gard to the host country's legislation as well as to national and
international practice:

(i) recognise trade unions created by the employees;
(ii) let union officers exercise normal union functions;
(iii) disclose wage statistics before negotiations;
(iv) enter into collective bargaining agreements according to
country's rules;
(v) give the unions notice of lay-offs and facilitate the read-
justment of workers laid off;
(vi) cooperate towards a peaceful solution of disputes with
unions.

The practical application of these rules will vary greatly already
within the circle of countries receiving Swedish aid. The independence allowed for union organisations varies from one country to another. Differences exist, concerning the central organisation's position and its relations to the Government, the relationship between the central organisation and its affiliated unions, procedures to establish wages, the scope of the collective bargaining agreements, and the rules for behaviour during strikes or lockouts. Other differences may concern rules and practices for the acknowledgement by the company of a local union, the possibility of collecting union fees through deductions from wages, etc. These differences mean that the behavioural condition as to attitude towards trade unions may have different meanings in different countries. The rules must be interpreted with due regard to their purpose of encouraging the employees' efforts to influence wages and unemployment conditions through union activities.

**Benefit conditions**

7. The benefit conditions belong to three main categories:
   - training
   - social security
   - social welfare

8. The training category includes all activities aiming to increase the employees' skill and experience in order to (1) increase their productivity, and (2) make possible a quick transfer of tasks from foreign specialists to local personnel.

9. **Social security** means benefits to employees through legislation, agreement and/or the company's general employment conditions regarding compensation during illness, injuries at work, layoffs and retirement because of age. All these benefits have in common the aim to reduce the risk that the employee or his family will suffer economic distress if he loses his wages.

10. **Social welfare** means measures supplementary to wages and social security which tend to improve health, nutrition and cultural standards, such as:
   
   (a) measures to help employees find suitable housing;
   
   (b) measures to keep those who work and/or live within the company area in good health;
   
   (c) measures to make it possible for the employee to keep a good nutritional standard; and
   
   (d) measures to provide libraries, meeting premises, training and entertainment so as to facilitate the workers' adjustment to a new environment.

11. The investor will be expected to conduct investigations and present plans on the above type of measures which are required according to the host country's laws, and to describe whatever additional measures he plans to take in favour of the foreign company's employees. On the basis of this information, negotiations between the applicant and EKN will determine what specific measures will be considered conditions for the guarantee.

12. In these negotiations EKN will take the following factors into account.

   Knowledge should be obtained of ILO recommendations and conventions on the subject under discussion as well as of the host country's attitude. Any requirements must be in harmony with the legislation of the host country and with practices generally prevailing there. It is also necessary to adjust requirements in
relation to the type of production, its geographical location, and its size. Social welfare conditions are, for example, essentially different for a small workshop industry in a town and for a plant to utilise natural resources in a sparsely populated area of the country. Finally the time aspect must be considered. It is not necessary that the desired measures be taken immediately in connection with the establishment of the foreign company. Employment and working conditions should gradually improve during the guarantee period to keep pace with the development of the company and of the host country. The purpose of EKN’s negotiation activities should be to contribute to employment and working conditions in the foreign company in a manner consistent with the host country’s enlightened self-interest.

13. In order to help in determining issues relating to the above paragraphs, the Swedish International Development Authority (SIDA) has declared itself prepared to make investigations describing the employment and social conditions in the relevant countries. These investigations will be based on material from ILO and other national and international sources. They will, in particular, compare these conditions with international practice.

International and Regional Arrangements

Thus far, our discussion of efforts to regulate the actions of multinational corporations with respect to labor and union relations with management has been concerned with rules established by host or parent countries. As has been mentioned, one of the more severe problems associated with such a tactic is the fact that one state by imposing guidelines may disadvantage itself as a recipient of foreign investment on the one hand or injure its own multinational firms and its position as an exporter of investments on the other hand. One method of avoiding this problem is to develop regional or international mechanisms to regulate multinational corporations. A number of union organizations at all levels have called for international control of the enterprises, but admittedly concrete proposals much less concrete progress have not been made.

At the international level, the ICFTU has urged the adoption of codes of conduct for multinational corporations which would be internationally developed, administered and enforced. The report of the 1971 ICFTU World Economic Conference suggested that an international convention be convened by various U.N. agencies, the International Labor Organization (ILO), General Agreement on Tariffs and Trade (GATT) and the Organization for Economic Cooperation and Development (OECD) to propose a set of regula-
tions and to establish an international body to oversee compliance with the rules. Of primary interest to the recent convention is regulation in matters such as:

... observance of established industrial relations procedures (ILO standards), manpower planning, industrial concentration and mergers especially conglomerates, intra-company trading and financial practices, and their policies on research, tax liability and dividend remittance as well as the obligation to publish global balance sheets together with financial accounts for all their individual subsidiaries.8

In addition, the ICFTU has mentioned specifically the desirability of an international conference or agreement subscribing to the ILO Conventions number 87 and 98 which relate to freedom of association and rights of organization and collective bargaining. More precisely, Convention 87 affirms the right of workers and employers to establish and join organizations of their choosing for furthering and defending their interests without interference from public law or authority. Convention 98 more pointedly prohibits acts calculated to force a worker not to join a union as a condition of work and condemns practices which seek to punish or prejudice workers engaging in union activities. Furthermore, both employer and workers organizations are not to interfere with each other's activities and particularly, company unions are deemed to be unacceptable. Convention 98 also urges the establishment of conditions which encourage and promote voluntary collective negotiations between employers associations and unions with respect to the terms of employment.

While the ICFTU has recommended that international guidelines for multinational corporations be developed, it has not translated its general plan into specific recommendations. A well-defined set of proposals on an international regulatory agency and for the content of potential regulations has not been presented by the ICFTU. Instead, ICFTU activity in this area seems to have progressed no further than appearances before many forums which call for the development of guidelines and control, and suggestions for further research on various issues of concern. Certainly in terms of spreading its point of view, ICFTU officials have been active, appearing before national congresses of affiliates, the various meetings of international trade secretariats, academic and study groups sponsored by universities and research institutions, and policy-making bodies of states including Mr. Maier's testimony before the Subcommittee on Foreign Economic Policy of the Joint Economic Committee of the United States Congress. However,

the message has usually been the same: "An international conference should be called to adopt regulations to control multinational corporations and to establish an international agency to enforce and administer the guidelines." Specifics with respect to procedures or content have not been offered.

While some other union organizations at the national and international levels are generally supportive of the ICFTU objectives, most union officials interviewed were highly skeptical about the likelihood of success in this area. Indeed, there was little confidence expressed in the ICFTU activities by other international union officials and even less support among national union officers. This general reaction of doubt towards ICFTU activities is caused by a number of complex matters, but suffice it to say that ICFTU efforts to achieve international control have remained largely at the level of generalities and largely unsupported by fellow trade unionists. While support for the ICFTU is lacking, trade union leaders do feel that legal aid of this type, while an attractive objective, is not a realistic hope in the short run. Furthermore, with only three or four exceptions of the total interviewed, they are most doubtful that the ICFTU can contribute much to this effort at the present time.

Greater faith and hope is placed in the efforts of the ILO to develop some meaningful guidelines or regulations for multinational corporations. However, the slowness and conservative nature of the tripartite structure of the ILO, where labor, government and employers are represented equally, suggests that the interests of labor on this controversial subject will not be pursued as fervently as labor might wish. Indeed, many of the labor officials interviewed recognized these tendencies and expressed great reservations about the ability of the ILO to come up with anything with much substance.

In 1971, labor representatives were first able to get the ILO to agree that the impact of multinational corporations deserved consideration and study by the organization. The International Labor Office (the permanent secretariat of the ILO) prepared a working paper for the use of a committee of experts which met in October and November of 1972.9 The results of this meeting are actually

quite typical of the ILO again because of the necessity of achieving a degree of consensus among the three types of members of the ILO. The committee of experts recommended that the Office undertake extensive studies concerning the impact of multinational corporations on matters of social policy, particularly as they differ from the actions of strictly national firms. To facilitate these efforts, governments are urged to improve their collection of statistics in this area, and employers and workers are encouraged to cooperate in whatever way possible. Also, the experts recommended that the Office study the usefulness of developing international principles and guidelines in the field of social policy and the multinational enterprises. If this latter study indicates that such guidelines would be useful, then action should be undertaken to establish a set of principles. Incidentally, financial support for these studies has been provided in the 1974-75 budget.

This, then, is as far as the ILO has progressed toward the development of international standards for multinational corporations regarding employment and labor issues. Furthermore, the time horizon suggests that it will be at least two or three more years before the ILO is even ready to begin hammering out the precise content of these guidelines. Even then, because of the necessity of compromise, it is doubtful that the principles will provide the protection and aid desired by trade union officials. Instead, they will probably be rather general statements of good conduct lacking, of course, any enforcement mechanism. However, it may be that by raising these issues in the ILO a legitimacy and "rightness" will accrue to the recommendations which will proceed to have some affect on the actions of multinational enterprises. It is my feeling, though, that the principles eventually arrived at will generally be well within the scope of the actions and policies of most of the leading multinational enterprises.

While trade union leaders have little confidence in the efforts of the ICFTU and have fewer but still substantial reservations about the ability of the ILO to get the job done, they are often enthusiastic supporters of and believers in efforts to build regional codes of appropriate multinational corporation behavior with respect to labor and trade unions. In Europe, particularly the Common Market countries, there is some national union backing for the development of Common Market standards, and in addition there exists appropriate labor union and governmental machinery to pursue the objective. However, as mentioned earlier, progress is extremely slow. The European Confederation of Free Trade Unions (ECFTU), representing the ICFTU affiliates in the Community, is
one of the more highly developed regional union organizations, and it considers as one of its major tasks the representation of trade union interests to the Commission and to the Council of Ministers of the Community. Additionally, there has recently been formed the European Federation of Trade Unions which encompasses more countries than those in the Common Market and which cuts across old ideological and confessional lines. The role of this organization is in the process of being formulated, but how it will affect efforts to establish a European code of conduct is not at all clear. Somewhat more is known about the ECFTU.

Each year the ECFTU has three meetings with the EEC Commission during which time presentations are made and problems are discussed. In addition, there are as many, or more, formal consultations with the appropriate EEC Ministers. Of course, less formal lobbying-type activities are also pursued on a continuing basis. Thus, the mechanisms for influence do exist.

In the area of regulation and control, the ECFTU has been concerned primarily with the role of unions in the various European Company proposals, but it has also presented recommendations to the Commission and to the Council of Ministers regarding multinational corporations in general. On this latter point, the ECFTU has sought the establishment of rules which will protect workers in case of acquisitions or mergers. More specifically, the ECFTU wishes to insure that change of ownership or corporate form will not lead to rejection of or adjustment in existing collective bargaining agreements at the various plants and facilities of the expanded corporation. Additionally, preliminary consultation between management and unions has been proposed whenever there is a possibility of the transfer of production or instability of employment. Also as might be expected, the ECFTU has urged upon the Commission the necessity of the publication of appropriate financial and employment data. While the ECFTU has not been successful in having these suggestions accepted and implemented, the problem has been deemed to be serious enough to warrant the creation of an expert group within the Commission which is charged to look into the problems posed by mergers and acquisitions by multinational corporations and to develop concrete proposals which are then to be submitted to the Council of Ministers, the organization of employers, and representatives of employees.
The process is agonizingly slow, and a recent conversation with an EEC official indicates that little is happening.

While the ECFTU has been somewhat active with respect to the impact of multinational corporations on labor, they generally defer to the ICFTU and other union organizations on this matter. Instead, the ECFTU is currently interested in development of a European Company law and the relationship of unions to these new enterprises. While this question is of major importance, it is also an exceptionally difficult one for the ECFTU because of the varying orientations and philosophies of its member unions. Worker participation in management or co-determination as it relates to a European Company is a complex issue because of the very different conceptions of the work force's relation to management. For instance, the Dutch and Germans are fervent believers in worker participation, but in practice the nature of participation is quite different in the two countries. The French viewpoint is not compatible with the Dutch or German, and the Belgian unions do not support the concept of worker participation. On this question, then, the position of the ECFTU is a delicate one. Nevertheless, the ECFTU did recommend to the Commission of the EEC that the membership of the Comité de Surveillance (somewhat analogous to a board of directors) be comprised of workers, shareholders and representatives of the public in equal proportions. This plan was turned down in favor of one which gave the workers one third of the membership and the shareholders two thirds. The point is that the ECFTU, in spite of internal problems, has taken an active role in attempting to shape the nature of the European Company.

Further evidence of this is the ECFTU proposal that for each European Company a Committee of Trade Union Representatives be established which will be composed of union representatives from each of the firm's factories. This committee would meet regularly with the management of the firm to discuss various problems.

With respect to the imposition of rules or guidelines on multinational corporations, the ECFTU pictures itself as an organization whose purpose is to represent the interests of trade unions in the deliberations, policies and procedures of the European Economic Community. The scope of its activities are therefore largely limited to the EEC, and as the Common Market expands it is likely that the importance of the ECFTU will also expand unless it is largely supplanted by the emerging EFTU. The ECFTU has been interested in establishing Common Market controls over non-Eu-
European multinational corporations, but it feels itself better able to seek through the Common Market Commission and the Council of Ministers the creation of a European Company charter that will incorporate the interests and rights of trade unions and workers. By accepting its limited range of concern, it is clear that the ECFTU does not plan to confront in a major way the problems presented by non-European international enterprises. However, this apparent weakness may be its source of strength in comparison to the broad international approach of the ICFTU. The latter seems to be lacking significant support at the national union level for its efforts. On the other hand, the ECFTU does have some support, although neither total nor overwhelming, for its more narrowly defined activities. The interviews revealed that even though European union officials recognized the international nature of management they are more comfortable thinking about European strategies than about international plans. Indeed, a good number still prefer to limit their concern to seeking political and administrative protection within their particular state.

The OECD has also evidenced some concern about the impact of multinational corporations on industrial relations and has hosted several conferences at which this topic has been examined. The Trade Union Advisory Committee to the OECD has a continuing input into the deliberations of the OECD, but again little seems to be happening. The Rey report, *Policy Perspective for International Trade and Economic Relations*, urged that the OECD study various consequences of multinational enterprises and held out the possibility that it might be necessary and possible to develop principles of behavior for the companies.\(^\text{10}\) Labor policy is just one of many issues identified by this report.

At the same time, studies regarding the multinational corporations are being pursued both by the Economic and Social Council and the United Nations Committee for Trade and Development, but neither group seems destined to produce a set of regulations which will be particularly useful for labor in its struggles with these firms. Also at a recent meeting with the OECD, a group of trade union economists agreed to introduce in the forthcoming

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GATT negotiations a provision calling for the safeguarding of income and employment for workers affected by shifts in international trade patterns dominated by multinational corporations. Another will be introduced on the issue of fair labor standards.

The preceding discussion should indicate to the reader that the development of international or regional rules and regulations governing the behavior of multinational corporations is a long, tortuous way off. Most assuredly, there is movement, but much of it seems to be unfocused and repetitive of other studies. Add to this the slowness with which the international and regional organizations act and the great need for compromise and conservatism based on the necessity of achieving the lowest common denominator for agreement, the prospects are not very encouraging. Also, meaningful enforcement power is absent from most of these organizations. While some trade union officials are quite hopeful of favorable developments at the regional level, fewer at the international level, a great majority feel that such guidelines would be nice but that the labor movement cannot afford to wait for them or rely upon them. Consequently, prime emphasis is placed upon developing strategies which can be pursued by the unions themselves.

Non-Governmental Codes of Conduct

This skepticism on the part of most union officials can also be applied to the recommendations advanced by various private and non-governmental groups concerning the behavior of multinational corporations. The Council of the International Chamber of Commerce in its November, 1972, meeting adopted Guidelines for International Investment. As stated in the introduction, the Guidelines are not presented as a rigid code of conduct but they are “a set of practical recommendations based upon experience, designed to facilitate consultation between investors and governments and to promote a better understanding of each other’s needs and objectives.”11 It is useful to discuss briefly the aspects of the code of particular interest to labor. In addition to recommending that the investor provide relevant and asked-for information about its business and a clause which asks the respect of the national laws, policies and economic and social objectives of the host country, the matters of concern to labor are located in part VI, Labour Policies. Instead of merely paraphrasing the clauses, this section is reproduced for the reader.

GUIDELINES FOR INTERNATIONAL INVESTMENT

VI. LABOUR POLICIES

1. The investor
   a) Should make the maximum practicable use of qualified local personnel.
   b) Should co-operate with the host government, labour unions and local educational and vocational training institutions in programs for the upgrading and training of local labour.
   c) Should, to the extent consistent with the efficient operation of the enterprise, take into account the host government's efforts to create employment opportunities in the localities where they are most needed.
   d) Should, in all matters directly affecting the interests of labour, to the extent appropriate to local circumstances, consult and cooperate with organisations representing its employees.
   e) When the necessity for the closure of factories or the laying off of redundant employees becomes apparent, should give adequate advance information, and in consultation with the employees, arrange the timing and conditions of such action in a way that will cause the minimum social damage.
   f) Should, in fixing wage and salary levels, act as a good employer, participating constructively as a member of national employers associations where these exist, and providing, according to local circumstances, the best possible wages, social benefits, retirement provisions and working conditions within the framework of the government's policies.

2. The Government of the Investor's Country
   a) Should, in formulating policies aimed at securing full employment, rely on stimulating domestic demand through appropriate economic and social policies, rather than on restrictions on the outflow of direct investment.
   b) Should consider making available aid for education and vocational training of local personnel in the skills needed by the enterprise and elsewhere in the economy of the host country, especially if it is a developing country.

3. The Government of the Host Country
   a) Should seek, in co-operation with investors and with appropriate national and foreign organisations, to assess future needs for skilled employees and to develop adequate programs for technical and managerial training.
   b) Should permit the employment of qualified foreign personnel where this is needed for the efficient operation of the enterprise or for training purposes.

As can be observed, these Guidelines are phrased in such a general fashion and with so many qualifications that they scarcely
meet the demands of labor. However, the above guidelines are much more acceptable than the Preamble and Basic Principles of the Pacific Basin Charter on International Investments adopted in May, 1972, by the Pacific Basin Economic Committee. In this effort, the responsibilities of the investor to the worker are totally ignored. Similarly, the principles for foreign investors issued jointly by the Canadian and United States Chambers of Commerce are concerned with labor only in the following obviously unsatisfactory way.

In matters of personnel administration and industrial relations, to conform with the practices and customs of the host country, and to develop the skills and technical abilities of local staff. Where control of a going concern is acquired, to refrain from disturbing existing personnel relationships more than is necessary.

These few examples suggest that privately developed codes of conduct are not going to offer the preciseness desired by trade unions. Yet one cannot help but wonder whether an ILO code will be much more satisfactory than that offered by the International Chamber of Commerce.

CONCLUSIONS

In the past, national trade union movements have successfully appealed to the political process to achieve various social welfare and employment goals. In most European countries, and to a somewhat lesser extent in the United States, many of labor's fringe and similar social benefits have been obtained through governmental action of some type. Furthermore, when labor unions needed a powerful ally in their struggles with management, government and the political process was frequently turned to. As a result, it is perfectly understandable that trade unions would consider calling upon government's regulatory powers to counteract the strength and internationalism of multinational corporations.

However, the situation is quite different from the previous difficulties with domestic firms. The international nature of the firm means that a specific state government can only control, for the most part, that portion of the corporate activity which occurs within the boundaries of the state. The multinationalism of management and the perception of benefits to be gained from foreign investment by other states enables the corporation to be mobile and flexible. Consequently, host state attempts to regulate corporate behavior on union matters may be undercut by the willingness of other countries to offer the firm a more attractive investment climate. Thus, host state regulation is relatively feasible but it also may backfire to the detriment of domestic employment.
Parent state regulation is another feasible mechanism, but at this point the major capital exporting countries, especially the United States, do not appear motivated to impose restrictions as Sweden has done on a limited basis. Perhaps if this could be achieved through agreement by the parent states, such as the OECD, effective regulation from the perspective of labor could be achieved. Given the interests of these states at this time, this alternative does not have much immediate likelihood.

Regulation or the establishment of codes of conduct by regional organizations may be possible in a rather energetic and fervent group such as the Andean common market, but the overly bureaucratized and rather cautious European Economic Community may take quite some time before enacting such laws. A flagrant example of multinational corporation insensitivity or abuse might galvanize the Community into action, but otherwise it promises to be a very slow process.

At the international level, trade unions have the difficulty of not having a powerful and well-accepted international organization with authority in these matters. The ILO is a slow-moving and necessarily conservative organization which has perhaps moral suasion power but little else other than its ability to direct attention to a particular issue. Other international organizations, both governmental and non-governmental, are not likely candidates for establishing a meaningful set of principles or regulations for multinational corporations in their relations with trade unions and workers.

While a few states may enact such regulations and there may be attempts at the regional or international level to act similarly, I do not think labor union officials should or do put much reliance on these efforts. It is my firm conviction, shared by a number of national and international union officials, that, while regulations may be helpful, the unions themselves, through old and particularly through emerging relationships, must develop their own counter-strategies to the power of the multinational corporations.