



FES-ACTRAV-TUAC-TUCA

REGIONAL SEMINAR

Multinational Enterprises and Trade Union Action in the Americas: The ILO MNEs Declaration and the OECD Guidelines

Buenos Aires, April 7 & 8, 2010

CONCLUSIONS

I. Overview

ILO and OECD

1. Since the 1970s, there have been two intergovernmental tools available to the international trade union movement for taking action towards multinational enterprises: the OECD Guidelines for Multinational Enterprises (1976) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977) (hereinafter the MNEs Declaration).

2. The MNEs Declaration was revised in 2000 and in 2006 to establish a link to the 1998 Declaration on Fundamental Principles and Rights at Work and the Global Employment Agenda. These reviews included mentions of new conventions and recommendations on this subject, which currently total 69.

In the early years of the last decade, the ILO began to connect the MNEs Declaration with the notion and the practice of Corporate Social Responsibility (CSR), which was specially developed by employers. In this way, the ILO set basic rules on the company's "internal" responsibility towards its own workers.

Likewise, since 2007, the ILO has put off the four-year survey on the MNEs Declaration in favour of sectoral and country-specific research studies, and it has created the ILO Helpdesk on MNEs. Through the Governing Body, the Workers' Group intends to give momentum to a significant review of the MNEs Declaration follow-up instrument, as it considers that the application of such an instrument is key in a globalized economy.

In 2007-2009, the ILO also included the MNEs Declaration in other instruments, namely: the "Conclusions on the Promotion of Sustainable Enterprises" (2007) (within the framework of the Director-General's Introduction to that year's Conference: "Decent Work for Sustainable Development"), the "Declaration on Social Justice for a Fair Globalization" (2008), and the Resolution "Recovering from the Crisis: A Global Jobs Pact" (2009).

Later, the ILO Symposium “Celebrating the 60th Anniversary of Convention No. 98: the Right to Organize and Collective Bargaining in the 21st Century” (Geneva, October 2009) also dealt with the potential role of the MNEs Declaration as a benchmark for transnational collective bargaining. A short time later, the High-Level Tripartite Meeting on Collective Bargaining held within the framework of the 306th Governing Body meeting (Geneva, November 2009) took up this approach in its introductory note (“Collective Bargaining: Negotiating for Social Justice”).

In 2010, ACTRAV came up with the Booklet “The ILO MNEs Declaration: What’s in it for Workers?”

Annex I outlines the two 2009 above-mentioned documents on this subject as well as the Booklet in relation to its emphasis on CSR.

3. The OECD Guidelines recognize the ILO’s competence on the issue of employment and labour relations and, in that context, state that their content reflects the provisions of both ILO Declarations, indicating that the 1977 Declaration may prove to be useful for developing a good understanding of the Guidelines as it is more comprehensive (in the supplementary text “Commentaries”).

The OECD Guidelines were subjected to a thorough review in 2000, which included new topics and boosted the performance of its operational mechanisms (the National Contact Points, NCPs). An update of the Guidelines has been in preparation since 2009—and is expected to be approved in 2011—with the aim of increasing their relevance and clarifying private sector responsibilities. Annex II features a summary of the main TUAC proposals.

This decade saw the creation of OECD Watch (2003) as a meeting place for NGOs working in connection with the Guidelines, twenty of which are American. From a historic perspective, the 2000 review made it possible to increase the number of submitted cases from a handful during the first twenty-five years to over 200 cases at present (113 of which have involved trade unions). According to TUAC, after completing the procedure, 60% of these cases have had positive outcomes. The study conducted by FES on the universe of Latin American cases (“The OECD Guidelines for Multinational Enterprises in Latin America: Experiences, Learnings and Proposals from a Trade Union Perspective,” 2009) concluded that for Latin America, this percentage rises to nearly 70%.

4. The ILO also views the Global/International Framework Agreements (hereinafter GFAs-IFAs; the two names have to do with their geographical reach) signed by Global Union Federations (GUFs) with multinationals in their respective sectors as positive in terms of “social dialogue on an international scale.” These agreements are linked to the work of the ILO as they include in their language references to international standards, in particular the Core Labour Standards and other Conventions and Recommendations contained in the MNEs Declaration. They have often resulted from the previous creation



of trade union networks or committees within GUFs. Since 2000, more than 70 GFAs-IFAs have been signed covering nearly 5 million workers.

5. In June 2008, the ILO and the OECD organized a high-level conference on CSR under the title “Employment and Industrial Relations: Promoting Responsible Business Conduct in a Globalising Economy” aimed at exploring potential synergies between the two instruments.

6. There are two current elements tied to this theme both at the ILO and the OECD, namely:

- At the ILO, the proposal submitted to the consideration of the Governing Body that the future editions of the Conference should address issues related to the global supply chains and information and consultation with workers. As previously indicated, the Workers’ Group has also suggested reviewing the MNEs Declaration follow-up mechanism.
- At the OECD, the announcement in March 2010 of the start of a process to develop sample provisions on investment to encourage their inclusion in trade and investment treaties.

7. Mention should also be made of some other initiatives developed within the United Nations: the Global Compact (2000), a voluntary endorsement initiative introducing some general references to labour, environmental, and anticorruption issues, and another one that seeks to create a more encompassing standard dealing with Human Rights and Transnational Corporations and other Businesses Enterprises (named “Protect, Respect and Remedy”) promoted by the UN Human Rights Council, through the Special Representative of the Secretary-General.

ITUC/TUCA, TUAC and GUFs

8. Historically, the MNEs Declaration and the OECD Guidelines have been supported by the international trade union movement (ICFTU, WCL). Later, the trade union movement included the European Works’ Councils (EWCs) in its strategy along with the GFAs-IFAs. The latter were included after the Working Group and the ITSs adopted a “Basic Code of Labour Practices” (1997).

Since its creation in 2006, the ITUC has consistently pursued this approach, placing an increasing emphasis on the regulatory aspects of CSR. In its 2nd Congress (Vancouver, June 2010), the ITUC will adopt a new resolution that follows up on and further develops this tool (“Global Unions, Global Companies”).

9. In the Americas, in its Founding Congress (Panama, March 2008), the Trade Union Confederation of the Americas (TUCA) adopted a Programme of Action containing a work sub-theme called “Multinational Enterprises, CSR and Regulated Investment,” which was placed under the responsibility of the Secretariat for Economic Policy and Sustainable Development. The TUCA followed a similar approach to that of the ITUC, TUAC and GUFs, although it also highlighted the importance of dealing with what are known as *multilatinas*, i.e. Latin American multinational enterprises, whose behaviour



is no different from that of the rest of multinational enterprises. In this regard, the TUCA has acted directly in relation to some events in Brazil.

10. The Programme is being developed by the Working Group on Transnational Enterprises (GTTN), with the participation of the regional arms of the Global Union Federations (GUFs), trade union centres and trade union technical support structures, with the backing of FES's Regional Trade Union Programme, under which four strategic workshops have been carried out on these topics. The focus has been on GFAs-IFAs, the notion of CSR, the draft ISO 26000 standard, and the European Works Councils (EWCs). From a CSR standpoint, the Group has endorsed the approach on the "legal responsibility" of GFAs-IFAs that has been developed for a number of years by European and Latin American trade unions (the main document is the Seville Declaration, 2005).

11. The TUCA also supported the TUAC-FES regional seminar on OECD Guidelines (Buenos Aires, November 2008), which issued the "Buenos Aires Declaration" recommending a number of operational improvements to governments based on TUAC's guidelines. That meeting brought together trade union representatives from the four countries with National Contact Points (NCPs), namely Argentina, Brazil, Chile, and Mexico—the first three in their capacity as observers and the fourth one in its capacity as a full member. Peru was about to be elected as an observer, so Peruvian trade unions had also been invited to the meeting. Later, Chile became a full member of the OECD.

12. The TUCA produced a booklet for analysing the ILO Conclusions on Sustainable Enterprises and had a regional exchange with ILO-ACTRAV from which strategic conclusions were derived (ACTRAV-TUCA Seminar "Trade Union Training on the Global Jobs Pact, Decent Work and Sustainable Development," Montevideo, March 1-3, 2010). The TUCA and several affiliated organizations have responded to an ACTEMP survey from the regional office.

II. PROPOSALS

In general:

1. To adopt the following strategic statement: The regulatory contents of the OECD Guidelines and the ILO MNEs Declaration are part of the set of internationally recognized fundamental rights at work. Therefore, they are to be considered as the basic guarantees of workers in all future negotiations as they apply to labour relations.

2. To strengthen international collective bargaining by using tools such as the GFAs-IFAs, building on the experience of European Works Councils (GTTN Workshop "The EWCs and the Latin American Trade Union Movement," Montevideo, November 5 & 6, 2009) and fostering interaction between bargaining at a global level and bargaining at a national/sectoral level as well as international solidarity actions

3. To follow up on the elements introduced into the new ITUC resolution, including the language changes (regarding “multinational enterprises” and “transnational enterprises”) as well as the final position to be adopted on the ISO 26000 Standard once it has been approved.
4. To study the issues and instruments addressed by the Seminar as they relate to the LPA’s (Labour’s Platform for the Americas) chapter on “Multinationals and Large Enterprises.”
5. To link the theme of the seminar with the work on regulated investment, including the investment chapters on FTAs and PAs, IPPTs (Investment Promotion and Protection Treaties) and the OECD investment policy.
6. To turn the ongoing mapping of foreign and Latin American multinationals in the Latin American and Caribbean region into a common database to work on this issue with the GUFs and the sub-regional Coordination bodies.
7. To draw formulations from the themes addressed in this seminar that may contribute to the organizational aspects of the Trade Union Self-Reform programme. This relates to the sub-theme “Relations with GUFs” as to their role at the national level as well as to the creation of specific functional areas (with the previous experience of CUT Colombia).
8. To include the productivity variable, following the concept of systemic productivity, in the analysis of the themes addressed in this seminar, within the context of decent work and as a fundamental starting point for a trade union strategy conducive to better wages and improved working conditions and, overall, a progressive redistribution of income.

Regarding the ILO MNEs Declaration (see Annex I):

1. To disseminate and use the ILO-ACTRAV Booklet on the Declaration in strategic and educational activities; to encourage the use of the ILO MNEs Helpdesk, particularly the sections on standards and sectoral analyses.
2. To support ILO-ACTRAV in the drafting of the conclusions of the 2009 Symposium on Collective Bargaining.
3. To continue the exchanges between trade unions and ILO-ACTRAV regarding ILO activities related to CSR and Sustainable Enterprises.
4. To promote the strengthening of the MNEs Declaration as part of an international framework for enforcement of the ILO regulatory principles by MNEs/ Latin American multinationals and their supply chains. To follow up on the recommendations of the Workers’ Group regarding eventual ILO developments on issues related to information and consultation to workers.



Regarding the OECD Guidelines

(See Annex II):

1. To propose to TUAC that trade union organizations in OECD observer countries (Argentina, Brazil, and Peru) should be incorporated with that same status for the purpose of follow-up and application of the Guidelines.
2. To carry out joint actions together with Chilean trade union organizations in order to validate their accession to TUAC as full members.
3. To support TUAC in its efforts to include its priorities in the OECD Guidelines review by supporting the proposals put forward at this seminar (See Annex III), within the context of the 2008 “Buenos Aires Declaration.”
4. To politically and technically endorse affiliated and fraternal organizations that decide to bring new cases before NCPs. This demand was raised at the seminar by representatives of CUT Peru and CNUS Dominican Republic.
5. To foster greater coordination among trade union organizations in connection with the cases brought before NCPs in the Americas (Canada, USA, Mexico, Peru, Chile, Argentina, and Brazil) involving MNEs established in the region. To follow up on the submission of cases before the OECD in coordination with TUAC.
6. To develop an exchange relationship with OECD Watch, taking into account the content of the Programme of Action and antecedents as the one described at the seminar (OECD Watch INCASUR-CTA-CGT workshop on the Argentine case, Buenos Aires, April 10, 2010).

Regarding GFAs-IFAs and Trade Union Networks:

1. To continue the exchanges within the GTTN regarding the “legal responsibility” of the agreements and their relation with the supply chain (theme of the next workshop, Montevideo, May 2010).
2. To support GUFs in the promotion of trade union networks, making use of the Booklet “Guía para a construçao de Redes Sindicais em Empresas Multinacionais” (CUT Brazil, 2009 [Guide to Building Trade Union Networks in Multinational Enterprises]) presented at the seminar. Likewise, to look into the possibility of carrying out a specific GTTN meeting to evaluate the experiences of existing Networks, especially in Latin American multinational enterprises.
3. To support GUFs in the signing of new “second generation” (as per UNI americas’s proposal) GFAs-IFAs, especially with Latin American multinationals, as well as their use as organising and collective bargaining tools, while giving visibility to collective agreements signed with subsidiaries of the same multinational (as per IMF’s proposal).



5. To request a strategic plan from PSI to link the themes of this seminar with its affiliates' approach in favour of quality public services.

IV. Next Steps

1. We now move on to the phase of obtaining support for this document from other TUCA affiliated and fraternal trade union organizations, as well as from other GUFs that were not present at the seminar.

2. Encourage seminar participants working within the sphere of sub-regional trade union coordination structures (CCSCS, CCSA, CSACC), other sub-regional bodies (CCLA, FCES, SICA-CC, CARIFORUM) and COSATE at a hemispheric level, to report on the results of this seminar and introduce the theme in their respective action plans.

3. The seminar participants will be incorporated into the GTTN network with the support of ACTRAV's Solicomm communications system.

CGT and CTA Argentina; CUT, Forca Sindical, and UGT Brazil, CLC Canada, CUT Colombia, CUT and CAT Chile; AFL-CIO USA, CTM y UNT Mexico, CGTP and CUT Peru, CNUS Dominican Republic, IMF, ICEM, PSI, ITF, UNI americas.

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ANNEXES

I. SELECTION OF CONTENTS FROM RECENT ILO DOCUMENTS

I. SYMPOSIUM "Celebrating the 60th Anniversary of Convention No. 98: the Right to Organize and Collective Bargaining in the 21st Century," Geneva, October 12-15, 2009

International Industrial Relations

- a. Globalization requires the internationalization of collective bargaining and industrial relations. International Framework Agreements and Global Framework Agreements constitute part of a strategy to widen the space for organizing and bargaining collectively at national level
- b. In order to achieve this, trade unions need to strengthen international solidarity including international direct support actions
- c. Codes of conduct have failed to promote freedom of association and collective bargaining;
- d. Models of international collective bargaining can only be effective if an interaction is established between negotiation at global level and national/sectoral negotiation.

Trade Union Action

- a. Multinational companies leading global supply chains need to be engaged nationally and internationally by trade unions, in close cooperation with national and sectoral structures. Trade unions should use tools such as global framework agreements, targeted programmes and international solidarity actions
- b. To address the challenge of globalization and to promote freedom of association and collective bargaining, actions should be extended to other areas such as trade, international investment and international procurement



ILO Action

In order to promote collective bargaining, the ILO needs to become a centre of excellence on this topic and assist constituents in addressing the policy challenges stated above. In particular, Office-wide efforts should be undertaken in order to implement the following actions: Increase efforts towards engaging with multinational companies, in order to fully respect labour rights and collective bargaining throughout global supply chains. The ILO MNEs Declaration provides relevant guidance in this regard. Synergies could be created with the OECD Guidelines and the national contact points. Consideration should be given to a new follow-up mechanism for the ILO MNEs Declaration;

II. Collective Bargaining: Negotiating for Social Justice. Introductory Note to the High-Level Tripartite Meeting on Collective Bargaining (Geneva, November 19-20, 2009)

Europe and Central Asia. With the enlargement of the European Union, the transnational dimension of collective bargaining is becoming more important. There are two major developments in this regard. The first is the increased cross-border comparison of labour costs, flexibility and performance by multinational enterprises (MNEs) and the exchange of information and coordination of bargaining agendas by trade unions. The second concerns transnational negotiations between European industry federations, sometimes initiated by a European Works Council (EWC) and a multinational enterprise, which result in European Framework Agreements (EFAs). These agreements do not address wages and working time—regarded as core collective bargaining issues—but rather address topics such as corporate social responsibility, the elaboration of key principles underpinning company employment policies, business restructuring, and particular aspects of company policy such as health and safety.

Global Developments. A growing number of International Framework Agreements (IFAs) have been concluded between MNEs and a global union federation (GUF) (possibly co-signed by an EWC). Unlike the EFAs, these are global in scope. These are not collective agreements, but rather establish frameworks of principles, often with a commitment to promote fundamental principles and rights at work including the effective recognition of the right to collective bargaining. In the maritime sector, a unique agreement was reached in an international bargaining forum between the International Transport Workers' Federation (ITF) and the International Maritime Employers' Committee (IMEC). The agreement has many of the characteristics of a collective agreement, including wage increases, working hours, leave entitlement, maternity pay, and medical treatment.

III. ILO/ACTRAV: The ILO Declaration regarding Multinational Companies: What's in it for Workers? 2010

Introduction. Now is the time to reassert the important role that international labour standards can play in promoting socially responsible economic development. A key to this development is the recognition by governments and employers that enterprises must act in a responsible way in relation to their labour practices.

Many enterprises, particularly multinational enterprises (MNEs) are responding to the demands of shareholders and consumers and adopting socially responsible actions and behaviours. We must ensure this commitment extends to the labour dimension by requiring that, as a minimum, these enterprises act in accordance with international labour standards.

The ILO has a ready-made framework for guiding the actions of enterprises that want to observe the principles enshrined in international labour standards, further to their obligations under the law: the MNEs Declaration is practical, comprehensive and comes with the authority that the ILO has adopted it. That is, governments, workers and employers have agreed that it is a good practice guide for enterprise behaviours and actions

The MNEs Declaration provides support for our arguments that enterprises should respect the right of workers to freedom of association and their right to organize and to collectively bargain for their terms



and conditions. While there is now broader awareness of core labour standards, more work has to be done in reference to the responsibility of companies to have good industrial relations. The need for a renewed effort to strengthen work and action in relation to the right to organize and collective bargaining rights was, for example, identified at the ACTRAV Symposium to celebrate the 60th Anniversary of ILO Convention No. 98 in October 2009. The MNEs Declaration will be an important tool in our efforts here.

Within the MNEs Declaration there are also clauses on consultation, grievance procedures and dispute resolution, all recognising the right of worker's to representation.

The MNEs Declaration represents a global agreement about how enterprises should act. It is a valuable tool for unions to utilize when organising to maintain and improve the situation of workers.

What is the MNEs Declaration? One of the problems with current Corporate Social Responsibility (CSR) claims is that businesses seek to use CSR initiatives and codes to redefine what constitutes responsible behaviour. Businesses should be discouraged from unilaterally defining their respective responsibility. The MNEs Declaration has an important role to play in this respect, being an agreed text at tripartite level.

All of this makes it a powerful tool for trade unions to use. It has moral authority and provides a comprehensive checklist of the standards that enterprises should uphold through their operation.

Why was the MNEs Declaration adopted? The MNEs Declaration was negotiated by governments, workers' and employers' representatives at a time when international organizations began recognising that the balance of power between transnational corporations and governments could be tipped towards the private entity. This was particularly the case for developing countries trying to attract Foreign Direct Investment.

The adoption of the MNEs Declaration coincided with the approval of the OECD Guidelines for Multinational Enterprises, another international framework that recognizes and refers to ILO standards.

Both the OECD Guidelines and the ILO MNE Declaration were responses to work begun on a United Nations Code of Conduct for MNEs.

The MNEs Declaration, therefore, arose out of the recognition that given their growing size and influence, the actions of multinational enterprises could have negative impacts on the political, economic and social development of communities and, in fact, whole countries.

Even at this early stage it was recognized that globalization while posing substantial potential benefits, also contained a number of risks. The actions and behaviours of multinational enterprises can contribute to these benefits and risks.

Why use it now? The usefulness of the MNEs Declaration is that it goes beyond respecting fundamental human rights to a broader range of responsibility. The MNEs Declaration can be used to counter those who seek to limit the scope of business responsibility for labour practices to the fundamental human rights. It is a tool that promotes the whole concept of good industrial relations.

The global economic and financial crisis has exacerbated the negative impact of globalization. Left unchecked, institutions operating in the global market will ignore the negative economic and social consequences of their actions.

The actions of multinational enterprises have never been under more scrutiny as the community demands more socially responsible corporate behaviour. De facto labour practices are usually the single greatest social impact of business activities both towards workers and for societal development.

In rebuilding after the global economic and financial crisis, everyone, but particularly governments, need to be reminded that social and labour standards must be maintained if we are to have sustainable growth for the future.



The MNEs Declaration provides the relationship between the activities of MNEs and development.

How does it work? The MNEs Declaration is an instrument that reflects the international consensus on what represents good practice for all enterprises and government behaviour in relation to enterprise activity. Although the MNEs Declaration is “non-binding” on states or MNEs, it is universally applicable. This means that it is not necessary for a company to “sign” or otherwise ‘adhere’ to the Declaration before its behaviour can be examined.

How does the MNEs Declaration fit with other international initiatives? The MNEs Declaration is the most relevant document among those aiming at regulating corporate behaviour (such as the OECD Guidelines for Multinational Enterprises, the UN Report on Business and Human Rights, and the UN Global Compact) given its formal adoption by the UN agency and being the most comprehensive text in the area of labour principles.

The MNEs Declaration is the only instrument that represents a consensus between governments, employers’ and workers’ organizations on the labour dimension of Corporate Social Responsibility (CSR). It provides an authoritative set of expectations of behaviour that is universally applicable.

The United Nations (UN), the Organization for Economic Co-operation and Development (OECD), the International Standards Organization (ISO) and other international and regional organizations recognize the ILO as the competent agency to establish and monitor labour standards. As an instrument of the ILO, the MNEs Declaration bears therefore a strong authority.

While the MNEs Declaration remains the ILO document dealing with the behaviour of business, other recently adopted texts contain helpful suggestions for trade unions: *the ILO Declaration on Social Justice for a Fair Globalization (2008)*, *the Global Jobs Pact (2009)*, and *the ILC Conclusions Concerning the Promotion of Sustainable Enterprises (2007)*.

Does the Declaration only apply to the actions of MNEs? The MNEs Declaration’s policies and principles apply equally to MNEs and national enterprises. They reflect good practice for all.

How can workers use the MNEs Declaration? Actions by unions to promote the principles contained in the MNEs Declaration can be taken at the global, national, local and enterprise levels.

Unions can argue that, although human rights do not need to be justified using a business case, there are strong synergies between economic and societal development once enterprises align their operations with the principles in the MNEs Declaration.

The actions of enterprises have never been under more scrutiny from governments, investors, purchasers and the community. Enterprises are responding by voicing their commitment to Corporate Social Responsibility (CSR). These enterprises can demonstrate their commitment to social responsibility and the attainment of decent work practices by implementing the principles within the MNEs Declaration.

Trade unions can use the Declaration to hold enterprises accountable for the impacts of their actions.

Trade unions can also use the Declaration to remind governments about the framework for socially responsible economic development.

Checklist for Trade Union Action. The MNEs Declaration provides a comprehensive platform for discussion about enterprise behaviour. Actions can be taken at the global, national and local level. This tool can be used to assess the current stay of play within a country or with any particular enterprise. Unions can promote the use of this tool for organisations to assess whether they are adhering to the labour dimension of CSR.

Trade Union Action

At the global level: 1. Incorporate the reference to the MNEs Declaration in Global Framework Agreements (GFAs) and International Framework Agreements (IFAs). Although the MNEs Declaration can be fairly characterized as an universally accepted “code of conduct” and IFAs should be considered more like a precursor to international industrial relations, IFAs are still far away from covering all the areas included in the MNEs Declaration, hence the importance to use this text as a checklist for revision of GFAs and IFAs as well as for guidance on application (possible development of mechanisms for the joint evaluation of enterprises’ behaviour against the provisions of the Declaration using the checklist contained in this booklet); 2. Participate in tripartite initiatives along with the ILO to promote the uptake of the principles in the MNEs Declaration; 3. Promote the ILO Helpdesk to enterprises so that they can gain assistance in the application of international labour standards within their operations.

At the national level: 1. Use the MNEs Declaration as the basis for national tripartite discussions regarding economic development priorities; 2. Campaign for governments’ application of the ILO instruments that the Declaration is based on; 3. Promote the MNEs Declaration as the framework governments should use to assess which organisations receive government assistance, subsidies and other favourable treatment; 4. Campaign for the establishment of government procurement guidelines incorporating adherence to the principles within the MNEs Declaration as a requirement; 5. Educate the community about the content of the MNEs Declaration so that they can make demands for government and enterprise adherence to its principles; 6. Promote adherence to the principles in the MNEs Declaration as a demonstration of “Employer of Choice/ Best Practice Employer” status.

At the Enterprise level: 1. Use the MNEs Declaration as the basis for obtaining agreements with enterprises about their operations; 2. Encourage enterprises to refer to the MNEs Declaration as a requirement in supplier codes of conduct and in analysis of supply chain compliance. While this guide does not intend to establish a blanket uncritical support for supply chain codes, it is evident that now it is the time for the labour movement to use every possible means to verify companies’ adherence to their social claims; 3. Educate workers about the content of the Declaration to enable them to assess the actions of their employer (use the tool contained in this booklet as a guide); 4. Encourage organisations to assess themselves against principles in the MNEs Declaration. Where they fall short of the standard, encourage adoption of remedial strategies; 5. Incorporate adherence to the principles in the MNEs Declaration as a provision in collective agreements; 6. Report findings to the national centres to which they are affiliated in order to establish a comprehensive action for the respect of the principles contained in the text.

General Policy. Unlike many CSR initiatives that emphasize management’s unilateral decisions, the Declaration envisages that the company will make decisions that will have a significant social impact together with other employers or on its own after having had consultations with other partners, i.e. trade unions and the government.

Labour Relations. The Declaration may help establish a mature labour relations system. The Declaration encourages multinationals to comply with standards not less favourable than those applicable to domestic employers as well as to develop internal consultation and dispute settlement mechanisms. In a modern setting, these obligations of multinational enterprises should also be extended to all players in the other links of their global supply chains.

Employment. It is important to stress that job creation and job security are a key responsibility of the company. This is not mentioned in the OECD Guidelines and it is rarely included in CSR initiatives or instruments.

Equal Opportunity and Treatment. Although in its 1977 wording the Declaration speaks about giving priority to “nationals,” it is evident that numerous host countries are currently home to migrant workers; therefore, provisions should clearly be applicable to all working persons dependent on the local labour market.

ANNEX II. TUAC’s Position on Updating of the Guidelines (taken from a presentation at the seminar)

1. To consider the strengthening of the Procedural Guidance as the top priority, taking into account that improving the Guidelines' effectiveness depends, above all, on improving the performance of NCPs.

This includes:

- a- strengthening its authority to implement the Guidelines regarding incentives, consequences, and follow-up
- b- playing a role in mediation and adjudication, as well as in the availability of resources for research
- c- setting up a fund for training and education (including mediation)
- d- reinforcing protection of whistleblowers at risk
- e- including a guide on best practices in parallel legal procedures
- f. introducing a mandatory, transparent, and participatory peer review

2. To expand the core contents of the Guidelines in keeping with the principles set by the Special Representative of the UN Secretary-General on the issue of Businesses and Human Rights, replacing the current ones (Visibility, Accessibility, Transparency, and Accountability) with Legitimate, Accessible, Predictable, Fair, Rights-compatible, and Transparent.

The following are specially important issues:

- a- introducing references to international standards
- b- introducing the commitment to respect the human rights of the individuals affected by its activities in line with the international duties and commitments of the host country
- b- making clear that the Guidelines are mandatory insofar as the responsibility to respect and to do no harm, which implies eliminating the current reference in the text of the Guidelines to their voluntary nature
- c- explaining that the Guidelines cover supply chains

3. To introduce the notion of decent work, precarious work and living wage in the chapter on Labour and Industrial Relations (the latter based on the content of ILO Recommendation 198, 2006).

4. To reinforce the chapter on access to information and country reports, including issues related to supervision.

5. To delve into the climate change dimension in the section on the environment.

Annex III. Some proposed changes to the OECD Guidelines regarding labour issues (taken from Hugo Barreto's document presented by FES at the seminar)

II. General Principles

2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments. ***In particular, recognize and promote freedom of association and other collective rights as well as the legitimacy of the representation by labour organisations. These duties apply to those companies acting as subcontractors for multinational enterprises.***

The principle of respect for human rights should encompass the individual as well as the collective dimension. The right to freedom of association and collective bargaining is one of the main components of the ILO Declaration on Fundamental Principles and Rights at Work (1998) and of other higher level international instruments (the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Additional Protocol to the American Convention on Human Rights, etc.) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy itself. Now or at a later date, a reference to subcontractors should be included, since they are often the ones that offer the most humiliating working conditions. MNEs should not wash their hands of this sort of indirect noncompliance they engage in through subcontracting.

2.

IV. Employment and Industrial Relations

Enterprises should, within the framework ***of the fundamental principles and rights at work and*** of applicable law, regulations, and prevailing labour relations and employment practices:

The current wording of the Guidelines indicates an obvious weakness when introducing the “framework” of the laws applicable to employment and industrial relations, since it refers curiously and solely to “the legal and regulatory provisions,” while the focal point of every framework should be the fundamental principles and rights. The current approach to human rights as “fundamental ethics” dictates that every consideration on labour relations should be made from the perspective of human rights standards and not from the largely impoverishing viewpoint of “legal and regulatory provisions,” many of which—as it is well known in Latin America— are unconstitutional as they contradict principles or limit the exercise of rights.

3

1. respect the right of their employees to be represented by trade unions and engage in negotiations, either individually or through employers’ associations, with such representatives with a view to ***reaching agreements on working conditions and terms of employment, regulating relations between employers and workers, or regulating relations between employers or their organisations and a workers’ organisation or several workers’ organisations, or achieving all these ends at the same time.***

Rationale

The following syntagms are deleted:

- a- “and other bona fide representatives of employees” after “unions”
- b- “constructive” before “negotiations”
- c- “on employment conditions,” replacing it with a longer phrase that partially transcribes Article 2 of ILO Convention No. 154.

In the first case, the reference to other “bona fide” representatives may lead to antiunion practices (preferences, etc.). In the second case, the term “constructive negotiations” is not commonly used in labour relations; consequently, including it leads to potentially harmful ambiguity. In fact, who is in a position or authorized to judge when a negotiation is “constructive”? And even simpler, what is a “constructive negotiation”? What are the consequences of considering a negotiation “non constructive”? Therefore, the problems of interpretation that could result from the inclusion of this truly “foreign body” in the text of the Guidelines are such that we consider that its deletion is perfectly justified. Finally, the plain phrase “on employment conditions” at the end of the paragraph should be replaced with a transcription of what ILO Convention No. 154 understands as the content of collective bargaining. The intention is to improve the text, as negotiation should not be limited to “employment conditions” but should also have a richer and more critical content.

4

1.d. Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, ***or establish any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation,*** unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

The current wording of this provision lists the causes of discrimination in a somewhat restricted manner, leaving out, for instance, the new forms of discrimination that the ILO mentions in its Global Report: obesity, smoking, diabetes, etc. In order to safeguard the right to non discrimination, it is advisable to include a sufficiently broad statement that encompasses behaviours affecting people’s equality. To this end, the solution adopted has been taken from Art. 1.1.b of ILO Convention No. 111 on non discrimination in employment and occupation.

2. b. Provide information to employees’ representatives which is needed for meaningful ***collective*** negotiations on conditions of employment. ***Such information should, as far as possible, include all matters of interest to the workers relating to the operation and future prospects of the undertaking and to the present and future situation of the workers, insofar as disclosure of the information will not cause damage to the parties.***

The word “constructive” is deleted due to the above-mentioned problems and replaced with “collective,” thereby becoming more consistent with the terminology used in labour relations. A statement based on item 15.1 of ILO Recommendation 129 on Communications within the Undertaking is added to highlight some of the elements that should be considered in a company’s communications and information policy.

2. c. Promote consultation and cooperation between employers and employees and their representatives on matters of mutual concern. ***Such consultation should not be a substitute for collective bargaining.***

The added condition appears in item 57 of the ILO Tripartite Declaration of Principles. Article 1 of ILO Recommendation 94 on Cooperation at the Level of the Undertaking coincidentally states that “Appropriate steps should be taken to promote consultation and cooperation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining machinery, or not normally dealt with by other machinery concerned with the determination of terms and conditions of employment” (underlined by us).

4. Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country. ***In particular, wages, benefits, and working conditions offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned.***

Although item 27 of the Commentaries on the Guidelines states that compensation and working time arrangements are included in the phrase “employment standards and labour relations,” we understand that basic data of the employment relationship such as wages should be expressly mentioned. Item 33 of the ILO Tripartite Declaration of Principles has been taken as a model.

[new] the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed upon between the parties.

The atypical forms of work, the jobs crisis, and the labour deregulation of the last thirty years have often brought about employment relationships disguised as self-employed work, leading to true fraud against labour laws. In many cases, it was labour policies that facilitated the conversion of employment contracts into service contract agreements. The basic protective nature of labour law needs to be respected. ILO Recommendation No. 198 on Determination of the Existence of an Employment Relationship provides some criteria to deal with doubtful cases and establishes a general principle in Article 9, determining the existence of an employment relationship based on facts relating to the performance of work. We propose that such provision be transcribed in the Guidelines in order to ensure that employment of other people’s work by MNEs adjusts to actual facts.

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6. ***Multinational enterprises equally with national enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security.*** In considering changes in their operations ... (followed by the original wording)

Article 6 of this chapter of the Guidelines sets out some criteria to apply when the changes of activities in companies may have negative effects on employment. Among other things, it raises the need to provide information with sufficient time in advance. We agree with such principle, but before establishing civilized, reasonable procedures in the event of mass redundancies, it is necessary to set the key principle: job security, which for the worker and his/her family represents employment stability. Once the principle of stability has been recognized, then the termination of employment may take place based on objective reasons or on the worker’s behaviour, according to the formula provided in ILO Convention No. 158 on Termination of Employment.

II. Implementation Procedures

1. National Contact Points

1. Adhering countries shall set up National Contact Points to undertake promotional activities, handle inquiries, ***monitor compliance with the Guidelines, operate as mediators, issue recommendations when applicable,*** and take care of discussions with the parties concerned on all matters covered by the Guidelines so that they can contribute to the solution of problems which may arise in this connection, taking due account of the attached Procedural Guidance. The business community, employee organisations, and other interested parties shall be informed of the availability of such facilities.

The lack of momentum for NCPs conspires against the full application of the Guidelines. A significant portion of the energy devoted to transforming the Guidelines should be directed to granting more competence and responsibilities to NCPs for monitoring the Guidelines, which implies introducing changes to their competences and composition. Additional competences are included in this section with the intention of bringing NCPs closer to the relations emerging every day among the various elements that make up the Guidelines, although, obviously, the focus is being placed on labour relations and employment.

2. the Committee shall periodically invite the Business and Industry Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) (the “advisory bodies”), as well as other non-governmental organisations to express their views on matters covered by the Guidelines. **When receiving a case on labour issues from a NCP, the Committee shall previously hold consultations with the advisory bodies.** In addition, when requested, exchanges of views with the advisory bodies on these matters may be held.

The intention is to promote TUAC’s involvement in all steps of the procedure dealing with labour issues.

4. The Committee shall be responsible for clarification of the Guidelines. Clarification will be provided as required. If it so wishes, an individual enterprise or **the workers...** (followed by its original wording)

Clarification of the Guidelines may be requested from CIME by enterprises or by the workers. The term “the workers” has been inexplicably left out in the current wording.

III. Procedural Guidance

A. Institutional Arrangements. Consistent with the objective of functional equivalence, adhering countries have flexibility in organising their NCPs, **but they must ensure some level of participation of** social partners, including... (followed by its original wording)

The phrase “seeking the active support” is replaced with the duty to ensure “some level of participation” in the NCP. As it can be easily noticed, without significantly changing the flexible nature of NCPs, we advocate that NCPs must ensure some level of participation by social partners in relevant national bodies. Without introducing rigidity into the NCPs, workers’ organizations are given the opportunity to have a direct influence in the bodies created by the Guidelines.

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Accordingly, the National Contact Point:

1. may be a senior government official or a government office headed by a senior official. **When dealing with a labour issue, the body shall partner with at least one representative of the labour ministries or secretariats and with representatives of workers’ and employers’ organizations in an advisory role.** Alternatively, the National Contact Point may be organized as a cooperative body, including representatives of other government agencies.

This is also along the lines of integrating organizations at some relevant level within the NCPs. Considering that many NCPs are made up by officials of the Ministries of Economy or Foreign Affairs, provisions are made to ensure that for labour-related cases there will be an “ad-hoc” committee involved to deal with the particular characteristics of the labour issue. The last part that speaks about the potential participation of representatives of the business community, of trade union organizations and other interested parties is deleted; therefore, such participation is established as mandatory in the new proposed wording.

C.2 Where the issues raised merit further examination, offer good offices as **a mediator and conciliator** to help the parties involved to resolve the issues (followed by its original wording)

To better align NCPs with the new realities resulting from the application of the Guidelines, agencies are induced to serve as mediators and conciliators in arising disputes. This possibility is also raised when further developing this item (see 2.d) although, as it can be seen, in these cases the intervention will be weaker as the NCP fulfils the function of “facilitating access” to these consensus-driven mechanisms, but its potential role as a mediator and conciliator is not recognized. In the proposed wording, the NCP is granted mediation and conciliation powers in order to add settlement mechanisms with no intention whatsoever of replacing any other body.

C.3. If the parties involved do not reach agreement on the issues raised, issue a statement and make recommendations as appropriate, on the implementation of the Guidelines. **The statement and the recommendations should be made public.**

By making the statement and the recommendations publicly known public opinion is brought into the scene. Public opinion is a key factor for MNEs, which have been making obvious efforts to improve their image and convey a message of ethics applied to business practices.



Deletion of C.4.b

There are no grounds for preserving confidentiality of the dispute resulting from the application of the Guidelines, and it goes against the principle of “transparency” in the operation of NCPs.

The National Contact Point shall not be able to refuse to deal with a case under the pretext of the existence of other alternative paths, be they a judicial procedure or an out-of-court procedure, at national or international level. Under no circumstances will these conditions hinder the implementation of this procedure.

The intention is to prevent NCPs from declining cases in advance, without dealing with them, on the grounds that complainants can pursue other paths.