

TRIPARTITE DECLARATION OF
PRINCIPLES CONCERNING
MULTINATIONAL ENTERPRISES
AND SOCIAL POLICY

AN EMPLOYERS' GUIDE

INTERNATIONAL ORGANISATION OF EMPLOYERS

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FOREWORD

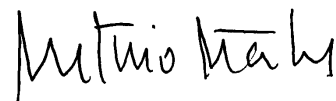
This guide is provided as a tool to assist employers' organizations and their members to better understand the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the ILO MNE Declaration). As expectations of societies worldwide increase concerning the role of MNEs in social matters, this guide also explores ways in which such companies may respond to those expectations. The MNE Declaration is a voluntary promotional instrument and is therefore not subject to a complaints-based mechanism. MNEs and companies in general wishing to uphold a socially responsible approach to conducting their business are called upon to consider the MNE Declaration when looking to establish operations overseas or when operating within their own domestic environment.

The MNE Declaration was adopted by the ILO Governing Body in 1977. Originally, the text of the Declaration was negotiated parallel to a debate that took place in the UN Commission on Transnational Corporations with a view to developing a code of conduct. However the UN initiative foundered and the UN Code of Conduct was not developed.

The MNE Declaration, however, persisted. In 2000, the document was updated to incorporate the 1998 ILO Declaration on Fundamental Principles and Rights at Work within its provisions. Although other more high-profile instruments – such as the OECD Guidelines – have taken the spotlight from the MNE Declaration, it continues to provide a ready point of reference for employers' organizations and companies looking to respond to the social challenges presented by the CSR debate, be they multinational enterprises or not, be they large or small. It is within this context that this guide for employers has been produced.



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AN EMPLOYERS' GUIDE TO THE TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY

I. WHAT IS IT?

The 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was negotiated between governments, workers' and employers' representatives and, as such, is the only truly international tripartite consensus on what would be a desirable behaviour of enterprises with regard to labour and social policy areas. It was updated in 2000 in order to incorporate the 1998 ILO Declaration on Fundamental Principles and Rights at Work within its provisions and again in 2006 to update the list of Conventions and Recommendations contained in the Annex, and to reflect the Global Employment agenda adopted by the ILO Governing Body in 2003.

II. WHERE DID IT COME FROM? A BRIEF HISTORY

In the 1960s and 1970s, the social and political climate was such that great concern and mistrust was expressed about the growing economic and sometimes political influence of MNEs.

This climate fuelled a debate within the United Nations which, in 1975, embarked upon the preparation of a Code of Conduct on Transnational Corporations. It was intended that the content of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which was then being formulated, would be reproduced as a chapter in the UN Code dealing with employment and industrial relations. This did not materialize as the UN initiative ultimately collapsed. Work continued in the ILO and in November 1977 the Declaration was adopted by the ILO Governing Body.

III. WHY IS THE MNE DECLARATION RELEVANT TODAY?

Today the debate surrounding the development of corporate social responsibility (CSR) continues to grow. Increasingly, companies are considering how they can respond to the challenges and opportunities of globalization whilst at the same time remaining conscious of the expectations of consumers, shareholders, employees and other stakeholders that, in operating the business, they would do so in a socially acceptable and sustainable way.

An important feature of the voluntary nature of the engagement in CSR is the diversity of responses. This recognizes that the contexts and situations are different for each company and that a one-size-fits-all response is neither possible nor desirable.

One of the questions often asked by companies is: What internationally recognized points of reference exist which can guide me in developing the company's approach? There are a number of substantive references, in addition to the MNE Declaration, including:

- *The 1976 OECD Guidelines for MNEs (revised 2000), the "OECD Guidelines"*. Although they are not totally supported by all countries, the OECD Guidelines are supported by most of the industrialized economies and an increasing number of countries are announcing their interest in complying with them. While this text was negotiated between the governments of the OECD member States, both employers' and workers' organizations were consulted. However, the terms of the OECD Guidelines go beyond employment and social policy matters and include environmental and other matters (see the table of comparison between the Declaration and the OECD Guidelines in Annex II).
- *The Global Compact*. While not an official UN agreement, the Compact contains principles drawn from universally-accepted international texts in the areas of human rights, labour, environment and corruption. The four labour principles of the Compact are drawn from the 1998 ILO Declaration on Fundamental Principles and Rights at Work (see www.ilo.org) which cover: freedom of association and the effective recognition of the right to collective bargaining; elimination of discrimination in employment and occupation; effective abolition of child labour; and the elimination of forced or compulsory labour. These are principles enshrined in the ILO Constitution and are addressed to governments which, by virtue of their membership of the ILO, are expected to give effect to them regardless of whether they have ratified the international labour Conventions covering such areas. However, the Global Compact is a voluntary call from the UN Secretary-General to the business community to embrace the principles and, through an approach based on learning and the exchange of good practice, work to give effect to the principles in their operations.

In addition, many commercial, sectoral and company initiatives on CSR and codes of conduct have been developed. The unique characteristic of the MNE Declaration is that it enjoys the support of governments and the social partners. The fact that support for the MNE Declaration is global and fully tripartite makes this instrument relevant and robust within the present debate. Whilst it was originally addressed to MNEs, its provisions are also directly relevant to any national company anywhere in the world regardless of its size.

IV. THE MNE DECLARATION AND ITS RELATION TO ILO STANDARDS

The MNE Declaration provides guidance to governments, employers' and workers' organizations, multinational enterprises and other national enterprises, in the areas of employment, training, conditions of work and life and industrial relations. The provisions of the Declaration are consistent with relevant international labour

Conventions and Recommendations. Whilst ILO Conventions and Recommendations are a matter for governments, the MNE Declaration encourages companies to bear them in mind and *consider* them within their own sphere of influence.

While companies are, of course, obliged to comply with national legislation they are not responsible for, or required to give effect to, international labour standards.

International labour standards are, and remain, the responsibility of governments.

V. ITS PURPOSE

The MNE Declaration is intended to:

“... encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise..”

The MNE Declaration recognizes that multinational enterprises constitute a potent economic force for progress and are an integral part of economic life and that, through their activities, they contribute significantly to raising the quality and quantity of employment. It also recognizes that with that power come possible challenges. The text is, therefore, an attempt to find ways by which companies themselves can consider the areas of potential risk and look to find their own solutions, involving others if they so wish.

As stated in paragraph 5:

“these principles are intended to guide the governments, the employers’ and workers’ organizations and the multinational enterprises in taking such measures and actions and adopting such social policies including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO as would further social progress”

The MNE Declaration, therefore, looks to build on the positive contribution multinational enterprises play in the advancement of social progress. It is also important to recognize that the Declaration itself **is not mandatory**, nor is it a code of conduct for business. **Rather, it is a checklist or reference point for companies in the area of corporate social responsibility.**

VI. HOW DOES THE MNE DECLARATION WORK?

The MNE Declaration works on the basis of information. Periodic surveys addressed to governments, workers’ and employers’ organizations are undertaken by the ILO to assess the impact that MNEs are having with regard to the specific chapters of the Declaration. That information is then shared with constituents and provides

direction for future ILO action. The MNE Declaration itself is discussed in the ILO Governing Body through the Subcommittee on Multinational Enterprises, which is a tripartite forum for discussion and information exchange.

The Declaration contains no enforcement or complaints mechanism – a key difference from the OECD Guidelines – nor are there national contact points with regard to how it is used. However, if there is a disagreement over the application of the Declaration, the parties can request the ILO to give an interpretation of the meaning of the disputed provision. At the time of writing this Guide there have been five such requests (see www.ilo.org/public/english/employment/multi/dispute.htm). Compared to the provisions of the OECD Guidelines, the Declaration has a lower profile. Efforts to raise the Declaration’s profile are in process and, in due course, more such requests for interpretation may be forthcoming.

VII. THE CONTENTS OF THE DECLARATION

1. General Polices (paragraph 8)

Under this section, the MNE Declaration sets out the general requests made of the parties. These are:

(a) Respect the sovereign rights of States:

Companies are asked to respect the legitimacy of governments to regulate their societies. However, in the event a governments fails to do so, companies need to ensure that they are not contributing to, nor benefiting from, that failure. Where government action in areas covered by the MNE Declaration (and here we would include also the 1998 Declaration on Fundamental Principles and Rights at Work) is weak or absent, companies can use the MNE Declaration’s provisions to guide their response in the face of weak or non-existent national law.

(b) Obey national laws and regulations:

Legal compliance is the basis from which the MNE Declaration operates. Such compliance is needed before anything else is possible and in many instances such compliance will bring a company into conformity with the expectations of the MNE Declaration itself. In order to meet this expectation, companies need to ensure that they have a thorough understanding of the local laws and have in place systems to ensure compliance. This can be complicated at times. In this connection, national employers’ organizations are the best point of reference with regard to these and any other “local” issues.

(c) Give due consideration to local practices and “respect” relevant international standards:

Firstly, this provision seeks to ensure that local traditions and practices are respected. This, like the issue of legal compliance, needs a good understanding of local conditions and again the national employers’ organization can provide ready information and guidance.

The second part of this provision relates to “respect relevant international standards”. What is meant here is not expressly clear. It is true that the wording calls for all parties concerned by this Declaration to respect relevant international standards so the duties of States is also captured here. The respect that a company must give can therefore be separated from the duty that a State may have – i.e. a legal duty – and so the respect required of a company may well just not be limited to ensuring that it does not act in a way contrary to the intentions of these relevant international standards – i.e. a moral and ethical duty. Of course, where a State has translated any relevant international standard into domestic law, then the company must comply with its relevant provisions.

The paragraph goes on to clearly state that respect should be given by the partners to the MNE Declaration, to the “Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles... They should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up as well as honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations”.

From this list it could be argued that these are the relevant international standards to which the opening words of paragraph 8 refer and they should certainly be those directly considered by a company within its own context even though they are all directed to States and not private actors. Familiarity with them can help a company in its decision making without making the company legally responsible for the instruments themselves. However, there may be other standards that become important given the situation being considered. Relevance then becomes a key word and what might be relevant to be considered will be situation-dependent. Again, in a national context the national employers’ organization may be able to give guidance to this question.

Respect for core international labour standards is another matter and would necessarily imply that private companies should be aware of them. Whether or not those Conventions have been ratified or translated into national law and practice becomes a compliance issue. Where they have not been ratified they can be referred to for guidance in looking for appropriate responses, but

companies are not required to take responsibility for them; respect is different from a legal obligation. Local realities, practices, religion and traditions also need to be considered as these may be reasons for not ratifying. Efforts to give effect to the MNE Declaration will therefore need to take into account the reasons for non-ratification of the Convention(s) concerned. This also comes back to the request to respect the sovereign rights of States.

(d) Honour commitments freely entered into in conformity with national laws and accepted international obligations:

Again, the expectations here will vary between the different parties to which the Declaration is addressed. For a company this refers to such things as national industrial agreements entered into. It may include international understandings applicable across all of a company's operation - i.e. through a framework agreement. It may also include non-legally binding undertakings made by a company with regard to its operations, including undertakings arising through company policy documents.

A company is also asked to consider the general policy objectives of the country in which it operates or intends to operate. It should also consider how its operations will impact on that policy, the intention being to seek harmony between the company's behaviour and the government's policies, development priorities and social gains. Again, local knowledge is important in order to identify those policy objectives for the purpose of making the comparison.

Governments are also addressed in this part. Their responsibility for ratification and implementation of international labour standards is recognized (paragraph 9) as is their responsibility to promote good social practice through the implementation of their social and labour law, regulation and national practice (paragraph 12). This is an area for action by employers' organizations, as they have a role to play in engaging with governments in promoting and developing legislation consistent with delivering the objectives set by the MNE Declaration.

2. Employment

This chapter is in three parts: (a) employment promotion; (b) equality of opportunity and treatment; and (c) security of employment.

(a) Employment promotion

The chapter begins with a recognition that it is government's role to pursue a range of policies designed to promote full, productive and freely chosen employment and recognizes that such a policy is needed if it is to stimulate economic growth and development, raise living standards, meet manpower requirements and address issues of unemployment and underemployment. The lack of such a policy is not an excuse for

companies to pull back from consideration of the expectations of them under the MNE Declaration, but it is another entry point for employers' organizations with governments to develop such policies to encourage foreign direct investment (FDI) and MNE participation in the national economy. This expectation of governments is also consistent with the ILO Global Employment Agenda. Before starting their operations, companies, for their part, should consult with governments and workers' and employers' organizations to ensure that their manpower plans are consistent with that national policy (paragraph 17).

Paragraph 16 looks to MNEs, particularly in developing countries, to increase employment opportunities and raise standards. This is qualified by the paragraph also recognizing that such an approach needs to be considered having regard for national policy as well as job security and the enterprise's own development. This expectation needs to be considered now in light of the nature of the MNE's operations. When this text was written, the focus was largely on manufacturing or extractive industries where the technology of today was not even dreamed of. Many MNEs are now in the high end specialized manufacturing or service sector where employment opportunities – due to the nature of the work and the impact of technology – limits the employment possibilities. However, issues of indirect employment creation through engaging in the local supply of goods, services and personnel should not be forgotten (refer paragraphs 18 and 20, with the warning that this should not be done as a means of avoiding the responsibilities outlined in the MNE Declaration).

This paragraph should also be considered by those companies whose operations may imply higher levels of employment. This is an expectation that is not always possible for a company to satisfy. Paragraph 19 also calls for local skills enhancement and the use of technology to enable local production to move from unskilled “low-end” to “high-end” high value production (although this will be largely dependent on the type of company operation involved). There is a possible conflict between these calls for high-end skills development and calls for other MNEs to maximize job creation by applying labour-intensive low technology practices. These are sensitive issues and a company needs to have a good understanding of the expectations at the national level before commencing operations so as to ensure local expectations are met.

The issue of giving priority to the employment of nationals is also promoted here (paragraph 18). Again there is no one approach to this as it will be dependent on the nature of the jobs involved and the availability of local skilled workers. However, companies should be proactive in exploring ways to address this request and it may well require a longer term investment in human resource development to equip nationals with the requisite skills so as to not only increase their eligibility for employment but also to enable them to progress within the company. Collaboration with others at national level on skills development is one way in which companies can contribute to this.

(b) Equality of opportunity and treatment.

Under this section, the MNE Declaration calls on governments and encourages them to pursue – not deviate from – policies which promote equality of opportunity and treatment in employment with a view to eliminating discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin (paragraphs 21, 23).

Companies, for their part, are asked to have regard for these policies and support government measures taken to correct historical patterns of discrimination - e.g. affirmative action programmes - as well as to use what is now accepted human resource policy, namely the engagement, promotion and access to training of personnel on the basis of their qualifications, skills and experience (paragraph 22).

(c) Security of employment.

This section is more complicated for companies. It begins by calling on governments to monitor the impact of MNEs on employment (this refers back to paragraph 16 and the request that MNEs should endeavour to increase employment opportunities – see (a) above – and requesting them to have in place measures to deal with the employment impacts).

One of the criticisms often laid at the door of MNEs is their displacement of small national companies on the commencement of their operations. Paragraph 24 also asks MNEs to have measures in place to deal with their impacts. This is quite vague. It could include such steps as undertaking employment impact assessments prior to the start-up of operations and consultations with government and employers' and workers' organizations as to what possible impacts their operations could have. It also comes back to paragraphs 18 and 20 regarding the employment of nationals and the domestic sourcing of goods and services.

Provisions are also included with regard to security of employment. MNEs are not only asked to address this issue through endeavouring to provide stable employment, but are also asked to take a leading role in promoting security of employment. This requires early consideration of the type of operation to be established and the nature of the work to be performed. There must be cognisance of any agreements reached with the enterprise and, additionally, conformity with national legal requirements.

It has to be remembered that the MNE Declaration was written largely with the developing world in mind, where sanctity of contract and work continuity were not always present and the aim was to secure employment opportunities for nationals, thereby contributing to social improvement. This objective is seen as being best obtained where individuals have some certainty about their employment. This does not, however, preclude flexible work arrangements or new forms of work. It asks companies to manage changes in their operations with sensitivity, including adequate notification

to the government and their workers where major job losses are possible (especially in the case of full or partial closures) so as to enable ways to mitigate the effects to be explored jointly. Companies are called on to avoid arbitrary dismissals and, if they are unavoidable, to seek together with governments the provision of some form of income protection for terminated staff (paragraphs 26 – 28).

3. Training

These provisions call on governments to work with employers and workers representatives in developing national policies on vocational guidance and training. These policies should then guide an MNE in developing its own training needs. The MNE should also involve itself in, and support, national programmes aimed at skill formation and development (paragraphs 29 and 31).

The MNE's training programme should look to ensure that relevant training is given at all levels in the company and that this be done with the co-operation of the government, workers' and employers' organizations (paragraph 31).

A company's operational needs should determine what is relevant by way of training needs. This provision is aimed at ensuring, as far as possible, that the presence of an MNE at the national level makes a positive contribution to skill attainment by individual staff members. It also aims at benefiting from MNEs' expertise in training and the contribution to an overall improvement in the country's training programmes, including at managerial level (paragraph 32).

In some instances the MNE may be looked at to play a leadership role in this regard where such local programmes are weak or not established. It also recognizes the enlightened self-interest that companies have in enlarging the pool of skilled workers from which to draw as the business expands. The provision also recognizes that the responsibility for training is a shared one and not the sole responsibility of the company itself.

4. Conditions of work and life

This chapter is divided into three parts: (a) wages, benefits and conditions of work; (b) minimum age; and (c) safety and health.

(a) Wages, benefits and conditions of work

This provision seeks to ensure that the wages paid by an MNE are not less favourable than those paid by comparable companies in the country concerned. Where there are no such comparable companies the request is that the wages, benefits and conditions of work be the best possible, taking into account the economic situation of the company, and be consistent not only with national law but also with government policies. Also, where the company provides basic amenities like housing, medical care or food these should be of a good standard.

This is very subjective and words such as “of a good standard” are not of much assistance. Employers’ organizations in many countries provide information on national terms and conditions of employment and can also help clarify such subjective terms, taking into account the national context. The provision is also a reminder to companies to act reasonably and responsibly in host countries and avoid criticism that, through their practices, they are not providing what is now the ILO expression “decent work”.

(b) Minimum age

This is quite simple. Employees should only be engaged where their age is at, or above, the national minimum age for admission to employment. It is important to remember that the permitted age sometimes varies depending on the job to be performed and, again, good local knowledge is needed to ensure that this is respected. The aim, of course, is to prevent child labour. In the absence of a national minimum age, the company would be wise to consult with both the national government and employers’ organization before engaging younger staff. The company’s own human resource policy can also give guidance in this regard. Generally speaking, any employment of persons younger than 16 should be treated with great caution.

(c) Safety and Health (OSH)

MNEs are expected to maintain a high standard of health and safety in conformity with national standards, paying particular attention to any special hazards applicable to their operations. Companies therefore need to be in and maintain compliance with national law in this regard and should share the information regarding their OSH standards with government and workers’ organizations (paragraph 38). Where appropriate, OSH should also be included in any negotiated agreements (paragraph 40).

MNEs, because of their status in the eyes of others, are also asked to work with international organizations on OSH standards (paragraph 39).

Given the emphasis today on health and safety at work, these expectations should come as no surprise and provide little in the way of obstacles to realizing them. MNEs should also consider exchanging information and knowledge with other employers at the national level as a means of improving domestic practice. This can be done through their involvement with the national employers’ organization and, whilst not part of the expectations of the MNE Declaration itself, this would certainly assist.

5. Industrial Relations

This chapter is divided into five parts: (a) freedom of association and the right to organize; (b) collective bargaining; (c) consultation; (d) examination of grievances; and (e) settlement of industrial disputes.

As a starting point, the MNE Declaration expects companies to observe standards of industrial relations no less favourable than those observed by comparable domestic companies. The text is however silent on what should be done where there are no comparable companies. In both instances, in order to ensure that they are acting appropriately, advice should be sought from the national employers' organization.

(a) Freedom of association and the right to organize

This provision reflects the general ILO principles surrounding freedom of association. It stresses the right to:

- Establish and/or join organizations of one's own choosing without previous authorization, which should be run free of interference by any other persons (company included) (paragraphs 42, 43).
- Be protected against acts of anti-union discrimination, e.g. dismissal, discrimination, etc.
- Meet and exchange views amongst employees, providing company operations are not prejudiced (paragraph 47).

Governments are also asked to give effect to allowing such organizations to affiliate internationally (paragraph 45) and incentives for companies to locate in any country should not include any which seek to limit or interfere with these rights to freedom of association or the right to organize and bargain collectively (paragraph 46).

There is also a provision in paragraph 44 where it says, "where appropriate, in the local circumstances, multinational enterprises should support representative employers' organizations". This wording may seem strange today, but it recognizes, in the context of freedom of association for employers, their right to freely choose to associate with other employers at the national level. Increasingly these days, as has already been mentioned in the text of this Guide, local knowledge by foreign firms of not only law but also practice and culture is increasingly important in ensuring not only legal compliance but also integration into the local community. For an employer the national employers' organization remains the best means to achieve those objectives (see Annex I).

(b) Collective bargaining.

This is probably at times a more difficult provision for some companies in some countries. It is important to remember that the MNE Declaration does not say that companies **have to** bargain collectively. The language used in this section is quite specific. Both the right to collective bargaining and its promotion, as a means of regulating terms and conditions of employment, are subject to it being in accordance with national law and practice (paragraph 49). The rest of the section needs to be read in that context.

However, the section requires a good understanding of what national law and practice is and also what might be “appropriate to national conditions” (paragraph 50).

Collective bargaining and workers’ rights remain compromised in a number of countries around the world. Increasingly, MNEs are becoming aware that these issues need to be approached sensitively and, if not, they could experience a lot of negative campaigning by both trade unions and NGOs. Good advice should be sought before considering operations to ensure these issues are fully understood and discussed. It may not always be possible to even give effect to either company policy or usual practice in this context.

Where collective bargaining is recognized and freely entered into, the section sets out the following expectations:

- That the workers’ organizations will be recognized by the company for the purposes of bargaining (paragraphs 49 and 52);
- That the company would help with facilities to assist in the development of such collective agreements (paragraph 51). This may take many forms; the MNE Declaration does not define what those facilities may be and local law and practice should be considered in this context;
- The MNE local management should have the authority to negotiate and conclude such agreements (paragraph 52);
- That such agreements will include dispute and interpretation provisions as well as means for their enforcement (paragraph 54);

Elements of good faith can be found in the text, including the prohibition of the use of threats during any such bargaining or partial or total withdrawal from the country or of importing labour to influence bargaining outcomes (paragraph 53). Also, in this regard the company should, in accordance with national law and practice, exchange information through the negotiation process to enable a true and fair view of the performance of the local operation or even the MNE as a whole (paragraph 55);

Given that governments are also asked to be able to supply information on the industries within which the local firms operate, MNEs are asked to co-operate with governments in the collection of relevant information on their operations (paragraph 56). What this means in practice is unclear but any requests for such information should be clearly officially requested and, if any doubts persist, a discussion with the local employers’ organization might be helpful.

(c) Consultation

Paragraph 57 sets out to establish a means for social dialogue within the company between it, its workers and their representatives as an addition to and not an alternative for collective bargaining. Again, this should be established in accordance

with national law and practice and cover matters of mutual concern. The content of such dialogue is not defined further.

(d) Examination of grievances.

This is a matter of process. It asks that employees with a grievance be entitled to submit a grievance and have it dealt with through an appropriate procedure without fear of prejudice to their employment. Consideration should be given to national law and practice in determining what is meant by an “appropriate procedure” (paragraph 58).

(e) Settlement of industrial disputes.

This provision looks at ways in which companies, in conjunction with their workers and their representatives, can establish voluntary conciliation machinery (i.e. dispute settlement mechanisms) to assist in the prevention and settlement of industrial disputes. Such a procedure, it suggests, *may* include voluntary arbitration (paragraph 59).

Again the request here has to be considered within the national context and such mechanisms need to be appropriate to those circumstances. The key word here though is *voluntary*. Such procedures need to be ones that can be freely entered into. That freedom, however, may be constrained if the industry involved is regarded as an essential service where strike action can be limited and arbitration is the means of dispute resolution. Again, local knowledge is important.

VIII. CONCLUSION

The above text sets out the content of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. As readers will appreciate, the MNE Declaration contains many elements which are already either reflected in national law or are part of a company’s human resource and industrial relations policy.

That said, there are parts of the world where legislative gaps and gaps in the implementation of legislation exist and it is in that context that the MNE Declaration can play an important role in guiding companies, both MNE and national, in acting appropriately in the face of that silence. Its global support from all ILO member States makes it a strong instrument for companies to refer to.

Geneva, October 2007

**TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING
MULTINATIONAL ENTERPRISES AND SOCIAL POLICY**

(text only)

Introduction

In the 1960s and 1970s, the activities of multinational enterprises (MNEs) provoked intense discussions that resulted in efforts to draw up international instruments for regulating their conduct and defining the terms of their relations with host countries, mostly in the developing world. Labour-related and social policy issues were among those concerns to which the activities of MNEs gave rise. The ILO's search for international guidelines in its sphere of competence resulted, in 1977, in the adoption by the ILO Governing Body, of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

The principles laid down in this universal instrument offer guidelines to MNEs, governments, and employers' and workers' organizations in such areas as employment, training, conditions of work and life, and industrial relations. Its provisions are reinforced by certain international labour Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible. The adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 highlighted the importance of the fundamental Conventions in realizing the objectives of the ILO, and consequently, the MNE Declaration takes into account the objectives of the 1998 Declaration.

Today, the prominent role of MNEs in the process of social and economic globalization renders the application of the principles of the MNE Declaration as timely and necessary as they were at the time of adoption. As efforts to attract and boost foreign direct investment gather momentum within and across many parts of the world, the parties concerned have a new opportunity to use the principles of the Declaration as guidelines for enhancing the positive social and labour effects of the operations of MNEs.

Periodic surveys are conducted to monitor the effect given to the Declaration by MNEs, governments, and employers' and workers' organizations. A summary and an analysis of the replies received are submitted to the ILO Governing Body for discussion. These documents, as well as other information and research publications on MNEs and social policy, are available through <http://www.ilo.org>.

In the event of disagreement over the application of the Declaration, the parties, using a procedure instituted in 1981, may submit a request to the ILO for an interpretation of the meaning of its provisions. The text of this procedure is appended for information. Assistance and advice with regard to the submission of requests for interpretation can be obtained from the International Labour Office.

This instrument provides social policy guidelines in a sensitive and highly complex area of activities. Adherence to the Declaration by all concerned would contribute to a climate more conducive to economic growth and social development.

**TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING
MULTINATIONAL ENTERPRISES AND SOCIAL POLICY**

(adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977)
as amended at its 279th (November 2000) and 295th Session (March 2006))

The Governing Body of the International Labour Office;

Recalling that the International Labour Organization for many years has been involved with certain social issues related to the activities of multinational enterprises;

Noting in particular that various Industrial Committees, Regional Conferences, and the International Labour Conference since the mid-1960s have requested appropriate action by the Governing Body in the field of multinational enterprises and social policy;

Having been informed of the activities of other international bodies, in particular the UN Commission on Transnational Corporations and the Organization for Economic Cooperation and Development (OECD);

Considering that the ILO, with its unique tripartite structure, its competence, and its long-standing experience in the social field, has an essential role to play in evolving principles for the guidance of governments, workers' and employers' organizations, and multinational enterprises themselves;

Recalling that it convened a Tripartite Meeting of Experts on the Relationship between Multinational Enterprises and Social Policy in 1972, which recommended an ILO programme of research and study, and a Tripartite Advisory Meeting on the Relationship of Multinational Enterprises and Social Policy in 1976 for the purpose of reviewing the ILO programme of research and suggesting appropriate ILO action in the social and labour field;

Bearing in mind the deliberations of the World Employment Conference;

Having thereafter decided to establish a tripartite group to prepare a Draft Tripartite Declaration of Principles covering all of the areas of ILO concern which relate to the social aspects of the activities of multinational enterprises, including employment creation in the developing countries, all the while bearing in mind the recommendations made by the Tripartite Advisory Meeting held in 1976;

Having also decided to reconvene the Tripartite Advisory Meeting to consider the Draft Declaration of Principles as prepared by the tripartite group;

Having considered the Report and the Draft Declaration of Principles submitted to it by the reconvened Tripartite Advisory Meeting;

Hereby approves the following Declaration which may be cited as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, and invites governments of States Members of the ILO, the employers' and workers' organizations concerned and the multinational enterprises operating in their territories to observe the principles embodied therein.

1. Multinational enterprises play an important part in the economies of most countries and in international economic relations. This is of increasing interest to governments as well as to employers and workers and their respective organizations. Through international direct investment and other means such enterprises can bring substantial benefits to home and host countries by contributing to the more efficient utilization of capital, technology and labour. Within the framework of development policies established by governments, they can also make an important contribution to the promotion of economic and social welfare; to the improvement of living standards and the satisfaction of basic needs; to the creation of employment opportunities, both directly and

indirectly; and to the enjoyment of basic human rights, including freedom of association, throughout the world. On the other hand, the advances made by multinational enterprises in organizing their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives and with the interest of the workers. In addition, the complexity of multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern either in the home or in the host countries, or in both.

2. The aim of this Tripartite Declaration of Principles is to encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the establishment of a New International Economic Order, as well as subsequent developments within the United Nations, for example, the Global Compact and the Millennium Development Goals.

3. This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments and by cooperation among the governments and the employers' and workers' organizations of all countries.

4. The principles set out in this Declaration are commended to the governments, the employers' and workers' organizations of home and host countries and to the multinational enterprises themselves.

5. These principles are intended to guide the governments, the employers' and workers' organizations and the multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, as would further social progress.

6. To serve its purpose this Declaration does not require a precise legal definition of multinational enterprises; this paragraph is designed to facilitate the understanding of the Declaration and not to provide such a definition. Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned. Unless otherwise specified, the term "multinational enterprise" is used in this Declaration to designate the various entities (parent companies or local entities or both or the organization as a whole) according to the distribution of responsibilities among them, in the expectation that they will cooperate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.

7. This Declaration sets out principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers' and workers' organizations and multinational enterprises are recommended to observe on a voluntary basis; its provisions shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.

GENERAL POLICIES

8. All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights and Work and its Follow-up, adopted in 1998. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.

9. Governments of States which have not yet ratified Conventions Nos. 29, 87, 98, 100, 105, 111, 122, 138 and 182 are urged to do so and in any event to apply, to the greatest extent possible, through their national policies, the principles embodied therein and in Recommendations Nos. 35, 90, 111, 119, 122, 146, 169, 189 and 190.¹ Without prejudice to the obligation of governments to ensure compliance with Conventions they have ratified, in countries in which the Conventions and Recommendations cited in this paragraph are not complied with, all parties should refer to them for guidance in their social policy.

10. Multinational enterprises should take fully into account established general policy objectives of the countries in which they operate. Their activities should be in harmony with the development priorities and social aims and structure of the country in which they operate. To this effect, consultations should be held between multinational enterprises, the government and, wherever appropriate, the national employers' and workers' organizations concerned.

11. The principles laid down in this Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of this Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular.

12. Governments of home countries should promote good social practice in accordance with this Declaration of Principles, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either.

EMPLOYMENT

Employment promotion

13. With a view to stimulating economic growth and development, raising living standards, meeting manpower requirements and overcoming unemployment and underemployment, governments should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.²

¹ Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention (No. 105) concerning the Abolition of Forced Labour; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 122) concerning Employment Policy; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour; Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer; Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 146) concerning Minimum Age for Admission to Employment; Recommendation (No. 169) concerning Employment Policy; Recommendation (No. 189) concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises; Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

² Convention (No. 122) and Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 169) concerning Employment Policy; and Recommendation (No. 189) concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises.

14. This is particularly important in the case of host country governments in developing areas of the world where the problems of unemployment and underemployment are at their most serious. In this connection, the general conclusions adopted by the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour (Geneva, June 1976),³ and the Global Employment Agenda (Geneva, March 2003)⁴ should be kept in mind.

15. Paragraphs 13 and 14 above establish the framework within which due attention should be paid, in both home and host countries, to the employment impact of multinational enterprises.

16. Multinational enterprises, particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise.

17. Before starting operations, multinational enterprises should, wherever appropriate, consult the competent authorities and the national employers' and workers' organizations in order to keep their manpower plans, as far as practicable, in harmony with national social development policies. Such consultation, as in the case of national enterprises, should continue between the multinational enterprises and all parties concerned, including the workers' organizations.

18. Multinational enterprises should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in cooperation, as appropriate, with representatives of the workers employed by them or of the organizations of these workers and governmental authorities.

19. Multinational enterprises, when investing in developing countries, should have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions envisaged in the economic sector concerned, they should adapt technologies to the needs and characteristics of the host countries. They should also, where possible, take part in the development of appropriate technology in host countries.

20. To promote employment in developing countries, in the context of an expanding world economy, multinational enterprises, wherever practicable, should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials. Such arrangements should not be used by multinational enterprises to avoid the responsibilities embodied in the principles of this Declaration.

Equality of opportunity and treatment

21. All governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.⁵

22. Multinational enterprises should be guided by this general principle throughout their operations without prejudice to the measures envisaged in paragraph 18 or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment.⁶ Multinational enterprises should accordingly make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.

23. Governments should never require or encourage multinational enterprises to discriminate on any of the grounds mentioned in paragraph 21, and continuing guidance from governments, where appropriate, on the avoidance of such discrimination in employment is encouraged.

Security of employment

24. Governments should carefully study the impact of multinational enterprises on employment in different industrial sectors. Governments, as well as multinational enterprises themselves, in all countries should take suitable measures to deal with the employment and labour market impacts of the operations of multinational enterprises.

25. 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 view of the flexibility which multinational enterprises may have, they should strive to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment.

26. In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.

27. Arbitrary dismissal procedures should be avoided.⁷

28. Governments, in cooperation with multinational as well as national enterprises, should provide some form of income protection for workers whose employment has been terminated.⁸

TRAINING

29. Governments, in cooperation with all the parties concerned, should develop national policies for vocational training and guidance, closely linked with employment.⁹ This is the framework within which multinational enterprises should pursue their training policies.

30. In their operations, multinational enterprises should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise as well as the development policies of the country. Such training should, to the extent possible, develop generally useful skills and promote career opportunities. This responsibility should be carried out, where appropriate, in cooperation with the authorities of the country, employers' and workers' organizations and the competent local, national or international institutions.

3 ILO, World Employment Conference, Geneva, 4-17 June 1976.

4 ILO Global Employment Agenda, 2003, ILO, Geneva.

5 Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 100) and Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

6 See the two following ILO codes of practice: HIV/AIDS and the world of work, ILO code of practice, 2001, ILO, Geneva; Managing disability in the workplace, ILO code of practice, 2002, ILO, Geneva.

7 Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer.

8 *ibid.*

9 Convention (No. 142) concerning Human Resources Development and Recommendation (No. 195) concerning Human Resources Development: Education, Training and Lifelong Learning, recalling the voluntary nature of the substance and levels of collective bargaining.

31. Multinational enterprises operating in developing countries should participate, along with national enterprises, in programmes, including special funds, encouraged by host governments and supported by employers' and workers' organizations. These programmes should have the aim of encouraging skill formation and development as well as providing vocational guidance, and should be jointly administered by the parties which support them. Wherever practicable, multinational enterprises should make the services of skilled resource personnel available to help in training programmes organized by governments as part of a contribution to national development.

32. Multinational enterprises, with the cooperation of governments and to the extent consistent with the efficient operation of the enterprise, should afford opportunities within the enterprise as a whole to broaden the experience of local management in suitable fields such as industrial relations.

CONDITIONS OF WORK AND LIFE

Wages, benefits and conditions of work

33. Wages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned.

34. When multinational enterprises operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies.¹⁰ These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.¹¹

35. Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises.

Minimum age

36. Multinational enterprises, as well as national enterprises, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour and should take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.¹²

Safety and health

37. Governments should ensure that both multinational and national enterprises provide adequate safety and health standards for their employees. Those governments which have not yet ratified the ILO Conventions on Guarding of Machinery (No. 119), Ionising Radiation (No. 115), Benzene (No. 136) and Occupational Cancer (No. 139) are urged nevertheless to apply to the greatest extent possible the principles embodied in these Conventions and in their related Recommendations (Nos. 118, 114, 144 and 147). The list of occupational diseases and the codes of practice and guides in the current list of ILO publications on occupational safety and health should also be taken into account.¹³

38. Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards. They should also make available to the representatives of the workers in the enterprise, and upon request, to the competent authorities and the workers' and employers' organizations in all countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make known to those concerned any special hazards and related protective measures associated with new products and processes. They, like comparable domestic enterprises, should be expected to play a leading role in the examination of causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise as a whole.

39. Multinational enterprises should cooperate in the work of international organizations concerned with the preparation and adoption of international safety and health standards.

40. In accordance with national practice, multinational enterprises should cooperate fully with the competent safety and health authorities, the representatives of the workers and their organizations, and established safety and health organizations. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organizations.

INDUSTRIAL RELATIONS

41. Multinational enterprises should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned.

Freedom of association and the right to organize

42. Workers employed by multinational enterprises as well as those employed by national enterprises should, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorisation.¹⁴ They should also enjoy adequate protection against acts of anti-union discrimination in respect of their employment.¹⁵

43. Organizations representing multinational enterprises or the workers in their employment should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.¹⁶

¹⁰ Recommendation (No. 116) concerning Reduction of Hours of Work.

¹¹ Convention (No. 110) and Recommendation (No. 110) concerning Conditions of Employment of Plantation Workers; Recommendation (No. 115) concerning Workers' Housing; Recommendation (No. 69) concerning Medical Care; Convention (No. 130) and Recommendation (No. 134) concerning Medical Care and Sickness Benefits.

¹² Convention No. 138, Article 1; Convention No. 182, Article 1.

¹³ Recommendation (No. 194) concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases. The ILO Conventions and Recommendations referred to are listed in the Catalogue of ILO Publications on Occupational Safety and Health, ed. 2000, ILO, Geneva. See also <<http://www.ilo.org/public/english/protection/safework/publicat/index.htm>>.

¹⁴ Convention No. 87, Article 2.

¹⁵ Convention No. 98, Article 1(1).

¹⁶ Convention No. 98, Article 2(1).

44. Where appropriate, in the local circumstances, multinational enterprises should support representative employers' organizations.

45. Governments, where they do not already do so, are urged to apply the principles of Convention No. 87, Article 5, in view of the importance, in relation to multinational enterprises, of permitting organizations representing such enterprises or the workers in their employment to affiliate with international organizations of employers and workers of their own choosing.

46. Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively.

47. Representatives of the workers in multinational enterprises should not be hindered from meeting for consultation and exchange of views among themselves, provided that the functioning of the operations of the enterprise and the normal procedures which govern relationships with representatives of the workers and their organizations are not thereby prejudiced.

48. Governments should not restrict the entry of representatives of employers' and workers' organizations who come from other countries at the invitation of the local or national organizations concerned for the purpose of consultation on matters of mutual concern, solely on the grounds that they seek entry in that capacity.

Collective bargaining

49. Workers employed by multinational enterprises should have the right, in accordance with national law and practice, to have representative organizations of their own choosing recognized for the purpose of collective bargaining.

50. Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.¹⁷

51. Multinational enterprises, as well as national enterprises, should provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements.¹⁸

52. Multinational enterprises should enable duly authorized representatives of the workers in their employment in each of the countries in which they operate to conduct negotiations with representatives of management who are authorized to take decisions on the matters under negotiation.

53. Multinational enterprises, in the context of bona fide negotiations with the workers' representatives on conditions of employment, or while workers are exercising the right to organize, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers' representatives or the workers' exercise of their right to organize.

54. Collective agreements should include provisions for the settlement of disputes arising over their interpretation and application and for ensuring mutually respected rights and responsibilities.

55. Multinational enterprises should provide workers' representatives with information required for meaningful negotiations with the entity involved and, where this accords with local law and practices, should also provide information to enable them to obtain a true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole.¹⁹

56. Governments should supply to the representatives of workers' organizations on request, where law and practice so permit, information on the industries in which the enterprise operates, which would help in laying down objective criteria in the collective bargaining process. In this context, multinational as well as national enterprises should respond constructively to requests by governments for relevant information on their operations.

Consultation

57. In multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining.²⁰

Examination of grievances

58. Multinational as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.²¹ This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively, to discrimination, to child labour and to forced labour.²²

Settlement of industrial disputes

59. Multinational as well as national enterprises jointly with the representatives and organizations of the workers whom they employ should seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.²³

Geneva, 28 March 2006

¹⁷ Convention No. 98, Article 4.

¹⁸ Convention (No. 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

¹⁹ Recommendation (No. 129) concerning Communications between Management and Workers within the Undertaking.

²⁰ Recommendation (No. 94) concerning Consultation and Co-operation between Employers and Workers at the Level of Undertaking;

Recommendation (No. 129) concerning Communications within the Undertaking.

²¹ Recommendation (No. 130) concerning the Examination of Grievances within the Undertaking with a View to Their Settlement.

²² Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention (No. 105) concerning the Abolition of Forced Labour; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour; Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 146) concerning Minimum Age for Admission to Employment, and Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

²³ Recommendation (No. 92) concerning Voluntary Conciliation and Arbitration.

TABLE OF COMPARISON BETWEEN THE MNE DECLARATION
AND THE OECD GUIDELINES

<u>Subject</u>	<u>ILO - Tripartite MNE Declaration</u>	<u>OECD – MNE Guidelines</u>
<p><u>Concepts/ Principles/General Policies</u></p>	<p>The Declaration sets out principles in the fields of employment, training, conditions of work and life and industrial relations</p> <p>The principles set out in the MNE Declaration are commended to governments, employers' and workers' organizations as well as to MNEs of home and host countries themselves.</p> <p>These principles are intended to guide the governments, the employers' and workers' organizations and the multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, as would further social progress.</p> <p>The Declaration does not require precise legal definition of MNEs. They include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based.</p> <p>Observance is voluntary.</p> <p>All concerned parties should refer to Conventions Nos. 29, 87,98,100,105,111, 122, 138, 182 and Recommendations Nos. 35, 90, 111, 119, 122, 146, 169, 189 and 190 for guidance in their social policy by the country concerned even if they have not been ratified.</p> <p>MNEs should take fully into account established general policy objectives of the countries in which they operate. Consultations should be held between multinational enterprises, the government and, wherever appropriate, the concerned national employers' and workers' organizations.</p> <p>The Principles of the Declaration do not aim at introducing or maintaining inequalities of treatment between MNEs and national enterprises. They reflect good practice for all.</p>	<p>The Guidelines are recommendations addressed by governments to multinational enterprises.</p> <p>They provide voluntary principles and standards of good practice consistent with applicable laws.</p> <p>The precise definition of MNEs is not required for the purposes of the Guidelines. These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. Ownership may be private, state or mixed.</p> <p>Observance by enterprises is voluntary and not legally enforceable.</p> <p>No reference to ILO Conventions and Recommendations.</p> <p>Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.</p> <p>The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.</p> <p>Enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.</p> <p>Governments adhering to the Guidelines should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.</p> <p>Enterprises should support and uphold good corporate governance principles and develop and apply good corporate governance practices.</p>

<u>Subject</u>	<u>ILO - Tripartite MNE Declaration</u>	<u>OECD – MNE Guidelines</u>
<p data-bbox="135 264 263 291"><u>Employment</u></p> <p data-bbox="135 315 359 342"><i>Employment Promotion</i></p> <p data-bbox="135 1458 359 1512"><i>Equality of opportunity and treatment</i></p> <p data-bbox="135 1794 359 1821"><i>Security of employment</i></p>	<p data-bbox="375 315 900 392">Governments should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.</p> <p data-bbox="375 421 858 474">Due attention should be paid, in both home and host countries, to the employment impact of MNEs.</p> <p data-bbox="375 504 900 629">Before starting operations, MNEs should, wherever possible, consult the competent authorities and the national employers' and workers' organizations in order to keep their manpower policies, as far as practicable, in harmony with national social development policies.</p> <p data-bbox="375 658 900 734">MNEs should give priority to the employment, occupational development, promotion and advancement of nationals of the host country in which they operate.</p> <p data-bbox="375 786 900 1023">Multinational enterprises, when investing in developing countries, should have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions prevailing in the economic sector concerned, they should adapt technologies to the needs and characteristics of the host countries. They should also, where possible, take part in the development of appropriate technology in host countries.</p> <p data-bbox="375 1052 900 1312">To promote employment in developing countries, in the context of an expanding world economy, multinational enterprises, wherever practicable, should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials. Such arrangements should not be used by MNEs to avoid the responsibilities embodied in the principles of the Declaration.</p> <p data-bbox="375 1435 900 1561">Governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.</p> <p data-bbox="375 1590 900 1644">Governments should never require or encourage MNEs to discriminate on any of the grounds mentioned above.</p> <p data-bbox="375 1794 900 1870">Governments as well as MNEs should take suitable measures to deal with the employment and labour market impacts of the operations of MNEs.</p> <p data-bbox="375 1899 900 2024">MNEs equally with national enterprises should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security.</p>	<p data-bbox="916 658 1453 757">To the greatest extent possible, enterprises should employ local personnel and encourage human capital formation, in particular, by creating employment opportunities and facilitating training opportunities for employees.</p> <p data-bbox="916 786 1098 813">Enterprises should:</p> <ul data-bbox="916 842 1453 1375" style="list-style-type: none"> ▶ endeavour to ensure that their activities are compatible with the science and technology policies and plans of the countries in which they operate and, as appropriate, contribute to the development of local and national innovate capacity. ▶ adopt, where practicable, in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights. ▶ when appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S & T capacity and encourage their training, taking into account commercial needs. ▶ when granting licences for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long-term development prospects of the host country. <p data-bbox="916 1435 1453 1644">Enterprises should 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, 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.</p> <p data-bbox="916 1673 1453 1798">Enterprises should refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.</p>

<u>Subject</u>	<u>ILO - Tripartite MNE Declaration</u>	<u>OECD – MNE Guidelines</u>
<p><u>Safety & Health/Environment</u></p>	<p>Governments should ensure that both MNEs and national enterprises provide adequate safety and health standards for their employees. Governments are urged to apply the principles of Conventions Nos. 119, 115, 136 and 139 and their related Recommendations Nos. 118, 114, 144 and 147 even if they have not ratified the Conventions.</p> <p>MNEs should maintain the highest standards of safety and health in conformity with national requirements. They should also make available to the representatives of workers in the enterprise and, upon request, to the competent authorities and the workers' and employers' organizations in all the countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make known to those concerned any special hazards and related protective measures associated with new products and processes.</p> <p>They should be expected to play a leading role in the examination of causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise as a whole.</p> <p>MNEs should cooperate in the work of international organizations concerned with the preparation and adoption of international health and safety standards.</p> <p>MNEs should cooperate fully with the competent safety and health authorities, the representatives of the workers and their organizations, and established safety and health organizations. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organizations.</p>	<p>Enterprises should take adequate steps to ensure occupational health and safety in their operations (No reference to ILO Standards).</p> <p>Enterprises should provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.</p> <p>Enterprises should establish and maintain a system of environmental management appropriate to the enterprise, including:</p> <ul style="list-style-type: none"> ▸ collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities; ▸ regular monitoring and verification of progress towards environmental, health and safety objectives or targets. <p>Taking into account concerns about cost, business confidentiality and the protection of intellectual property rights, enterprises should:</p> <ul style="list-style-type: none"> ▸ provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; ▸ engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation. <p>Enterprises should assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle.</p> <p>Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, enterprises should not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent such damage.</p> <p>Enterprises should maintain contingency plans for preventing, mitigating and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.</p> <p>Enterprises should continually seek to improve corporate environmental performance.</p>

<u>Subject</u>	<u>ILO - Tripartite MNE Declaration</u>	<u>OECD – MNE Guidelines</u>
<p><i>Consultation</i></p> <p><i>Examination of grievances</i></p> <p><i>Settlement of industrial disputes</i></p>	<p>MNEs, in the context of bona fide negotiations with the workers’ representatives on conditions of employment, or while workers are exercising the right to organize, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers’ representatives or the workers’ exercise of their right to organize.</p> <p>Collective agreements should include provisions for the settlement of disputes arising over their interpretation and application and for ensuring mutually respected rights and responsibilities.</p> <p>MNEs should provide workers’ representatives with information required for meaningful negotiations with the entity involved and, where this accords with local law and practice, should also provide information to enable them to obtain a true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole.</p> <p>Governments should supply to the representatives of workers’ organizations on request, where law and practice so permit, information on the industries in which the enterprise operates, which would help in laying down objective criteria in the collective bargaining process.</p> <p>In MNEs as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining.</p> <p>MNEs as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.</p> <p>MNEs as well as national enterprises jointly with the representatives and organizations of the workers whom they employ should seek to establish voluntary conciliation machinery, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.</p>	<p>In the context of bona fide negotiations with representatives on conditions of employment, or while employees are exercising the right to organize, enterprises should not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises’ component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organize.</p> <p>Enterprises should provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.</p>
<p><u>Disclosure</u> <u>Combating Bribery</u> <u>Consumer Interests</u> <u>Competition</u> <u>Taxation</u></p>	<p>These five subjects are not covered in the Declaration</p>	<p>Sections III, VI, VII, IX and X cover these five subjects in detail.</p>

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