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THE KENNETH M. PIPER LECTURE
TRANSNATIONAL REGULATION OF
THE LABOR RELATIONS
OF MULTINATIONAL ENTERPRISES

ROGER R. BLANPAIN*

The fourth annual Kenneth M. Piper Lecture was presented at Chicago Kent College of Law on March 31, 1982. The featured speaker was Roger R. Blanpain, Director of the Institute for Labor Relations, University of Leuven, Belgium. John T. Dunlop, former Secretary of Labor and present Lamont University Professor at Harvard University chaired a distinguished panel of commentators. The other members of the panel were Herman Rebhan, General Secretary of the International Metalworkers Federation, Richard L. Rowan, Co-Director of the Industrial Research Unit of the Wharton School at the University of Pennsylvania, and Richard H. Weise, Vice-President, General Counsel and Secretary of Motorola, Inc.

The remarks of the speakers will be presented in the order in which they spoke. The remarks of the panel in response to questions from the audience are included. The use of the Organization for Economic Cooperation and Development's (OECD) Guidelines is a central theme addressed by each speaker. For the convenience of the reader, the text of the Guidelines is appended to this article.

ROGER R. BLANPAIN: Professor Collens, distinguished members of the panel, ladies and gentlemen, dear students, may I first of all express my sincere gratitude for your invitation and for your kind words of introduction. I consider it a real honor and privilege to be asked by this fine law school and the Piper Endowment to address you this afternoon on an indeed challenging topic, the Transnational Regulation of the Labor Relations of Multinational Enterprises. Before going into my speech, I'd like to make an introductory remark and give some background information. Transnational Labor Relations are only just emerging. Labor relation systems are still mainly national and will, for a long time to come, be so. The fact that they will remain national is true even in the context of the European Communities. After twenty-five years of European Communities, the developments are

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such that we still speak mainly of French, or German, or Italian labor relations. So this afternoon we will study the exception, but exceptions can and are important.

By way of background information, you should be aware of the OECD and the European Communities. The OECD, the Organization for Economic Cooperation and Development, is headquartered in Paris and has twenty-four member countries. Among them are the United States, Canada, Japan, Australia, New Zealand, Turkey, and the European Community countries. The OECD, as you know, tries to promote the free flow of capital and goods. Within the OECD internal organization some two hundred committees operate. One of those committees is the IME Committee, the Committee on International Investment and Multinational Enterprises.

The IME Committee was created in 1975 to establish guidelines for multinational enterprises and later on, once the guidelines were established (as they were in 1976), to monitor the experience under the guidelines. So the governments meet, discuss this experience, and exchange ideas. The governments meet with both the trade unions and with the business community, each of which has an advisory status with the OECD. Advisory opinions are submitted by TUAC, (Trade Union Advisory Committee) which represents the trade unions of the twenty-four member countries, and by BIAC (Business and Industry Advisory Committee) which represents the employers' associations of the twenty-four countries.

The IME Committee, when it meets in Paris, has formal and informal contacts with representatives of BIAC and TUAC. When the IME Committee meets, the governments can ask questions of their fellow representatives. They can introduce cases and the union and business community representatives can also introduce cases. Each group can ask questions and join in the discussion.

The IME Committee cannot make a judgment on the individual behavior of a company. Instead, when cases are introduced, the cases are introduced as an illustration of an issue and it is for the discussion of an issue that the Committee then meets. The Committee eventually issues a clarification of the Guidelines.

It is also important to have some background information on the European Community (EC). As you know, there are ten country-members of the EC; the latest member is Greece. There are several bodies within the EC. The first is the Council of Ministers, which takes legislative measures by consent. Next, there is the European Commission,

or the European Government, whose members are appointed by the Council of Ministers for a period of years. It is the Commission which takes the initiative for introducing legislative measures. The European Parliament and the Economic and Social Committee are comprised of representatives of unions, businesses and the so-called third group of consumers and other interests. After all viewpoints have been considered, the Commission presents its final draft for legislation to the Council of Ministers. The different countries' members, represented in the Council, then negotiate. If they reach consensus, a legislative measure can be taken. Those measures are called directives. A directive is a legally binding measure taken by the Council of Ministers which sets a goal for the member countries. Each member country then has to adopt national measures in order to implement that goal.

This afternoon we will also discuss a proposal on information and consultation which is actually in Europe on the table before the European Parliament. It is a proposal regarding information to and consultation of employees working in enterprises with a complex structure. It is especially applicable to multinational enterprises.

OPPOSITE STRATEGIES

Mr. Chairman, ladies and gentlemen, transnational labor relations are dominated by fundamentally opposed strategies developed by those who are directly involved: by multinational enterprises on the one hand and by trade unions on the other.

The basic problem has to do with the fact that multinational managers want to remain as free and as flexible as possible in the management of their enterprises. They want to continue to make decisions in headquarters which escape the possible countervailing power of employees and of national governments. Multinational managers want to be free to decide where to invest, where to disinvest, and what kind of technology to use. These are decisions which are mostly made at corporate headquarters.

The multinational strategy is consequently not to discuss any of the problems involved at the transnational level with their employees. The managers say, indeed, that there are no *transnational* labor relations since all relevant decisions are made or can be made at the *local* level—that is, in the country where the headquarters or subsidiary are located. This is the point of view of most, if not all, multinationals, as well as international employers' associations such as UNICE at the European level, BIAC at the level of the OECD in Paris, and IOE (Inter-

national Organization of Employers) at the ILO (International Labour Organization) level in Geneva.

It is at the local level, at the level of the subsidiary, where employers insist that information has to be given, and where consultation and negotiation have to take place. They say it must occur at this level to take local law and practice into account. This is one strategy.

The other strategy is the one of the trade unions, who suggest that the employers' attitude does not take into account that the most important decisions in multinational enterprises are decisions involving jobs—the number and quality of jobs, and, especially lately, collective dismissals and closures in the framework of the restructuration process. These decisions, the union movement says, escape the local grip and the local social network. Trade unions indicate that they cannot adequately defend the interests of their members unless they are allowed to consult and to negotiate with the real decision-makers at the level where decisions are made, and thus eventually at the multinational level of headquarters.

So, you get two opposite strategies: multinationals saying that all relevant problems have to be settled, dealt with at the local level and unions indicating that there must be consultation and negotiation at the transnational level with headquarters. Both parties are looking for ways and platforms to achieve their goals.

ACTION BY UNIONS

There are basically two ways for the trade union movement to promote their objectives in this area. The first is to rely on their own strength, to rely on their industrial power, to push the employer on the basis of industrial action (international solidarity, strikes, boycotts, etc.) to recognize them and to consult and bargain with them.

Here, one must say, the international trade union movement has dramatically failed for a number of well known reasons: their ideological diversity, their lack of manpower and their opposed interests. The trade unions have not succeeded in pushing the multinational enterprises to the transnational bargaining table.

The second method for the trade unions is to rely on the power of someone else—on the power of their respective governments. They must press their governments to develop, in the international arena, rules adjusting the balance of power so as to force multinationals to recognize them and to deal with them.

Here, obviously, the relationship between unions and political par-

ties in power is of the greatest importance. Clearly, the picture has dramatically changed, at least in Europe, in the last years from labor to conservative in the United Kingdom, and from conservative to socialist in France and elsewhere.

This is one—I underline one, since some governments and some multinationals are independently looking for acceptable, reasonable rules for behavior—of the reasons why we have codes of conduct for multinational enterprises in the OECD, adopted in 1976, and by the ILO, adopted in 1977. This is also the reason that there are similar proposals in the EC and the United Nations. Those rules and codes may provide for the trade unions a number of platforms enabling them to force the other side to international negotiations.

Let's see how this has been tried in the OECD framework, where there has been—up to now—the most experience, and how this relates to the EC proposals on information and consultation.

THE OECD GUIDELINES

Let's have a look at the OECD Guidelines. The Guidelines were adopted in 1976. They constitute a legislative recommendation. They are accepted and supported by BIAC, the representatives of the business and industrial community. They are also supported as a first step by the trade unions. So, they have the backing of both sides of the bargaining table. The Guidelines contain an introduction and seven chapters; one chapter on General Policies, one chapter on Disclosure of Information (where information must be given to the public on the multinational enterprise as a whole), a chapter on Competition, a chapter on Financing, a chapter on Taxation, a chapter on Employment and Industrial Relations (which will obviously interest us the most this afternoon), and a chapter on Science and Technology. It is a relatively short document which was negotiated in a very short period of time. The committee was created in 1975, and the document was accepted in 1976.

The Guidelines are voluntary. Paragraph 6 of the Introduction states: "Observance of the Guidelines is voluntary and not legally enforceable." I never knew that the word voluntary had so many meanings. For some countries, which will remain nameless, voluntary means the text is acceptable or the text is not acceptable. The meaning of voluntary becomes "do whatever you like." Most governments do not share that view, I think, and say that the text is morally obligatory. If morality is abiding by the principles of obligatory behavior, which

society at large recommends enterprises follow, and if society is represented by democratically elected governments, consisting of the business community and the trade unions, then we have to act according to rules that are morally obligatory. The Guidelines supplement national law and national practice, since otherwise the Guidelines would make no sense in light of the fact that enterprises have to follow national law and practice.

Let's consider some of the problems which have been presented to the OECD. I will limit myself to three problems, namely those involving information to and consultation with employees, access to real decision-makers, and, finally, the co-responsibility of the parent company for the operations of its subsidiaries.

Multinational Enterprise Consultation with Employees

When we look at national law and practice, we see that in general—with the exception of a couple of countries—employees are informed of company decisions at the local level of the work shop. OECD Guidelines go a step further and indicate that employees are entitled to have a true and fair view of the enterprise as a whole. Paragraph 3 of the Employment and Industrial Relations chapter of the Guidelines states that enterprises should work within the framework of the law, regulations, and prevailing labor relations and employment practices in each of the countries in which they operate, and should “provide to representatives of employees where this accords with local law and practice, information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.” A similar principle can be found in the ILO Declaration on Multinationals and in the EC proposed directive on information and consultation.

Article 5 of this proposed directive reads, in part, as follows: that “1. At least every six months, the management of a dominant undertaking shall forward relevant information to the management of its subsidiaries in the Community giving a clear picture of the activities of the dominant undertaking and its subsidiaries taken as a whole.”

This means that a Works Council in Paris should be informed about what happens with a company subsidiary in Brazil. The management of each subsidiary is required to communicate such information to the representatives of the employees. When the management of the subsidiary fails to do so, then the employees are entitled to address

themselves to the management of the dominant undertaking. Thus, an international opening is created.

Guideline 6 of the OECD chapter on Employment and Industrial Relations foresees that multinational enterprises should:

in considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closures of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and where appropriate to the relevant governmental authorities, and co-operate with the employee representatives and appropriate government authorities so as to mitigate to the maximum extent practicable adverse effects.

It is obvious that the expression, "changes in operations" must be broadly interpreted and that the Guidelines do not only apply to closures and collective layoffs, but also to other structural changes, for example mergers, provided that they have a major effect on the livelihood of the employees. The wording of the phrase "in considering changes" would seem to indicate a stage prior to the final decision. Again, specific circumstances of each case have to be taken into account. Especially compelling reasons of business confidentiality may prevent early information, but this should be the exception rather than the general rule. It goes without saying that headquarters also has a definite obligation to provide local management with the necessary information in reasonable time so as to enable the local managers to comply with Guideline 6.

The EC proposals are more precise, but again, we get the same technique. Article 6 states that when the management of a dominant undertaking proposes to act on a decision concerning the whole or a major part of the dominant undertaking, or of one of its subsidiaries, which is liable to have a substantial effect on the interests of its employees, it shall be required to forward precise information to the management of each of its subsidiaries within the Community, not later than forty days before adopting the decision. The notice must give the details of the grounds for the proposed decision, the legal, economic and social consequences of the decision for the employees concerned and the measures planned in regard to these employees. The decisions referred to shall be those relating to the closure or transfer of an establishment or major parts thereof; restrictions, extensions or substantial modifications of the activities of the undertaking, major modifications with regard to organization, the introduction of long-term cooperation with other undertakings, or the cessation of such cooperation.

Here, again, headquarters has to inform the local manager, who

has to inform and consult with the employees. Here, again, there is an international opening since, if no information or consultation with local management takes place, then the local employees are entitled to information from and consultation with a view of reaching agreement with top management.

It is especially in this area that the EC proposals are attacked most vehemently by employers. A real fight is taking place in European capitals between defenders and opponents of the EC proposals.

The employers argue that the proposal lacks a legal basis and that the European Commission is over-reaching the legal possibilities under the enabling Treaty. Internationalization of labor law is, they argue, not a goal of the EC. It is only where different, territorially limited legal systems disturb the realization of the goals of the Treaty that the European Community is entitled to propose a measure favoring harmonization. This is not the case in respect to information and consultation, they argue. The proposal of consultation deters foreign investment, makes the position of EC multinationals more difficult versus the Japanese, asks for too much and unnecessary information, does not take into account the real decision-making structure of the multinational, is too simplistic in assuming that everything is decided at the top, undermines the authority of local managers, undermines the OECD and ILO codes of conduct, and will affect the necessary flexibility of a multinational enterprise.

The trade unions, on the other hand, defend the directive vehemently, especially the legally binding character of the proposal. They refute the arguments of the employers and refer to the OECD Guidelines as a "paper tiger" or a "fig leaf." The debate is currently continuing in the European Parliament, where one involved commission was in favor (94 pro, 80 against, 37 abstentions) and in the Economic and Social Committee, where a majority for the directive was also found.

Access to Real Decision-Makers

The second important problem concerns the access to real decision-makers. Here we must go to Guideline 9 of the Employment and Industrial Relations chapter of the OECD Guidelines which provides that employees should have access to real decision-makers. This principle is a basic one, which should cover all labor relations of the enterprise, including negotiation as well as consultation. It seems self-evident that employees must be able to consult with managers who are authorized to make the decisions necessary to mitigate adverse effects.

The expression "authorized to make decisions" has self-evidently a universal meaning. Someone who has authority is more than a mere messenger, more than a go-between. It means that he has the power to determine the content of the decision to be made, the wages to be paid, the hours to be worked, whether to invest or disinvest and the like. There are, of course, certain limitations. The manager must take the broad principles of company policy into account, and he may have to report to the Board of Trustees or what have you, but the point is the permission should not have to be sought at every step.

Normally, that "authority" will usually be "delegated" authority. The question is then: Can all decision-making power be delegated to local managers? Theoretically, one can say yes, but for some issues there has to be someone who possesses a more global view of the enterprise. Here the decision-making structure of the multinational enterprise comes into play. Of course, this structure is complicated; of course, there is an input from below, from the local manager. But this does not change the fact that it is possible to indicate who has the main authority to make decisions.

It is self-evident that most multinational enterprises have a centralized decision-making process concerning investment and technology and creation and control of pension funds. One cannot reasonably say—except perhaps for really big subsidiaries—that investment and other major decisions are mainly made by local management. To the extent that decisions are actually made at the centralized level rather than by the local manager, then delegation becomes a fiction and local employees are not able to talk with real decision-makers. If investment, technology, and pensions are bargainable issues following national law or practice, and those decisions are mainly made at the international level, then employees are entitled to negotiate or to consult with this multinational centralized management.

The OECD clarified Guideline 9 on the occasion of a disinvestment case in Sweden, the Viggo case, as follows:

In carrying out their responsibilities, management of the enterprises as a whole would seem to have a range of possibilities, among which it would choose or that it could combine, taking into full account the need to respect prevailing labor relation practices in the country where the negotiations have been initiated. Its choice depends on various circumstances, such as the matters under discussion, the decision-making structure within the enterprise, and the importance of the decisions to be taken. A number of possibilities are open to this end without suggesting any order of preference. Examples of such possibilities include: to provide the management of the subsidiary

with adequate and timely information and to insure that it has sufficient powers to conduct meaningful negotiations with representatives of employees; to nominate one or more representatives of the decision-making centre to the negotiating team of the subsidiary in order to secure the same result as in the preceding example; to engage directly in negotiations.

Thus a new opening for transnational labor relations was created. The OECD further indicated that employees in this context "have a legitimate interest to be informed about the decision-making structure within the enterprise." I think this is a landmark clarification.

Co-responsibility of the Parent for Obligations of the Subsidiaries

The third and last problem is an especially important one: it concerns the co-responsibility of the parent for the obligations of the subsidiaries. The main question is whether there is financial responsibility on the part of headquarters for the debts of its subsidiaries? Can a multinational enterprise invoke the principle of limited responsibility of a company? That principle is a basic one for the twenty-four countries in OECD. It means that if I create a company and I want to invest \$100,000, that is the money I want to invest, to risk. My responsibility is limited to that. Can one, in such a multinational, still invoke the principle of a limited responsibility, meaning that each legal entity of the multinational group is only liable to the extent of its assets?

Discussion of this problem was triggered by an important case, the Badger case. In the Badger case, the question was raised concerning what conditions must exist for a mother company to be obligated to pay the debts of its bankrupt daughter. The issue was raised by the Belgian government. Badger was located in Belgium and was a subsidiary of an American entity. Badger closed down, dismissed 250 employees and filed in bankruptcy. According to Belgian law, employees are entitled to compensation in such an instance. Badger Belgium, however, did not have sufficient money to pay compensation and the American parent refused to pay, invoking the principle of limited responsibility.

It was the position of the Belgian community as a whole, not only of the unions, not only the political parties, but informally also of the employers, that limited responsibility could only be invoked when the subsidiary is legally autonomous. The Belgian position was that there should be co-responsibility when a subsidiary is fully controlled and fully run by the parent company.

The Belgian government found its argument in Paragraphs 7 and 8

of the Introduction to the OECD Guidelines. Paragraph 7 reads: "The entities of a multinational enterprise located in various countries are subject to the laws of these countries." So, the Belgian government said, the Belgian affiliate is subject to the law of Belgium. Thus, the subsidiary should pay compensation.

Paragraph 8 of the Introduction says: "For these reasons, the Guidelines are addressed to the various entities within the multinational enterprise (parent companies and/or local entities) according to the actual distribution of responsibilities among them on the understanding that they will cooperate and provide assistance to one another as necessary to facilitate observance of the Guidelines." The Belgian government said, (a) the local subsidiaries must pay, and, (b) the parent and local entities must cooperate and assist each other in observing the guidelines according to the actual distribution of responsibilities.

The OECD stated, in agreement with the arguments developed by the Belgian government, that while the Guidelines do not imply an unqualified principle of parent-subsidiary responsibility, there is a principle of qualified responsibility. The responsibility is qualified by the relationship between the parent company and the subsidiary. For example, in cases of 100% ownership, such as the Badger case, it is important to consider the extent to which decisions are made by headquarters and the conduct of the parent company. The OECD stated that the responsibility of the parent company could be of particular relevance in the circumstances set out in Guideline 6 of the Chapter on Employment and Industrial Relations relating to important changes in the operation of a firm, and the cooperation required concerning the mitigation of resulting adverse effects.

The OECD's conclusion on the co-responsibility of the parent for the affiliate is of the utmost importance in establishing standards of behavior and responsibilities which go beyond national law. This is the very "*raison d'être*" for the Guidelines. This step by OECD, although important, is undoubtedly but a first step. More experience under the Guidelines is needed with more cases and issues to see whether the principle of co-responsibility, still an exception to the general rule, can evolve in the direction of a more far-reaching responsibility of the parent for the daughter, thus bridging the gap between the law and economic reality.

A TENTATIVE LOOK TO THE FUTURE

There are other cases which are important but which I have not

touched upon because time is a factor. To conclude, I will just speak briefly about a tentative look to the future. An overall evaluation of the transnational exercise, especially of the Guidelines, is difficult since there are positive as well as negative experiences. Let's start with the negative aspects. First, the Guidelines do not yet live at the grass-root level. They are still widely unknown. Second, the actual support by enterprises, such as indications in their annual reports that they support the Guidelines, is meager. Third, economic crisis plays a role. In the beginning, governments introduced problems and issues. Now, no one wants to scare investment away and each prefers to take a low profile.

At the same time, there are very positive things to be reported. This is especially true at the top level in the OECD, where collaboration between governments, employers, and unions—I repeat at the top—has resulted in a lot of ground being covered and a good deal realized. Guidelines have been negotiated, cases and issues have been discussed and clarified among member countries, an elaborate follow-up procedure has been set up. There has been real impact on labor relations and the beginning of an elaboration of an international labor relations system.

I would not have thought in 1975, when I was engaged in a study for the OECD on these matters, that all this would have been possible in so short a time, that a realistic framework to resolve difficult and delicate problems in a reasonable, peaceful way could come into being and function. Whether the impact of the Guidelines and transnational labor relations will grow depends largely on the use made of them, especially by labor representatives. Of particular importance will be the introduction of cases and issues at the OECD as well as at the ILO. By way of evaluation, one has to keep in mind that the "great" grows slowly, that Paris and Chicago were not built in one day, that the Guidelines and related issues are just out of the starting blocks.

Let me conclude by leaving you with a thought by the good Pope John XXIII: "Order, security and peace of each country are necessarily connected with the social progress or the security and peace of all countries. At the present day, no political community is able to pursue its own interests and develop in isolation." These words are very apropos today in the area of labor relations.

HERMAN REBHAN* : Mr. Blanpain, Mr. Dunlop, ladies and

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gentlemen, I want to thank Mrs. Piper for sponsoring this lecture series. I once worked for the Motorola Company when it was still on 4545 Augusta Boulevard. I assembled control heads for automobiles; I am delighted to have returned to this distinguished audience. Let me say that this is a powerful idea indicated by Professor Blanpain, and there's a powerful and vicious campaign in progress to not only oppose, but to discredit, the initiative by the common market that we are supposed to be discussing here today.

If you will permit me, I will cite just a few examples: the Honorable Senator Sims of Idaho, who sponsored a bill to nullify the initiative, says, and I will quote, "that Europeans are ingrates who fail to recognize the benefits to the economic health of Europe of the activities of U.S. firms." And there is a nice lobbying firm known as Fisher, Pepp and Bogendbull, in Washington, that urges that the United States reduce U.S. defense commitments to NATO if the Europeans undercut U.S. economic interests. They're talking about EC. Senator Sims also said the actions of the EC are outside the scope of the Treaty of Rome.

In October of this last year, the American firms who control half of the industrial capital of EC, namely eighty billion dollars worth, have shown they are not without means of applying pressure. Recently the *Wall Street Journal* had an editorial which said: "Is Brussels sprouting?" The legislation is actually very mild. This opposition reminds me of the little story that's told about several elderly ladies sitting on the porch of the spinster home and rocking in rocking chairs and watching the chickens in the yard. A rooster began chasing a hen. And the hen ran out on the road and was killed. "See, Elsie," one of the women said, "she'd rather die." Looks like some of our multinational corporations would rather die than accept some regulations.

For those of you who are representing corporations here today, and those of you who are going to graduate from this school and going to represent businesses, let me give you a word of caution: once each generation, American business has an opportunity to exert public leadership rather than defend itself against the public. And the U.S. multinational corporations have such an opportunity now. Will they use it? If the past is any guide, the answer is probably no. American business had such opportunities in the 1880's with the invention of mass production in modern corporations. And the failure of business to respond resulted in anti-business legislation covering a broad range of

topics from the Federal Trade Commission to laws governing wages and hours. Here in the City of Chicago, I think we ought to remember Upton Sinclair's great book about the stockyards.

And then there was a second opportunity, and that was in the 1920's. After returning a measure of trust during World War I, business failed to respond to the post-war demands of labor and investors and consumers, and foreshadowed the New Deal legislation. I think lawyers were probably happy with the New Deal legislation, because it created the National Labor Relations Board, the Federal Communications Commission and the laws protecting consumers.

The third opportunity was in the early 1960's. Government monetary policies presumed that we were going to have a continuously expanding economy. Again business failed to seize the initiative of public concern about the environment, consumer safety, or equal employment opportunities. And you know what happened.

Overseas recently, when Germany was discussing co-determination law, the American Chamber of Commerce issued a paper saying that this was contrary to the 1948 Peace Treaty with Germany. I will, of course, simplify the situation. I think it's fair to say that the anti-business activity has been activated largely by the business community, the only difference being the amount of public concern.

When we discuss how we should handle a multinational corporation, or as the United Nations terminology calls it, transnational corporations, it reminds me that I used to sit across the bargaining table right here in the General Motors plant not far from this city, about forty years ago, and negotiate. We let the power lie with the foreman or the superintendent. But the same cannot be said for the millions of workers who now work for multinational corporations all over the world.

Often when they try to approach local management for sound discussion, they are told that the decision is being made back in New York or Detroit and the local manager apologizes. And when a plant shuts down, even for an economically justifiable reason, there is tremendous bitterness if the decision is made in a far away country. I don't want to moralize about the behavior of multinational corporations, they are not inherently evil, but for them it's the bottom line that counts, just like it counts at the grocery store at the corner. The trade union movement has to develop a new strategy and new tactics to handle the multinational corporations. As the Professor has pointed out, we are seeing the development of international codes and international practices, and policies laid down by such international bodies as the OECD, the ILO

and others. None of these codes are going to transform the behavior patterns of multinational corporations overnight. Some are so loosely worded or so impossible to believe, that they have no direct impact. There are others, like the code here proposed by the European Economic Community, or the code that already exists for South Africa by the European Economic Community, or the Sullivan Code used in the United States, which have some modest effect in putting companies under pressure to temper the worst parts of the hard times in the working place.

I don't want to over-emphasize these codes. In many cases, unions can be as suspicious of these codes as the companies because of the regulations. But there is a subtle, slow moving, irreversible trend towards increased international regulation of international manufacturing and marketing operations. One of the important actors in this field is the Common Market Commission in Brussels. Clearly they can only affect the ten member countries of the EC, but since these countries include the most powerful industrial nations outside North America and Japan, what the EC does is of great importance.

Now, at the moment there is a campaign that has been pointed out within the EC to make compulsory the provisions of information about company plans of investment and employment through the unions or to the workers' representatives. The companies, especially the American multinationals, are opposed to it, while the trade union movement is strongly hurting.

I feel that such disclosure of information would help change the relationship between workers and employers and introduce a great deal of cooperation in what is still, in many countries, a relationship based on confrontation.

Now, the idea is nothing new. Already many European countries have a national legislation which requires companies, including subsidiaries of multinational corporations, to provide certain categories of information. And I personally am privy to a lot of this information because I happen to sit on the Board of the Ford Motor Company of Germany as a workers' representative. I don't go around telling this information to reporters. It means that my colleagues on the union side have to be informed in making decisions. There is, predictably, hostility from employers and right-wing politicians to the Common Market proposal on information disclosure.

If you read the *Wall Street Journal*, the bureaucrats of Brussels are depicted as clouded subversives when, in fact, they are cautious con-

servatives and anxious to keep afloat a set of economic policies which is presently drifting close to a rock. And they reckon collectively, in my view, that people who overcome their difficulties are more successful if they are put fully into the picture rather than treated as simpletons who are there to work obediently and take their paycheck home at the end of the week. But let me say that the days when the multinationals are weakly involved in the ruling of sound international regulatory bodies is going to be a long time in coming, and in the meantime, business is business.

However, let me say, on the brighter side, that multinational companies are not immune to learning. In West Germany, for instance, multinational companies have to live with the West German system of industrial democracy. Young managers come over to West Germany for tours and find that having workers on the Board does not mean the end of capitalism and it does not mean the end of profitability. In fact, far from it. After they have done their tour of duty in Germany, I hope they will be educated in the idea that industrial democracy and cooperation within Europe in terms of stability, and in terms of increased trade and world economic growth, is important. It is important that multinational companies are unionized by national and international trade unions. Multinational companies can do what they want, like so many are by making their super profits, but they are also stoking the fires of anger amongst the people. As Americans, we need only look at Central America, with decades of social and economic injustice, and decades of exploitation which have made the whole region ripe for left-wing takeovers. Multinational companies have often allied themselves with totalitarian governments of suppression. Without unions to act as intermediaries, people will take more radical, more violent paths to obtain social justice.

While I'm not holding out, at the present time, for the negotiations of mobile contracts, I do believe that multinational corporations have got to be willing to sit down and talk with international union groups. So far they have resisted. Let me just remind the American audience that fifty years ago American companies resisted national agreements, multi-plan contracts, paid vacations, paid health insurance, et cetera, et cetera. They learned their lesson, and I think they will learn their lesson about the need and usefulness of talking to international unions.

I think, Mr. Chairman, I have more things to say, but I believe my time is up and I thank you very much.

RICHARD L. ROWAN*: The strategies of multinational firms and unions are opposite in some respects; however, one can detect a certain amount of convergence in their respective strategies, if it can be presumed that both have an ultimate interest in providing an optimal set of employment conditions. It is true that the multinational firm, almost without exception, reflects an attitude that industrial relations should be practiced under a set of national and/or local determinants because this is where the interface between employers and employees occurs. Employers strongly oppose the international regulation of industrial relations, which they consider will interfere with the most effective representation of employee interests at the national and local levels. On the other hand, international trade union bodies such as the International Confederation of Free Trade Unions (ICFTU), the European Trade Union Confederation (ETUC), and the International Trade Secretariats, such as the International Metalworkers' Federation (IMF), the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET), and the International Transport Workers' Federation (ITF), believe that the international regulation of industrial relations is essential for the protection of employee interests in general. It would appear, however, that national and local union officials, on occasion, may not see direct benefits arising out of transnational bargaining or a remote set of international industrial relations guidelines.

MULTINATIONAL BARGAINING

Professor Blanpain refers to international bargaining as a dramatic failure. I find it difficult to come to such a conclusion or even to evaluate an activity which has not been accomplished. Multinational collective bargaining has existed only as a figment of a fertile imagination. In the early 1970's, Charles Levinson, Secretary General of the International Chemical and Energy Workers' Federation based in Geneva, shocked many of us by announcing that multinational collective bargaining would be the wave of the future and that he had consummated

* Professor of Industry and Co-Director, Industrial Research Unit, Wharton School, University of Pennsylvania; A.B., Birmingham-Southern College, 1953; Ph.D., University of North Carolina, 1961; author, *Multinational Collective Bargaining Attempts: The Record, the Cases and the Prospects*; *Multinational Union Organizations in the Manufacturing Industries*, "Readings in Labor Economics and Labor Relations."

such an arrangement with the St. Gobain Company, a French glass manufacturing concern headquartered in Paris. In my judgment, Levinson did the international trade union movement a disservice by making unsubstantiated claims. In my private conversations with international trade secretariat officials during the past ten years, I have not detected much interest in multinational collective bargaining. Herman Rebhan, General Secretary of the International Metalworkers' Federation, summed it up as follows in a speech given in Brussels in November of 1981:

I have just read a six-hundred page book by Professor Rowan of the University of Pennsylvania which is devoted to multinational collective bargaining attempts, and at the end of this exhaustive volume I think that the message Professor Rowan is trying to put over is that there is no such thing as multinational collective bargaining. I would not dissent from his conclusion.

And I say that with no feeling that we have failed in achieving a target set by an earlier generation of international trade union leaders.

Instead of meeting the multinationals on the terrain of their own choosing—that is a war of words on the global scale—we have opted for a strategy of putting pressure on the vulnerable points of the MNC activities in the individual countries where they are situated.

Even the most superficial examination of the legal, social, political, and cultural systems of OECD countries, let alone countries in the developing world, will show such enormous differences that the search for a system of common bargaining is a will of the wisp.

Research that has been conducted over the past decade by my colleagues and me at the Wharton School substantiate Rebhan's statements. The reasons why multinational bargaining has not developed can be summarized under four headings: varying law and practice, management opposition, union reluctance, and lack of employee interest.

Discussions pertaining to multinational collective bargaining by those who have not understood either the union or the corporate position have obscured the goals that have been achieved by international trade secretariats in representing their national affiliates. Union bodies have also been effective in pushing for the development of codes of conduct at the ILO, OECD, UN, and EC. It is clear that the European Trade Union Confederation has been the major supporter of the *Vredeling* proposal for a "Directive on procedures for informing and consulting employees of undertakings with complex structures," which is currently being discussed in Brussels.

OECD GUIDELINES

Codes of conduct to regulate activities of multinational firms have been in vogue since the mid-1970's. The rationale for the OECD Guidelines can be explained by publicity given to alleged malpractices on the part of some multinational firms in the early 1970's, international union support, and a movement by the ILO to formulate a code of conduct. The OECD evidently desired to issue the first set of Guidelines hoping to protect business interests.

The issuance of the Guidelines led to the creation and activation of various bodies within the OECD. The Committee on International Investment and Multinational Enterprises (CIIME) is responsible for supervision of work conducted under the Guidelines. Business interests are represented before the CIIME by the Business and Industry Advisory Committee (BIAC), and labor's interests are represented by the Trade Union Advisory Committee (TUAC).

Representatives on the CIIME are drawn from national government echelons and usually come from agencies whose work pertains to finance and investment. Since the Employment and Industrial Relations section of the Guidelines appears to have generated the most activity for the CIIME, it is surprising that practically no labor relations representatives have been appointed to the committee. Indeed, even the BIAC has been sorely lacking in industrial relations expertise. The difficulty arising from this situation is that the significance of technical and practical labor problems discussed before the committees by trade unionists and others may not be fully understood. Many times the nuances of industrial relations issues are quite subtle, and they are likely to be overlooked or improperly evaluated by those not in the field.

Needless to say, the trade unions were anxious to seek interpretation of the Employment and Industrial Relations Guidelines once they were issued. I think that it augurs well for the practice of industrial relations at the national and local levels that there have been relatively few cases of any substance brought before the OECD committee since 1976. Initially, the IMF filed some ten cases alleging misconduct on the part of various multinational firms with very little follow-up.¹ These cases were followed by about ten others, including those discussed by

1. See International Metalworkers' Federation, "Complaints on the Policy of Multinational Companies Calling for Application of OECD Guidelines for Multinational Enterprises and Some First Indications About the Impact of the Code on the Industrial Relations at World Level," (cases submitted by IMF through TUAC, March 11, 1977).

Professor Blanpain: Badger (Belgium), Hertz (Denmark), Viggo (Sweden), and Philips (UK).

What has happened in terms of the further protection of employee interests as a result of the Guidelines and the cases mentioned? Factually, the answer can only be "very little." The reason for this perhaps is that each of the Guidelines is preceded by an important chapeau clause that reads: "Enterprises should within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate, . . ."²

Emphasis continues to be placed on the practice of industrial relations at the national and local levels and, almost without exception, the disputes that have arisen under the Guidelines have been settled under existing national laws and practices. There has been only one case where a challenge has led to refinement of the language in the Guidelines. The Hertz case resulted in considerable attention during the review of the Guidelines in 1979, and it also led to the only textual change made as a result of the review. As the OECD presently prepares for the 1982 mid-term review of the Guidelines, there is discussion pertaining to the issue raised in the Viggo case on interpretation of Paragraph 9 covering access to decision-makers in the multinational firm.

If the international codes of conduct have had little impact on employee interests at the rank and file level, what has been their significance? They have been used by the international union movement to support broader union goals. Publicity pertaining to the cases has led to union pressure for the establishment of binding guidelines and legislation. This has been evident most recently in the pressure placed by the European Trade Union Confederation on the European Commission for the passage of the *Vredeling* proposal.

VREDELING PROPOSAL

The *Vredeling* initiative is much different than the voluntary OECD Guidelines. As an EC Directive, it would be an enforceable piece of legislation with European-wide implications. The draft Directive specifies that the member states "shall introduce the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification." (Article 17.1).

2. OECD, "Guidelines for Multinational Enterprises, Employment and Industrial Relations," Annex to the Declaration of 21 June 1976 by Governments of OECD Member Countries on International Investment and Multinational Enterprises.

While employers have given at least some support to the OECD Guidelines, they are totally opposed to the *Vredeling* initiative. A review of the circumstances surrounding the development of the *Vredeling* proposal would lead one to believe that employees and multinational corporations would have little to gain through the passage of this proposal. I realize that Professor Blanpain and Herman Rebhan would disagree with my statement. The IMF has recently advised its affiliates to rally support for the proposal and Professor Blanpain has headed a hearing at Leuven concerning the *Vredeling* proposal in which Mr. Vredeling was given the opportunity to defend his proposal before representatives from multinational companies and members of the European Parliament. An industry spokesman at the hearing stated "that if the Directive were adopted it would harm the image of the EEC and would worsen the competitive position of European industry."

The European employers' federation, UNICE, has stated:

The proposal is based on a faulty appreciation of the operation of complex structure undertakings and their industrial relations. It does not take sufficient account of national methods in the field of industrial relations so that it would conflict with, rather than supplement, these arrangements.

Furthermore, the proposed directive, the need for which has not been shown by the Commission, would adversely affect the proper working of enterprises in the Community. It would undermine the flexibility which is needed in running an enterprise and would thus diminish the competitive capacity of European enterprises and have a depressing effect on investment in the Community. It would impose on complex structure undertakings the duty to provide employee representatives with information, the relevance of which for the employees concerned has not been established. Finally it would discriminate against parent companies established in the Community since extending the obligation to parent companies established in non-Member Countries would involve insuperable legal and political obstacles.³

National employer groups have also taken a very firm stand against *Vredeling* as evidenced by the following statement from the Federation of German Employers Associations:

German industry is not prepared to accept the radical alterations in the Works Constitution Act, company law and co-determination law, which would become necessary as a result of this draft directive, and for this reason categorically rejects the concept of the draft directive. Owing to the fact that the principle of the EEC draft extends well

3. UNICE, Department of Legal and Fiscal Affairs, "Draft opinion on the Directive," Nov. 27, 1980.

beyond the German Works Constitution Act, German industry cannot envisage any sort of proposals which might make this draft more practicable and acceptable.⁴

It is this complete lack of consensus that leads me to believe that, if passed, the *Vredeling* proposal would face little likelihood of successful implementation. I can understand how the international unions may benefit politically, but I cannot understand how employees will benefit economically from a law that threatens an employer's ability to make decisions that are necessary for continued operations. Given the wide variety of national laws and practices and the various Codes of Conduct, employers do not see the necessity of yet another piece of enforceable legislation.

Regardless of employer opposition, it now appears that the union strategy, principally that of the European Trade Union Confederation, is beginning to yield results and some type of *Vredeling* proposal may be recommended by the European Parliament. This will be a major victory for the ETUC which has an objective of establishing a precedent for community-wide social legislation. Once this has been accomplished, the ETUC looks forward to its main mission—community-wide works councils, consultation, and multinational collective bargaining legislation.

CONCLUDING COMMENTS

In summary, it would appear that my views and the views of Professor Blanpain differ in the following ways: (1) whereas Blanpain appears to look upon the multinational firm as an institutional arrangement that may occasionally benefit society with the possibility of doing considerable harm, my view is that the multinational firm makes a considerable contribution to society and may occasionally cause harmful dislocations; and (2) whereas Blanpain appears to place faith in compulsory guidelines which eventually will be incorporated into national legislation, my view is that voluntary guidelines and the practice of industrial relations at national/local levels are more desirable and will lead to a more effective representation of employee interests.

It must be remembered that international confederations of labor represent national federations of unions and international trade secretariats represent national union affiliates in various parts of the world;

4. Federation of German Employers Associations, Federation of German Industry, "Opinion on the EEC Commission Proposal," COM (80) 423 (Oct. 23, 1980).

as such, these organizations do not represent employees directly and they have an institutional life of their own. Representation of employees remains a matter of concern to national and local unions or their counterparts in various countries. International trade secretariats, in particular, play an important role in supporting the continuing activities of national unions on a country-wide basis. However, it would be practically impossible for them to supplant the activities of their national affiliates. Of course, they understand this even better than those who continue to write about them with the distorted impression that the secretariats are really seeking multinational collective bargaining and attempting to usurp the traditional functions of those whom they may represent.

RICHARD H. WEISE*: I find myself agreeing with everything that Professor Blanpain and Mr. Secretary Rebhan said this morning except—and this exception follows the lead of Mr. Rebhan's animal story—not the rooster and the chicken—but the mouse that was overheard talking to the cat. "I think it is a marvelous idea except the part about having me for breakfast."

First certain disclaimers are necessary. In the introduction we were described by the moderator as a distinguished international labor panel. I will not deny being distinguished, but I am not an international labor lawyer. I am a "garden variety" corporate lawyer. You may then ask why am I here? My understanding is that my role is to provide a corporate perspective of the effects that these proposals might have in a "real world" situation.

First, however, it might be helpful for you to know a bit about my perspective. My client, Motorola, is a company best known for a product that it hasn't made for eight years, that is, television sets. However, it does make communications equipment; a full range of semi-conductor products, information systems and computers, government electronics, and automotive electronic products. This year it will probably near the four billion dollar mark in sales. Motorola is, therefore, essentially an industrial electronics company. Given this background, and being a conservative corporate lawyer type (and also feeling a bit like the mouse talking to the cat), I am not going to admit that Motorola is a multinational corporation. However, it does have some thirty major

* Vice President, General Counsel and Secretary, Motorola, Inc.; B.A., DePauw University, 1956; J.D., DePaul University, 1961.

plant facilities throughout Europe, Asia, Canada, and Latin America. It also has between seventy and eighty thousand employees worldwide.

Given that backdrop, I would like to turn to a discussion of a corporate lawyer's perspective of the *Vredeling* proposal. Two principles which weave their way through the *Vredeling* proposal, the OECD regulations and guidelines, and the United Nations Code are, *Information* for and *Consultation* with employees of foreign-based subsidiaries on key issues which might affect their employment.

It also has been noted at the outset that in order for this "*Information*" to be useful and in order for the "*Consultation*" to be effective, the subsidiary employee has to know about the parent company's plans well in advance of their implementation.

Allow me to suggest at the outset that these twin principles, while appearing philosophically appealing at first blush, become a hoary hobgoblin when an attempt is made to translate them to operational terms, particularly in an international setting.

Allow me also to point out as a predicate, that American Business—and most particularly my company—has continually been a champion of communications with its employees. Following this axiom, Motorola has enjoyed an unparalleled record of employee relations success and labor peace. It has been a pioneer in the concept of "Participative Management" and has voluntarily implemented a complex worldwide system of communications with its employees for the express purpose of having their active and effective participation in the management of *their company*.

Given this Motorola belief in employee communication, one might ask why I perceive difficulties with the *Vredeling*, OECD, UN and ILO proposals.

The problem is not in the intent of these proposals but, rather, the problem is in the obligatory and inflexible manner in which they are expressed and suggested for implementation. The matter is further exacerbated when one contemplates similar proposals which could be adopted by third world countries.

Let me be specific and discuss several significant problems that would be created for U.S. Industry.

Trade Secrets and Confidentiality

America's high technology industry is struggling to survive in a highly competitive world marketplace. Industrial espionage actually does occur and those firms operating at the leading edge of their tech-

nology are particular targets. To the uninitiated, this may sound like a fantasy of "cops and robbers," but to the manager of confidential processes, the keeper of trade secrets, and the marketing strategists, these are genuine concerns. A corporation may not be able to compete in the world marketplace if it has to share, as it would under the proposals, its "advanced production and investment programmes," its production "rationalization plans," its "manufacturing and working methods," the "introduction of new working methods" and "all procedures and plans liable to have a substantial effect on employees' interests."

Further, in many high technology businesses, timing is everything. Pricing follows a technology learning curve, and successes in early product introduction and availability can spell long-term success or failure. Each technology change involves an intricate series of decisions and building blocks before a product can be designed, produced and brought to the market in an effective manner. Our point, here, is that the legitimate desires of employees for information have to be balanced with the equally legitimate needs of high technology industry to protect its secrets and confidential information.

United States Securities Laws

A second problem associated with giving employees information about the company and its plans for the future, arises out of the United States securities laws. Because of these laws, and because of the practices and inclinations of American companies, American industry already provides not only our employees but the whole world with a tremendous amount of information. This information, both textual and numerical, is required to be disclosed by the securities laws and the various stock exchange regulations. Given these parameters, one has to be impressed with the quality and quantity of information contained in annual reports, 10K, 10Q and 8K reports and all of the other registrations and filings regularly made. The information given is admittedly meant to be of use to the investor as opposed to the employee but, all in all, a United States company provides incredible amounts of information to the public—ininitely more than any typical European company does. If we were to add to this intricate system of public disclosure and begin to provide information to employees including forecasts of production, sales, employment and investment programs, we would most certainly run into conflicts with the United States securities laws.

I will attempt to review a few potential conflicts, but time doesn't permit more than a mere listing.

In the *Vredeling* proposal, information is to be provided as to the structure and manning of the local enterprise. This includes economic and financial information such as the potential development of business, production plans and sales forecasting.

The federal securities laws, however, effectively discourage American companies from forecasting their production, investment, sales or earnings. They do this by creating enormous liabilities to present and prospective shareholders when such forecasts turn out to be inaccurate or merely unattainable, notwithstanding contrary statements by the staff of the Securities and Exchange Commission.⁵ Again, this is a subject in and of itself, and this audience might profit from a panel on the subject of corporate liability to shareholders arising out of forecasting and the subject of the management of information disclosures in general.

In any event, the present statutory scheme of the United States securities laws requires a total reorganization of thought to move from a system of prescribed disclosures to shareholders to a system of disclosures to employees of a given local unit of the company in Germany, for example. Given the notions of the *Vredeling* proposal, it is understandable that these employees might find it desirable to receive predictions as to what may transpire elsewhere in the company and attempt to relate those predictions to what may happen in Germany. But even if one believes that such would be a commendable idea, how can we rationalize and accomodate the mandating of the U.S. securities laws on disclosures?

The Fragility of Transactions

I would like to now focus on the element of the *Vredeling* proposal which requires information to and consultation with a company's local employees about decisions which are "liable to have a substantial effect on the interests of its employees." This directive mandates that an employer give local employees 40 days notice of such a decision, along with precise details, including its rationale and the legal, economic and social consequences to employees. Assume that the decision is to close one plant, double the capacity of another plant, and go out of business

5. See the "safe harbor rule" for forecasting; Rule 3b-6 of the SEC's General Rules and Regulations Under the Securities Exchange Act of 1934; see also the principal SEC release discussing Rule 3b-6; Release No. 34-9984; CCH Fed. Sec. L. Rep. 23,508.

in one entire product line. The problems that would be created by the requirement to give 40 days advanced notice (public disclosure) perhaps can be best shown by providing a quick profile of such a transaction. I do not know how many in this audience have been involved in corporate transactions involving the purchase and sale of companies and so forth, but, out of competitive necessity, it is a business reality that American industry engages in such endeavors.

The nature of corporate acquisitions and dispositions is that they are often conceived just days before they are consummated. As an example, consider a hypothetical company's decision to go out of the television business—worldwide. One does not know if there is a customer out there for a \$400 million business. However, common sense (as well as the securities laws) dictates that it may not be a good idea to send a letter to your employees in Germany announcing that you have decided to go out of the television business. Confidentiality and speed are the bywords of these fragile transactions. If the news does get out and if a company is delayed (40 days or more), the buying public may not be interested in its products. Distributors and dealers may abandon the company in favor of a competitor. Key employees (who are often the best and most marketable employees) may be out looking for jobs. A company may not have a business to sell forty days after it has made such a public announcement.

In quick review, then—it is the fragility of major transactions, possible violations of the U.S. securities laws and concerns over preservation of confidentiality and trade secrets which cause many corporate observers to be troubled by these proposals.

I think that I will end on that note. It is a shame that there is so little time to discuss such a large subject, but I thank you for your attention.

PANEL DISCUSSION IN RESPONSE TO QUESTIONS FROM THE AUDIENCE

JOHN T. DUNLOP*: Ladies and gentlemen, I am sure that my colleagues and the panel would love to add more. But I do think you have been very good, and patient, and it would be most unfair not to permit members of the audience to ask some questions in the limited

* Lamont University Professor, Harvard University; A.B., University of California, 1935; Ph.D., University of California, 1939; LL.D., University of Chicago, 1968; LL.D., University of Pennsylvania, 1976; Director, Cost of Living Council, 1973-74; Secretary of Labor, 1975-76; editor, *The Lessons of Wage and Price Controls—The Food Sector, Labor in the Twentieth Century, Business and Public Policy*.

time we have left to members of the panel. I am sure in commenting upon your questions, they may kind of clatter a little response to each other. So, who would like to ask the first question?

QUESTION: This question would be to whoever is representing the employers. How are employees to effectively bargain collectively over decisions that affect their livelihood unless they are given information concerning the decision-making process?

MR. DUNLOP: I take it by definition he was talking to you, Mr. Weise. I wouldn't want to preclude anyone else from representing that point of view.

MR. WEISE: First of all, you have to make a determination as to those things that employees should participate in and those things that they should not. And I think the question has to be asked in a perspective of what kind of information you are talking about. If you are talking about information having to do with production, about decisions as to how something is going to be done, something within the realm, within the grasp, within their day-to-day operating activities, then a company that is run well will tap its employee input and make it possible for them to participate whether it be a union environment or a non-union environment. This is happening to a greater and greater extent all of the time.

If you are talking about a question as to whether or not a product should be manufactured in Germany or Brazil, I think that many would say that the employees of Germany, from whence the production facility is going to be transferred to Brazil, don't have anything to contribute to that decision. As these people have said, it is the decision-makers who have the whole picture that have to make that decision.

MR. REBHAN: If I may just comment, and I am not representing the employers here, I think we spoke about the entity to be sold in Brazil. There is not a word, not an inkling, of some social responsibility that these corporations have to the people that work for them. There is nothing in there. There is no social responsibility. Besides, if Motorola has a plant in Germany, it has to give this information, it is not violating any SEC laws by doing this. I think these things are done. The Ford Motor Company has to tell whether they are going to transfer production. They are not violating any SEC laws.

I think these are phantoms that are created, imagining that as soon as the *Vredeling* proposal passes, and it will pass in some form or another in Europe because the time has come, that American corporations will not adjust themselves to it. They will operate profitably

under it, and they will continue to make money, and capitalism will not come to an end. Capitalism survives because we modify it from time to time—because unions and other good people modify it.

QUESTION: I have a question for Professor Blanpain. Granted in the transnational situation it is difficult to get multinational corporations to act in accordance with the Guidelines that have been promulgated, but suppose they do act in accordance with the Guidelines, and you interpret consultation to mean negotiations, what sanctions or guarantees are there that negotiations will be conducted in good faith and there won't be surface bargaining, for instance?

PROFESSOR BLANPAIN: If I understand the questions correctly, you are asking how do you see to it that negotiations are bona fide negotiations? The Guidelines are adding to national law where the transnational situation requires it. The decisions are taken at a local level; local men can duly inform the Council. It is only when decisions are taken in other countries that it should indicate there be timely information so that local law and local practice will be lifted. Now what negotiation means, what consultation means, what has to be bargained about at the local level, is purely and completely a matter of national law. The Guidelines try to see to it that this becomes meaningful. So, whether it will be bona fide or non-bona fide is a matter for national law to decide.

MR. REBHAN: In the German law which deals with bargaining committees, there is a section that provides for a committee on social problems. That committee is informed every six months at least about the status of the plant, what the prospects of the plant are, and what the financial status is. This has been done since 1952 and the American companies have done quite well.

PROFESSOR BLANPAIN: I was a little bit surprised when the representative of Motorola said that there would be problems with the Security Exchange Commission. It is news to me. All of those points are already covered in the Guidelines. Therefore, I do not see why there is a problem. I can assure him that the American government carefully watches every word which is said to see that the SEC laws are not violated. We have eight Americans sitting there doing their job beautifully.

MR. WEISE: I'd like to give somebody a great Law Review article and I will give it free. The problem, as far as securities law is concerned is not whether or not you can give the information out. The company can give information out about itself. The problem arises in

areas where you are asked to project what your employment is going to be, what your sales are going to be, in essence, what your operations are going to be in the future. This carries with it certain perils because if you project wrong, your stockholders will get mad at you; your stockholders will sue you. The Security and Exchange Commission may ask you what your basis was for this projection of your operation. So, the solution that I think I can say all American companies have adopted is not to make projections of what their performance is going to be in the future, but to give reflections of the past and of right now, and let the shareholder make the determination from the body of information. If you give the projecting type information that is called for in the proposals, such as the *Vredeling* proposal, to the representatives of the employees in a given country, there are provisions that they are supposed to keep the information a secret. The provisions are very unclear as to what happens if they don't.

PROFESSOR BLANPAIN: The confidentiality is written in the test.

MR. WEISE: We understand it should be confidential but how do you keep it confidential?

MR. REBHAN: The German law provides for penalties.

MR. WEISE: We don't care what the penalty is, but the leaker of the information suffers if the information leaks. Then we are faced with a first class securities law problem.

MR. DUNLOP: I'm interested as to how in normal business, to distinguish between a leakee and a leaker. Who will care to have the last question?

QUESTION: My question is directed to Mr. Weise. Can you amplify at all as to the securities law violations. I just don't understand from what you have said which provisions are violated.

MR. WEISE: There is a basic premise that if you disclose material, important information to anyone, it has to be disclosed to everyone on the same basis. All investors must have the same ability to have that information. It is referred to as the "tipping law." You can't leak tips to your brother-in-law to go out and buy stock on the eve of an important event that is taking place. Therefore, control of the information which you give to the public is very important and there are laws that cover it. As a result, if a company were required to give information, let's say projecting-type information, to the employee representa-

tive in Germany, a prudent company would feel that it had to give that projecting-type information to everyone.

QUESTION: What would be wrong with that?

MR. WEISE: What would be wrong with that is that the way the securities laws are currently configured in the United States, projecting performance, earnings, profit, sales and so forth into the future is too dangerous. It will be subject to litigation from individual litigants, and from the Securities Exchange Commission. It is not done.

Take a look at the annual report of any of a number of companies, and it will be filled with information. There will be lots of financial information which bears on last year, and not what is going to happen next year.

MR. DUNLOP: Ladies and gentlemen, I think that I do not want to be responsible for retaining you from the reception which is to follow this program. I am sure, however, that you will join me in expressing our gratitude for what has really been an interesting introduction to a field of growing importance and significance, for the lecture we had from Professor Blanpain, and for the contributions from our three panelists, who commented on what was said and other aspects of the subject that occurred to them—thank you Herman Rebhan, Richard Rowan, and Richard Weise. I am delighted to ask you to join me in expressing our thanks to all of them.

Text of the OECD Guidelines

ANNEX

TO THE DECLARATION OF 21 JUNE 1976 BY GOVERNMENTS OF OECD MEMBER COUNTRIES ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

Guidelines for Multinational Enterprises

1. Multinational enterprises now play an important part in the economies of Member countries and in international economic relations, which is of increasing interest to Governments. Through international direct investment, such enterprises can bring substantial benefits to home and host countries by contributing to the efficient utilization of capital, technology and human resources between countries and can thus fulfill an important role in the promotion of economic and social welfare. But 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. In addition, the complexity of these multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern.
2. The common aim of the Member countries is to encourage the positive contributions 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. In view of the transnational structure of such enterprises, this aim will be furthered by co-operation among the OECD countries where the headquarters of most of the multinational enterprises are established and which are the location of a substantial part of their operations. The Guidelines set out hereafter are designed to assist in the achievement of this common aim and to contribute to improving the foreign investment climate.
3. Since the operations of multinational enterprises extend throughout the world, including countries that are not Members of the Organization, international co-operation in this field should extend to all States. Member countries will give their full support to efforts undertaken in co-operation with non-Member countries, and in particular with developing countries, with a view to improving the welfare and living standards of all people both by en-

couraging the positive contributions which multinational enterprises can make and by minimizing and resolving the problems which may arise in connection with their activities.

4. Within the Organization, the programme of co-operation to attain these ends will be a continuing, pragmatic and balanced one. It comes within the general aims of the Convention on the Organization for Economic Co-operation and Development (OECD) and makes full use of the various specialized bodies of the Organization, whose terms of reference already cover many aspects of the role of multinational enterprises, notably in matters of international trade and payments, competition, taxation, manpower, industrial development, science and technology. In these bodies, work is being carried out on the identification of issues, the improvement of relevant qualitative and statistical information and the elaboration of proposals for action designed to strengthen inter-governmental co-operation. In some of these areas procedures already exist through which issues related to the operations of multinational enterprises can be taken up. This work could result in the conclusion of further and complementary agreements and arrangements between Governments.
5. The initial phase of the co-operation programme is composed of a Declaration and three Decisions promulgated simultaneously as they are complementary and inter-connected, in respect of guidelines for multinational enterprises, national treatment for foreign-controlled enterprises and international investment incentives and disincentives.
6. The Guidelines set out below are recommendations jointly addressed by Member countries to multinational enterprises operating in their territories. These Guidelines, which take into account the problems which can arise because of the international structure of these enterprises, lay down standards for the activities of these enterprises in the different Member countries. Observance of the Guidelines is voluntary and not legally enforceable. However, they should help to ensure that the operations of these enterprises are in harmony with national policies of the countries where they operate and to strengthen the basis of mutual confidence between enterprises and States.
7. Every State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and to the international agreements to which it has subscribed. The entities of a multinational enterprise

located in various countries are subject to the laws of these countries.

8. A precise legal definition of multinational enterprises is not required for the purposes of the Guidelines. These usually comprise companies or other entities whose ownership is private, state or mixed, established in different countries and so linked that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge and resources with the others. The degree of autonomy of each entity in relation to the others varies widely from one multinational enterprise to another, depending on the nature of the links between such entities and the fields of activity concerned. For these reasons, the Guidelines are addressed to the various entities within the multinational enterprise (parent companies and/or local entities) according to the actual distribution of responsibilities among them on the understanding that they will co-operate and provide assistance to one another as necessary to facilitate observance of the Guidelines. The word 'enterprise' as used in these Guidelines refers to these various entities in accordance with their responsibilities.
9. The Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; wherever relevant 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.
10. The use of appropriate international dispute settlement mechanisms, including arbitration, should be encouraged as a means of facilitating the resolution of problems arising between enterprises and Member countries.
11. Member countries have agreed to establish appropriate review and consultation procedures concerning issues arising in respect of the Guidelines. When multinational enterprises are made subject to conflicting requirements by Member countries, the governments concerned will co-operate in good faith with a view to resolving such problems either within the Committee on International Investment and Multinational Enterprises established by the OECD Council on 21 January 1975 or through other mutually acceptable arrangements.

Having regard to the foregoing considerations, the Member countries set forth the following Guidelines for multinational enterprises with the

understanding that Member countries will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and international agreements, as well as contractual obligations to which they have subscribed:

General Policies

Enterprises should

1. take fully into account established general policy objectives of the Member countries in which they operate;
2. in particular, give due consideration to those countries' aims and priorities with regard to economic and social progress, including industrial and regional development, the protection of the environment, the creation of employment opportunities, the promotion of innovation and the transfer of technology.
3. while observing their legal obligations concerning information, supply their entities with supplementary information the latter may need in order to meet requests by the authorities of the countries in which those entities are located for information relevant to the activities of those entities, taking into account legitimate requirements of business confidentiality;
4. favour close co-operation with the local community and business interests;
5. allow their component entities freedom to develop their activities and to exploit their competitive advantage in domestic and foreign markets, consistent with the need for specialisation and sound commercial practice;
6. when filling responsible posts in each country of operation, take due account of individual qualifications without discrimination as to nationality, subject to particular national requirements in this respect;
7. not render—and they should not be solicited or expected to render—any bribe or other improper benefit, direct or indirect, to any public servant or holder of public office,
8. unless legally permissible, not make contributions to candidates for public office or to political parties or other political organizations;
9. abstain from any improper involvement in local political activities.

Disclosure of Information

Enterprises should, having due regard to their nature and relative size in the economic context of their operations and to requirements of business confidentiality and to cost, publish in a form suited to improve

public understanding a sufficient body of factual information on the structure, activities and policies of the enterprise as a whole, as a supplement, in so far as is necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate. To this end, they should publish within reasonable time limits, on a regular basis, but at least annually, financial statements and other pertinent information relating to the enterprise as a whole, comprising in particular:

- (i) the structure of the enterprise, showing the name and location of the parent company, its main affiliates, its percentage ownership, direct and indirect, in these affiliates, including share-holdings between them;
- (ii) the geographical areas¹ where operations are carried out and the principal activities carried on therein by the parent company and the main affiliates;
- (iii) the operating results and sales by geographical area and the sales in the major lines of business for the enterprise as a whole;
- (iv) significant new capital investment by geographical area and, as far as practicable, by major lines of business for the enterprise as a whole;
- (v) a statement of the sources and uses of funds by the enterprise as a whole;
- (vi) the average number of employees in each geographical area;
- (vii) research and development expenditure for the enterprise as a whole;
- (viii) the policies followed in respect of intra-group pricing;
- (ix) the accounting policies, including those on consolidation, observed in compiling the published information.

Competition

Enterprises should

while conforming to official competition rules and established policies of the countries in which they operate,

1. refrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example,
 - (a) anti-competitive acquisitions,

1. For the purposes of the guideline on disclosure of information the term 'geographical area' means groups of countries or individual countries as each enterprise determines it appropriate in its particular circumstances. While no single method of grouping is appropriate for all enterprises, or for all purposes, the factors to be considered by an enterprise would include the significance of operations carried out in individual countries or areas as well as the effects on its competitiveness, geographic proximity, economic affinity, similarities in business environments and the nature, scale and degree of inter-relationship of the enterprises' operations in the various countries.

- (b) predatory behaviour toward competitors,
 - (c) unreasonable refusal to deal,
 - (d) anti-competitive abuse of industrial property rights,
 - (e) discriminatory (i.e. unreasonably differentiated) pricing and using such pricing transactions between affiliated enterprises as a means of affecting adversely competition outside these enterprises;
2. allow purchasers, distributors and licensees freedom to resell, export, purchase and develop their operations consistent with law, trade conditions, the need for specialization and sound commercial practice;
 3. refrain from participating in or otherwise purposely strengthening the restrictive effects of international or domestic cartels or restrictive agreements which adversely affect or eliminate competition and which are not generally or specifically accepted under applicable national or international legislation;
 4. be ready to consult and co-operate, including the provision of information, with competent authorities of countries whose interests are directly affected in regard to competition issues or investigations. Provision of information should be in accordance with safeguards normally applicable in this field.

Financing

Enterprises should, in managing the financial and commercial operations of their activities, and especially their liquid foreign assets and liabilities, take into consideration the established objectives of the countries in which they operate regarding balance of payments and credit policies.

Taxation

Enterprises should

1. upon request of the taxation authorities of the countries in which they operate, provide, in accordance with the safeguards and relevant procedures of the national laws of these countries, the information necessary to determine correctly the taxes to be assessed in connection with their operations, including relevant information concerning their operations in other countries;
2. refrain from making use of the particular facilities available to them, such as transfer pricing which does not conform to an arm's length standard, for modifying in ways contrary to national laws the tax base on which members of the group are assessed.

Employment and Industrial Relations

Enterprises should

within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate,

1. respect the right of their employees to be represented by trade unions and other bona fide organizations of employees, and engage in constructive negotiations, either individually or through employers' associations, with such employee organizations with a view to reaching agreements on employment conditions, which should include provisions for dealing with disputes arising over the interpretation of such agreements, and for ensuring mutually respected rights and responsibilities;
2. (a) provide such facilities to representatives of the employees as may be necessary to assist in the development of effective collective agreements;
(b) provide to representatives of employees information which is needed for meaningful negotiations on conditions of employment;
3. provide to representatives of employees where this accords with local law and practice, information which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprises as a whole;
4. observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
5. in their operations, to the greatest extent practicable, utilize, train and prepare for upgrading members of the local labour force in co-operation with representatives of their employees and, where appropriate, the relevant governmental authorities;
6. in considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals; provide reasonable notice of such changes to representatives of their employees, and where appropriate to the relevant governmental authorities, and co-operate with the employee representative and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects;
7. implement their employment policies including hiring, discharge, pay, promotion and training without discrimination unless selectiv-

ity in respect of employee characteristics is in furtherance of established governmental policies which specifically promote greater equality of employment opportunity;

8. in the context of bona fide negotiations¹ with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to utilise a capacity 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;
9. enable authorized representatives of their employees to conduct negotiations on collective bargaining or labour management relations issues with representatives of management who are authorized to take decisions on the matters under negotiation.

Science and Technology

Enterprises should

1. endeavour to ensure that their activities fit satisfactorily into the scientific and technological policies and plans of the countries in which they operate, and contribute to the development of national scientific and technological capacities, including as far as appropriate the establishment and improvement in host countries of their capacity to innovate;
2. to the fullest extent practicable, adopt in the course of their business activities practices which permit the rapid diffusion of technologies with due regard to the protection of industrial and intellectual property rights;
3. when granting licenses for the use of industrial property rights or when otherwise transferring technology do so on reasonable terms and conditions.

1. Bona fide negotiations may include labour disputes as part of the process of negotiation. Whether or not labour disputes are so included will be determined by the law and prevailing employment practices of particular countries.

