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EMPLOYMENT

UNCTAD Series
on issues in international investment agreements

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NOTE

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The following symbols have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row;

A dash (-) indicates that the item is equal to zero or its value is negligible;

A blank in a table indicates that the item is not applicable;

A slash (/) between dates representing years, e.g. 1994/95, indicates a financial year;

Use of a hyphen (-) between dates representing years, e.g. 1994-1995, signifies the full period involved, including the beginning and end years.

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The main purpose of the UNCTAD Series on issues in international investment agreements is to address key concepts and issues relevant to international investment agreements and to present them in a manner that is easily accessible to end-users. The series covers the following topics:

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Preface

The United Nations Conference on Trade and Development (UNCTAD) is implementing a work programme on a possible multilateral framework on investment, with a view towards assisting developing countries to participate as effectively as possible in international investment rule-making at the bilateral, regional, plurilateral and multilateral levels. The programme embraces capacity-building seminars, regional symposia, training courses, dialogues between negotiators and groups of civil society and the preparation of a series of issues papers.

This paper is part of that series. It is addressed to government officials, corporate executives, representatives of non-governmental organizations, officials of international agencies and researchers. The series seeks to provide balanced analyses of issues that may arise in discussions about international investment agreements. Each study may be read by itself, independently of the others. Since, however, the issues treated closely interact with one another, the studies pay particular attention to such interactions.

The series is produced by a team led by Karl P. Sauvant and Pedro Roffe. The principal officer responsible for its production is John Gara who oversees the development of the papers at various stages. The members of the team include S.M. Bushehri, Patricia Mira, Christina Stachowiak, Cynthia Wallace and Jörg Weber. The series' principal advisors are Arghyrios A. Fatouros, Sanjaya Lall, Peter T. Muchlinski and Patrick Robinson. The present paper is based on a manuscript prepared by Bob Hepple. The final version reflects comments received from Abebe Abate, Michael Gestrin, Jan Huner, Mark Koulen and Stephen Pursey. The paper was desktop-published by Teresita Sabico.

Rubens Ricupero
Secretary-General of UNCTAD

Geneva, April 2000

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UNCTAD has carried out a number of activities related to the work programme in cooperation with other intergovernmental organizations, including the Secretariat of the Andean Community, La Francophonie, the Inter-Arab Investment Guarantee Corporation, the League of Arab States, the Organization of American States, and the World Trade Organization. UNCTAD has also cooperated with non-governmental organizations, including the German Government Development Policy Forum, the German Foundation for International Development, the Centro de Estudios Interdisciplinarios de Derecho Industrial y Económico - Universidad de Buenos Aires, the Consumer Unity and Trust Society - India, the Economic Research Forum - Cairo, the European Roundtable of Industrialists, the Friedrich Ebert Foundation, the International Confederation of Free Trade Unions, Oxfam, SOMO - Centre for Research on Multinational Corporations, the Third World Network, Universidad del Pacifico, University of the West Indies, and World Wildlife Fund International.

Funds for the work programme have so far been received from Australia, Brazil, Canada, France, the Netherlands, Norway, Switzerland, the United Kingdom and the European Commission. Countries such as China, Egypt, Guatemala, India, Jamaica, Morocco, Peru, Sri Lanka and Venezuela have also contributed to the work programme by hosting regional symposia. All of these contributions are gratefully acknowledged.

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Executive Summary

The inclusion of employment issues into international investment agreements (IIAs) is a relatively new phenomenon. On the other hand, the development of international labour standards has a long pedigree dating back to the establishment of the International Labour Organization (ILO) in 1919. The main issues considered in this paper are those specifically developed in international instruments in relation to transnational corporations (TNCs). The most important of these instruments are the 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (the ILO Tripartite Declaration) and the Chapter on Employment and Industrial Relations of the 1976 Organisation for Economic Co-operation and Development (OECD) Guidelines on Investment and Multinational Enterprises (OECD Guidelines) (which is part of a broader set of guidelines). Following what is covered by these instruments, the main issues concern general employment (including employment promotion, equality of opportunity and treatment, and security of employment), as well as human resources development, conditions of work and life, and industrial relations practices. In addition a category of emerging issues is covered, namely issues related to core labour standards and efforts to reflect these in international agreements through a "workers' rights" or "social" clause. Many of the issues discussed in this paper are also dealt with in instruments other than those mentioned in this paper; however, these other instruments are not discussed in this paper as its focus is on issues specifically concerning TNCs.

The paper points out that employment promotion is a major goal pursued by Governments and that TNCs have an employment-generating potential that can be harnessed. At the same time, TNCs are called upon to promote equality of opportunity and therefore to base their employment policies on qualifications and skills. In this regard, they are also encouraged to invest in human resources development, especially in developing countries, so as to upgrade the human-capital base. While recognising that TNCs are generally progressive in terms of pay and conditions of work,

IIAs can exhort them to maintain high standards, considering that the record of some foreign affiliates raises some concerns. Another important employment issue is that of industrial relations practices. The paper illustrates how such related issues as the right of association, collective bargaining and consultation can be dealt with in an IIA. Finally, the paper examines certain emerging issues, including expanding TNC specific IIA provisions to cover all core labour standards and efforts to ensure observance of such provisions through a social clause.

Employment issues interact with a number of other issues in IIAs. In particular, there are interactions with admission and establishment, as where investments are screened for their employment effects, and with host country operational measures, incentives and national treatment. For example, certain performance requirements may impose extra obligations on foreign investors, thereby requiring exceptions to principles of national treatment in IIAs. Further interactions arise in relation to issues of social responsibility and dispute settlement as employment policies are usually closely linked to a country's obligations on these issues under an IIA. In some instances, interactions may also be with home country measures when home countries take measures aimed at affecting employment practices of foreign affiliates of their TNCs.

There are a number of options regarding clauses concerning employment that may be included in IIAs. At one extreme, an IIA may have no mention of employment issues. Secondly, an IIA could contain a general hortotary provision to the upholding of employment standards. Thirdly, an IIA could contain a commitment not to lower existing standards of protection to be found especially in the national laws of the contracting parties. Fourthly, an IIA could include a reference to the observance of employment issues contained in other IIAs or in international labour instruments generally. Finally, an IIA could include mandatory legal duties to observe certain employment standards.

INTRODUCTION

The inclusion of employment issues into international agreements is at once an old and a new phenomenon. It is old in that the evolution of international standards in this field can be traced back to the work of the ILO, which has been at the forefront of the movement for the international regulation of employment issues since its inception in 1919 under Part XIII of the Treaty of Versailles (Israel, 1967). It is new in that specific consideration of employment issues in relation to foreign direct investment (FDI) and TNCs has occurred only since the mid-1970s. This paper examines the treatment of such issues in the arena of FDI and TNCs.

Given the pre-eminence of some specialized international instruments in this field, section II provides some detail of their coverage as regards five main areas of TNC-related issues: employment promotion, opportunity and security of employment, human resources development, conditions of work and life and industrial relations (including freedom of association and the right to organize; collective bargaining and consultation; and examination of grievances and settlement of industrial disputes). Section II also examines to what extent IIAs have paid attention to emerging issues, such as the possible expansion of the scope of core labour standards to TNCs and the possible utilization of a social clause in this regard.

It is in the light of these issue areas that alternative approaches to the drafting of employment related clauses in IIAs are then examined. The varying relationship between employment issues and the aims and purposes of IIAs is reflected in the different approaches as regards clauses included in IIAs. These present a number of policy options which are further discussed in the conclusion.

Section I

EXPLANATION OF THE ISSUE

FDI generates employment in host countries directly and indirectly. Foreign affiliates of TNCs directly employ people in, for example, their natural resources projects, manufacturing plants and service industries. Estimates suggest that direct employment in foreign affiliates in developing countries numbered around 19 million at the end of the 1990s (UNCTAD, 1999) (table 1).

Table 1. Estimated employment in TNCs

(Millions of employees)

Economy	Total employment in TNC[a]	Employment in affiliates in developed countries	Employment in affiliates in developing countries
All countries			
1985	65	15	7
1995	78	15	15
1998	86	17	19
Memo item:			
Employment in TNCs from:			
United States (1996)	26.4	4.9	2.7
Japan (1995)	5.6	0.8	1.4
Germany (1996)	..	2.0	1.0

Source: UNCTAD, 1999, p. 265.

[a] Including parent firms and foreign affiliates.

TNCs also generate indirect employment through enterprises that are suppliers, subcontractors or service providers to them; indirect employment created by foreign affiliates is larger than direct employment, amounting to between one and two times the number of jobs created directly in these affiliates (UNCTAD, 1999). Much foreign affiliate employment is concentrated in

manufacturing and modern services where the employment practices of TNCs often have a demonstration effect.

Given the growing integration of the world economy, the employment practices of TNCs come increasingly under international scrutiny. Besides the importance of their employment-generating potential, TNCs, as a major force in the transnationalization of the world's economies, can have significant impact in a number of key areas related to employment. Following the ILO and OECD approaches in this regard, five areas are traditionally identified as being of special importance and particular relevance to FDI and TNC issues. In addition, some new issues are emerging that bear on the subject of this paper. This paper thus deals with employment issues under six headings:

- **Employment promotion.** The issue of employment promotion is intricately connected with aspirations for economic development. It is particularly important for host developing countries where unemployment is most serious. The labour force in the developing world is growing each year at around two per cent (ILO, 1998d; World Bank, 1997). Population growth and increasing labour force participation are continuously adding new entrants to the work force. Thus, for example, in 1997, open unemployment ranged from 3 to 15 per cent in the urban areas of Latin America and 5 to 20 per cent in those in Africa; this in addition to a substantial amount of hidden unemployment (UNCTAD, 1999). Increasing employment thus ranks high as a policy objective for developing countries. While there is no simple method of evaluating the impact of FDI flows on employment creation, in general "positive employment effects have been found to be associated with inward FDI" (UNCTAD, 1994, p. 169). Governments therefore pursue as a major goal the encouragement of TNCs to stimulate economic growth by promoting the growth of employment.

- **Opportunity and security of employment.** A fundamental right concerning employment issues is that of non-discrimination in employment matters whether on grounds inter alia of

race, colour, sex, national extraction or social origin, religion or political opinion. Equality of opportunity in employment implies that TNCs should base their employment policies on qualifications and skills. A related issue is security of employment. Of particular relevance is the question of how to deal with changes of operations by firms and their effects on employment. This may, for example, require a set of duties to be observed by firms in the process of restructuring their operations.

- **Human resources development.** A third issue, which flows naturally from the second, concerns the education and training of workers. This issue has become especially significant in recent years as the effects of global economic integration have manifested themselves inter alia in changing patterns of employment both in developed and developing countries. Complex integration strategies of TNCs (UNCTAD, 1993) are likely to involve training programmes with different implications for host and home countries. The issue for many developing countries that host low-skill foreign affiliate manufacturers is how to move themselves towards skill upgrading, higher value-added activities and better quality FDI. The problem is how to change the mix of skills, and ensure that skilled workers find better remunerated employment that is commensurate with such skills while moving up from their established base of competitiveness in low-skill activities. To put it another way, how can Governments "draw upon the resources offered by TNCs to upgrade their human-capital base while keeping their economy cost-competitive and attractive?" (UNCTAD, 1999, p. 275). Of major importance, of course, is the question of the role of IIAs in this respect.

- **Conditions of work and life.** The main issues of concern here are, first, wages and benefits, and, second, safety and health matters. Considering their size, technological sophistication and origin principally in developed countries, TNCs are often expected to be better employers than domestic firms (UNCTAD, 1999). Moreover, when it comes to these aspects, foreign affiliates generally have a great deal of autonomy

in the determination of wages and working conditions and can therefore go beyond minimum national requirements (UNCTAD, 1994, 1999). On the other hand, TNCs, like all private enterprises, are driven by the profit motive and thus, while generally progressive in terms of pay and conditions of work in host countries, the record of some foreign affiliates raises some concerns. This is especially the case in export processing zones (ILO, 1998c) and with respect to the conditions of work and life provided by sub-contractors of TNCs. Also of relevance to the issue of conditions of work and life is the issue of how to ensure that TNCs maintain high standards of safety and health.

- **Industrial relations practices.** Decisions affecting the quantity and quality of employment, human resources development and conditions of work and life are primarily the responsibility of management. But these decisions have to be taken in the context of national industrial relations and need to take account of workers' views – hence the importance of trade unions and the right of association. The right of association connotes rights of collective bargaining and consultation, which ensure that workers representatives have access to employers for the purposes of not only bargaining but of consultation from which information relevant to the bargaining process (that may be only in the possession of employers) is conveyed to those representatives. Furthermore, it is important to ensure that workers' grievances can be aired without prejudice to the workers concerned and that appropriate procedures for the settlement of disputes are in place.

- **Emerging issues.** A new and rather controversial issue in the FDI/TNC context is that relating to the use of a "social clause" in an IIA. This issue has its origin in the context of trade negotiations. One mechanism put forward to link "workers' rights" -- and, in particular, certain core labour standards -- and trade is the idea of including a social clause in trade agreements. It is characterised by two key elements. First, it would be based on already agreed and widely ratified international standards contained in ILO conventions. Second,

it would ensure observance of core labour standards by linking them to market access.[1] The benefits of an agreement would thereby become conditional on the observance of certain workers' rights by the contracting parties.[2] One of the issues that makes discussion on the use of a social clause rather controversial is the question of its potential scope. This is particularly relevant as employment issues concerning TNCs are increasingly discussed in a wider context. For example, certain core labour standards previously not covered by TNC specific provisions are finding their way into a number of international instruments (as will be indicated in section II). While the idea of linking certain core labour standards to FDI *per se* is not entirely new, what is new and could have wider implications, would be to expand the current scope of such standards.[3]

Notes

1 See for example TUAC, 1996 and ICFTU, 1998.

2 For a fuller explanation of the position of the main advocate of this approach, see ICFTU, 1999. For arguments of the opposite view, see Anderson, 1996.

3 For further discussion of other relevant issues, see Hepple, 1997.

Section II

STOCKTAKING AND ANALYSIS

Employment and labour issues are relatively uncommon in IIAs. They have only appeared in the 1970s on the agenda of IIAs, predominantly on the regional or multilateral levels.[1] The most comprehensive international instruments in this area remain the 1977 ILO Tripartite Declaration and the 1976 OECD Guidelines' Employment Chapter (box 1).[2]

Box 1. Principal features of the ILO Tripartite Declaration and the OECD Guidelines' Employment Chapter

The Tripartite Declaration, adopted by the Governing Body of the ILO in November 1977, was the outcome of a decade of research and discussion on the relationship between TNCs and social policy (Günter and Bailey, 1992).[a] The OECD Guidelines' Employment Chapter is part of the more general OECD Guidelines on Investment and Multinational Enterprises (OECD Guidelines).[b] It is less detailed than the ILO Tripartite Declaration. Some of the principal features to note about these two instruments are the following:

Legal status. The ILO Tripartite Declaration is addressed jointly to Governments, employers' and workers' organizations and to TNCs in both home and host countries. By contrast, the OECD Guidelines are addressed by OECD Governments and other adhering countries (at present Argentina, Brazil and Chile) to TNCs and all their entities operating in their territories.[c] Neither the ILO Tripartite Declaration nor the OECD Guidelines are mandatory or legally enforceable. They are voluntary and promotional, but their application (or, better, follow-up) is monitored by the institutional machinery available in both cases.

Definition of TNCs. Both the Declaration and the Guidelines adopt a functional definition of the types of enterprise to which they are addressed.[d] Thus by paragraph 6 of the ILO Tripartite Declaration, TNCs engaged in all types of activity are considered as falling under its provisions, irrespective of whether they are of public, mixed or private ownership or as to their type of activity, so long as there is

/...

(Box 1, concluded)

cross-border economic management of entities established in various countries. Like the ILO Tripartite Declaration, the OECD Guidelines' Employment Chapter applies to TNCs engaged in all types of activity regardless of their pattern of ownership or control. Moreover, the OECD Guidelines are addressed to the various parent companies and/or local entities (paragraph 8) "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" .

Relevance to domestic firms. Both instruments provide that, where their recommendations are relevant to domestic firms, they should be considered as applying to them as well.

Scope. The OECD Guidelines are wider than the ILO Tripartite Declaration in that they cover general policies, disclosure of information, competition, financing, taxation, environmental issues and science and technology as well as employment and industrial relations.[e] The Guidelines are part of a package of international instruments that together seek to provide a balanced framework for dealing with international investment issues, including national treatment, incentives and disincentives and conflicting requirements. The Tripartite Declaration has four major areas: general employment issues; training; conditions of work and life and industrial relations.

Source: UNCTAD.

a In 1987 the Governing Body approved an addendum to take account of relevant post-1977 ILO Conventions and Recommendations, and this was updated in 1995.

b The OECD Committee on International Investment and Multinational Enterprises also issues clarifications where necessary to help clarify the meaning of the Guidelines.

c One of the important proposed changes in the draft text of the revised Guidelines is that they encourage TNCs to observe the Guidelines wherever they operate.

d Both instruments also use the terminology "multinational enterprise" rather than the United Nations terminology "transnational corporation" . References to TNCs in this paper are therefore equivalent to references to "multinational enterprises" as defined in both the ILO Tripartite Declaration and the OECD Guidelines.

e For the proposed coverage of the revised Guidelines, see footnote 5.

Since the ILO Tripartite Declaration and the OECD Guidelines' Employment Chapter form what is the most comprehensive statement to date of the kinds of issues identified in section I, much of the following discussion focuses on them. Where other international instruments contain relevant provisions, they are, of course, also brought into the discussion.

A. Employment promotion

The instrument that gives the most detailed attention to this broad issue is the ILO Tripartite Declaration. It asserts (paragraph 13) that Governments should "declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment", and (paragraph 16) that TNCs, "particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise".

To this general objective, paragraphs 17, 18 and 19 of the Declaration add specific duties:

- to consult with host country authorities and national employers' and workers' organizations in order to keep manpower plans in harmony with national social development policies;
- to give priority to the employment and promotion of host country nationals; and
- when investing in developing countries, to use technologies which generate employment.

Furthermore, paragraph 20 provides that, to promote employment in developing countries, supply contracts with local enterprises should be concluded whenever practicable, and TNCs should stimulate the use and the processing of local raw materials.

The OECD Guidelines' Employment Chapter does not espouse the broader goal of employment promotion. However paragraph 2 of the General Policies Chapter in the OECD instrument mentions the "creation of employment opportunities" as a matter to which TNCs should give due consideration.

Some IIAs make the optimal use of local labour an objective for the promotion of TNCs. For example, article 2 of the Charter on a Regime of Multinational Industrial Enterprises in the Preferential Trade Area for Eastern and Southern African States provides that the establishment and promotion of such enterprises shall, among other objectives, be governed by "the development of industries making optimal use of labour available locally and within the subregion". Yet other agreements emphasize reduction of unemployment. Article 101 (2)(v) of the Treaty Establishing the Common Market for Eastern and Southern Africa provides that the member States shall determine the conditions that shall govern the multinational industrial enterprises that "through their activities, provide substantial employment or reduce unemployment within the territories of the Member States ...". The Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States uses the same exact wording in its article 2(a)(v).

Other IIAs make employment promotion a condition or advantage for the grant of incentives. Article 8 (2) of the Common Convention on Investments in the States of the Customs and Economic Union of Central Africa provides that the creation of employment and vocational training are among criteria for investments to qualify for a certain preferential schedule.

On the other hand, other IIAs emphasize that the treatment accorded to investors will contribute to their ability to create employment opportunities. In its preamble, the draft text of the OECD's Multilateral Agreement on Investment (MAI) provides:

> "Recognising that agreement upon the treatment to be accorded to investors and their investments will contribute to the efficient utilisation of economic resources, the creation of employment opportunities and the improvement of living standards..." (OECD, 1998, p. 7).

B. Opportunity and security of employment

1. Equality of opportunity and treatment

Paragraph 21 of the ILO Tripartite Declaration states that "[a]ll governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin."[3] TNCs should be guided by the same principles throughout their operations but without prejudice to preferential treatment for host country employees or to governmental policies designed to correct historical patterns of discrimination. Equally, Governments should never encourage TNCs to pursue discriminatory policies.

The Draft United Nations Code of Conduct on Transnational Corporations provides (Article 13) that, "[i]n their social and industrial relations, transnational corporations should/shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion". It also provides that TNCs should conform to Government policies "designed to extend equality of opportuniy and treatment" (ibid.).

Some IIAs make a point of emphasizing that the employment related rights enjoyed by nationals are equally applicable to foreigners from all States party to the IIAs. Article 11 (a) of the Community Investment Code of the Economic Community of the Great Lakes Countries provides as follows:

> " Workers who are Community nationals shall be governed by labour legislation and social laws under the same conditions as nationals. They may participate in trade union activities and belong to bodies defending employee rights. They shall be further governed by the general agreement on social security between the member countries of the Community".

It should be noted that the ILO Tripartite Declaration accepts "affirmative action" on the basis of government policies. The OECD

Guidelines' Employment Chapter, too, recommends (paragraph 7) that enterprises should:

> "Implement their employment policies including hiring, discharge, pay, promotion and training without discrimination unless selectivity in respect of employee characteristics is in furtherance of established governmental policies which specifically promote greater equality of employment opportunity".

Neither code has raised significant issues of interpretation in this area. Most countries accept non-discrimination in employment as a principle. In this respect TNCs are subject to the same requirements and pressures as national enterprises. Much depends on the internal "management culture" and whether, regardless of legal rules, a moral principle of non-discrimination is observed (Muchlinski, 1999, p. 463).

2. Security of employment

Governments are encouraged by the ILO Tripartite Declaration to study the impact of TNCs on employment and develop suitable policies to deal with the employment and labour market impacts of TNC operations. In their turn, TNCs and national enterprises should, through active manpower planning, "endeavour to provide stable employment for their employees and should observe freely-negotiated obligations concerning employment stability and social security" (paragraph 25). Furthermore, TNCs, because of the flexibility they are assumed to have, are exhorted to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment. The Declaration further states that arbitrary dismissal procedures should be avoided, and that Governments, in cooperation with TNCs and national enterprises, should provide some form of income protection for workers whose employment has been terminated.[4]

Both the ILO Tripartite Declaration and the OECD Guidelines' Employment Chapter accept that TNCs are free to change their operations, even if this results in major employment effects, as in the case of the closure of an entity involving collective lay-offs or dismissals, or in a merger, takeover or transfer of production which results in employment rationalization. At the same time, as indicated later in this paper on the discussion of industrial relations, changes of operations - including closing of firms or collective lay-offs - should not be used as a threat in collective bargaining.

The OECD Guidelines' Employment Chapter (paragraph 6) provides that in such cases TNCs should provide reasonable notice of the impending changes to the representatives of their employees, and to relevant governmental authorities, and should cooperate in the mitigation, to the greatest possible extent, of any adverse effects. This has been clarified by the OECD Committee on International Investment and Multinational Enterprises. The Committee observed that, in general, for notice to be reasonable, it should be sufficiently timely for the purpose of mitigating action to be prepared and put into effect. Furthermore, management should normally be able to provide notice prior to the final decision being taken (OECD, 1992).

The Draft United Nations Code of Conduct on Transnational Corporations requires (Article 44) annual employment information including the average number of employees.

C. Human resources development

On the issue of human resource development, the ILO Tripartite Declaration encourages Governments to develop national policies for vocational training and guidance, closely linked with employment. TNCs are encouraged to ensure that relevant training is provided for at all levels of employees in the host country to meet the needs of the enterprise as well as the development policies of the country. This should develop generally useful skills and promote career opportunities. Furthermore, in developing countries, TNCs are exhorted to participate in special programmes aimed at encouraging skill formation and development.

The OECD Guidelines' Employment Chapter provides for much the same approach. It states (paragraph 5) that TNCs, "[i]n their operations, to the greatest extent practicable, utilise, 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".

D. Conditions of work and life

Issues related to conditions of work and life can be divided between, on the one hand, wages, benefits and conditions of work and, on the other, safety and health matters. The ILO Tripartite Declaration covers all of them. The OECD Guidelines' Employment Chapter says little on the first set of issues, simply asserting that TNCs should observe standards of employment no less favourable than those observed by comparable employers in the host country.

1. Wages, benefits and conditions of work

Like the OECD Guidelines' Employment Chapter, here, too, the ILO Tripartite Declaration applies a standard of equality of treatment, or non-discrimination, to these matters. Thus paragraph 33 of the Declaration provides that:

> "Wages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned".[5]

When operating in developing countries, where comparable employers may not exist, TNCs should provide the "best possible wages, benefits and conditions of work, within the framework of government policies" (paragraph 34). These should be related to the "economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families" and where TNCs "provide workers with basic amenities such as

housing, medical care or food, these amenities should be of a good standard" (ibid.). [6]

Finally, the Declaration exhorts Governments, especially in developing countries, to endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of TNCs (ibid.).

2. Safety and health

The ILO Tripartite Declaration urges Governments that have not already done so to ratify ILO Conventions in the field of safety and health,[7] while in paragraph 37 TNCs are required to maintain the "highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards". Furthermore, TNCs are urged to make available information on safety and health standards relevant to their local operations, which they observe in other countries, to workers' representatives in the enterprise and, upon request, to the competent authorities and to workers' and employers' organizations in the countries in which they operate. In particular, special hazards and related protective measures associated with new products and processes should be made known to those concerned. This part of the Declaration ends with exhortations to TNCs to cooperate in the work of international organizations in the preparation of international safety and health standards, and with national authorities and representatives of workers' organizations and specialist safety and health organizations. Where appropriate, matters relating to safety and health should be incorporated into agreements with workers' representatives and their organizations.

E. Industrial relations

There are several important issues under this heading: freedom of association and the right to organize, collective bargaining and consultation, examination of grievances and the settlement of industrial disputes. As far as the ILO Tripartite Declaration (paragraph 40)

is concerned, each area is subject to the overriding general principle that TNCs "should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned". The OECD Guidelines' Employment Chapter contains the same general principle (paragraph 4).

1. Freedom of association and the right to organize

Freedom of association and the right to join workers' organizations have been one of the central guiding policies of international labour instruments. In fact, as recently as 1998, the ILO Declaration on Fundamental Principles and Rights at Work reaffirmed freedom of association among the core labour standards (ILO, 1998a). The ILO Tripartite Declaration recognizes in paragraph 41 the right of workers to establish and to join organizations of their own choosing without previous authorization, and to enjoy adequate protection against anti-union discrimination in respect of their employment and makes reference to the Freedom of Association and Protection of the Right to Organise Convention No. 87, article 2 (1948) and the Right to Organise and Collective Bargaining Convention No. 98 article 1(1) (1949). The establishment, functioning and administration of such organizations should not be interfered with by other organizations whether representing TNCs or workers in their employment.

The ILO Tripartite Declaration enumerates certain specific policies that Governments should and should not follow in the furtherance of the freedom of association. They are urged:

- to ensure that workers in TNCs are not hindered in meeting and consulting with one another;
- not to restrict the entry of representatives of workers' and employers' organizations from other countries; and
- to permit workers' and employers' organizations which represent, respectively, the workers and the TNCs in which they work, to affiliate with international organizations of workers and employers of their choosing.

This last obligation, which is provided for in paragraph 44 of the ILO Tripartite Declaration, may be of importance in relation to the development of international collective bargaining, as it accepts the legitimacy of entering organizational structures that can facilitate this. Indeed, the OECD Guidelines' Employment Chapter includes, among "other bona fide organisations of employees" International Trade Secretariats as bodies entitled to represent workers (OECD Guidelines' Employment Chapter, paragraph 1 as interpreted in the 1986 Review of the OECD Guidelines). International Trade Secretariats represent affiliated national unions in the same, or similar, industries. They can offer co-ordinating facilities for the exchange of information and, in exceptional cases, they have acted as the organizers of international industrial action.

Governments are also urged not to offer any limitation of the workers' freedom of association, or of the right to organize and bargain collectively, as special incentives to attract FDI. Thus, the ILO Tripartite Declaration exhorts Governments not to engage in a "race to the bottom" over trade union rights.

2. Collective bargaining and consultation

With regard to the issue of collective bargaining and consulation, both the ILO Tripartite Declaration and the OECD Guidelines' Employment Chapter assert (in paragraph 48 and paragraph 1, respectively) that the employees of TNCs should have the right, in accordance with national law and practice, to have representative organizations of their own choosing recognized for the purpose of collective bargaining. What constitutes collective bargaining is a matter for interpretation in the context of different national situations. The ILO Tripartite Declaration may offer some harmonization in this regard in that it recommends the taking of measures appropriate to national conditions for the encouragement and promotion of negotiations through collective agreements in accordance with ILO Convention No. 98, article 4. The ILO Convention may therefore provide a basis for identifying the common expectations that a system of collective bargaining should fulfil. The ILO Tripartite Declaration also seeks to encourage the development of systems for consultation between employers and

workers and their representatives on matters of mutual concern. However, such consultations should not substitute for collective bargaining.

Both the ILO Tripartite Declaration and the OECD Guidelines' Employment Chapter expect TNCs to provide the facilities necessary for the development of effective collective agreements, and to provide workers' representatives with information required for meaningful negotiations on conditions of employment. Thus paragraph 54 of the ILO Tripartite Declaration provides that this should give a "true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole". The ILO Tripartite Declaration and the OECD Guidelines' Employment Chapter also recommend that the provision of information must accord with local law and practice. The ILO Tripartite Declaration urges Governments to help workers' representatives by furnishing them, where the law permits, with information about the industry in which the TNC concerned operates. It urges TNCs to observe any requests from Governments for relevant information on their operations.

Furthermore, the two instruments recognize the implications of the group structure of TNCs for effective collective bargaining. Each instrument demands that the authorized representatives of employees conduct negotiations with representatives of management who are authorized to take decisions on the matters under negotiation (ILO Tripartite Declaration, paragraph 51; OECD Guidelines' Employment Chapter, paragraph 9). Under the OECD Guidelines' Employment Chapter this requirement means that parent companies may be obliged to take the necessary organizational steps to enable their foreign affiliates to observe the Chapter, *inter alia,* by providing them with sufficient and timely information and ensuring that local managers are duly authorized to take the decisions on matters under negotiation. Alternatively, the parent company may delegate a member of the decision-making centre to the negotiating team of the affiliate, or engage directly in negotiations, so as to achieve the same result. Furthermore, employees' representatives may be entitled to information about the decision-making structure within an enterprise, but such a right of information is confined

to the negotiating situations referred to in the Chapter. There is no general right to be informed about the decision-making structure within the enterprise. Additionally, negotiations should take place in a language understood by both sides.

Finally, both instruments also address the problem of unfair pressure being brought to bear upon negotiations with workers' representatives by TNCs as a result of the international scope of their operations. Thus the ILO Tripartite Declaration states in paragraph 52:

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

The OECD Guidelines' Employment Chapter contains essentially the same formulation in paragraph 8:

> "Enterprises should, within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate:
>
> .....
>
> In the context of bona fide negotiations 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 the right to organise".

It adds that "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". An important issue arising from this provision is the distinction between, on one hand, the legitimate provision of information and, on the other hand, threats designed to influence negotiations unfairly. A distinction should be drawn between giving employees information to the effect that a particular demand has serious implications for the economic viability of the enterprise, and the making of a threat. Furthermore, it is also important to note that, while the Employment Chapter was drafted to consider only operations involving existing plant and equipment, future investments (such as the replacement of equipment or the introduction of new technology) could be crucial to the survival of the enterprise in the medium to long term and thus might be of interest in this context. So, not only threats of withdrawal from current operations but also threats to run down an operation might be seen as "unfair", in the absence of information that justifies such a decision (Muchlinski, 1999, p. 479).

The OECD Guidelines' Employment Chapter also makes provision not to "import" strike-breaking employees from affiliates in other countries. This requirement was absent from the original formulation of the OECD Guidelines' Employment Chapter. However, it was inserted in 1979 as a result of the interpretation of the Chapter by the OECD Committee on International Investment and Multinational Enterprises in the light of such a case. The Committee observed that the transfer of employees from foreign affiliates could unfairly influence negotiations and was contrary to the general spirit and approach of the OECD Guidelines even if it did not contravene them. Consequently, this gap in the original formulation was remedied through the insertion of appropriate words.

3. Examination of grievances and settlement of industrial disputes

The ILO Tripartite Declaration also addresses the examination of grievances and the settlement of industrial disputes. Regarding workers' grievances, the following principle is recommended to TNCs (paragraph 57):

> "... any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure."

This is seen as particularly important where a TNC operates in a country that does not abide by the principles of ILO conventions relating to freedom of association, the right to organize and bargain collectively and to forced labour.

The ILO Tripartite Declaration ends (paragraph 58) with a recommendation that TNCs should seek to establish, with the representatives and organizations of the workers whom they employ, voluntary conciliation machinery to assist in the prevention and settlement of industrial disputes. This machinery should include equal representation for employers and workers, and it should be appropriate to national conditions. It may include provisions for voluntary arbitration.

F. Emerging issues

Independent of what has been discussed above in reference to TNC specific provisions on employment issues in international investment instruments, increasing efforts have been made in the past decade to identify certain core labour standards. The ILO Declaration of Fundamental Principles and Rights at Work (adopted by the International Labour Conference at its 86th session on 18

June 1998 - ILO, 1998a) set out, in paragraph 2, four basic obligations, often referred to as core labour standards (box 2).

Among these core labour standards are two –freedom of association and non-discrimination -- that are addressed in the principal international instruments dealing with employment matters (see above). Two others, however – the elimination of forced or compulsory labour and the abolition of child labour – have crystallised in the ILO but have, until very recently, not been discussed specifically in the context of TNCs. But to the extent that they are standards of good behaviour for companies in general, they are also relevant to TNCs. This is reflected in the fact that some corporate codes explicitly refer to them.[8]

Most recently, the identification of the two latter core labour standards has come up in connection with the revision of the OECD Guidelines. More specifically, the Draft Text and Commentary of the OECD Guidelines (OECD, 2000) provides (paragraph 1(b) and (c) of Chapter IV) that:

Box 2. Core labour standards restated by the ILO Declaration of 1998

" [A]ll Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

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

Source: ILO, 1998a, p. 7.

> "Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:
>
> ...
>
> b) Contribute to the effective abolition of child labour and, in particiular, not engage in the worst forms of child labour in their operations;
>
> c) Contribute to the elimination of all forms of forced or compulsory labour and, in particular, not engage in the use of such labour in their operations ..."

As the review of the OECD Guidelines is not yet concluded, it remains to be seen whether this instrument is a step towards advancing certain workers' rights.

The identification of certain standards as four labour standards focuses attention on them. Linking them – through the inclusion of a social clause – to international agreements makes obtaining the benefits of an agreement (e.g. market access) conditional on the observation of these core labour standards, especially where such agreements provide for sanctions in case of non-observance.

So far, the discussions of a social clause have focused on trade agreements. There are, however, signs that this approach is also beginning to find its way into IIAs. (It needs to be reemphasized, however, that some core labour standards are already included in traditional and -- employment-centred -- international instruments.) At the bilateral level, for example, the United States-Argentina bilateral investment treaty (BIT) (1991) (preamble, paragraph 5) speaks of promoting "respect for internationally recognized worker rights" (ILM, 1992, p. 128), but does not explain the phrase. Similarly, the United States-Bolivia BIT preamble makes provision for:

> "Recognizing that the development of economic and business ties can promote respect for internationally recognized worker rights ..." (United States, State Department, 1992, p. 1).

While being vague may imply an unknown scope for the meaning of "internationally recognized worker rights", it is important to note that this appears only in the preamble; its enforceability, if that were an issue, is therefore debatable.

In similar fashion, the draft MAI text made provision in its preamble for:

> "Renewing their commitment to the Copenhagen Declaration of the World Summit on Social Development and to observance of internationally recognised core labour standards, i.e. freedom of association, the right to organise and bargain collectively, prohibition of forced labour, the elimination of exploitative forms of child labour, and non-discrimination in employment, and noting that the International Labour Organization is the competent body to set and deal with core labour standards world-wide" (OECD, 1998, p. 9).

The issue is also pertinent to the operations of the Multilateral Investment Guarantee Agency (MIGA). Under its Environmental and Social Review Procedures, paragraph 16 provides that MIGA will not provide guarantees for certain types of business activities, including enterprises "involving slave labour or child labour inconsistent with internationally recognised norms" (MIGA, 1999).

The North American Agreement on Labour Co-operation (NAALC) (ILM, 1993), which came into force in January 1994, is another example of linking a regional IIA arrangement with labour co-operation in industrial relations and worker rights. Although NAALC is a "side" agreement, rather than an integral part of the North American Free Trade Agreement (NAFTA), it is significant in that it links employment issues to the NAFTA through a binding dispute resolution mechanism and allows for the partial suspension of NAFTA benefits where a country is found to be in breach of its own labour laws and regulations and where the breach is trade-related (and, through the natural relationship between trade and investment, this implies investment related issues as well).[9]

Its preamble calls, among other things, for protecting, enhancing and enforcing basic workers' rights; strengthening labour-management co-operation; promoting higher living standards; and encouraging compliance with labour laws and co-operation in maintaining a progressive, fair, safe and healthy working environment. The objectives of the NAALC include the improvement of working conditions and living standards; the promotion of eleven guiding labour principles; and the promotion of compliance with, and effective enforcement of, labour laws. The obligations under the NAALC require that each government ensure that its labour laws provide for high labour standards (Article 2), promote compliance with and effectively enforce its labour laws (Article 3), and ensure access to tribunals through proceedings that are fair, equitable and transparent (Article 4 and 5).

Annex 1, incorporated by reference in Article 1 (b) of the Agreement, outlines the eleven guiding labour principles to which the parties commit to promote through their respective domestic laws: freedom of association and the right to organize; the right to bargain collectively; the right to strike; the prohibition of forced labour; labour protections for children and young persons; assurance of minimum labour standards; elimination of employment discrimination; equal pay for women and men; prevention of occupational injuries and illnesses; compensation in cases of occupational illnesses and injuries; and protection of migrant workers.

As can be seen from this review, few IIAs address directly employment and related issues. However, some IIAs deal with some or all of the issues identified above, either through a cross reference to other international instruments or by adopting a "no lowering of standards" clause.

As regards the former approach, most prominent is perhaps the Draft United Nations Code of Conduct on Transnational Corporations. While emphasizing the role of national laws in dealing with labour relations, the Draft United Nations Code refers to the ILO Tripartite Declaration, making it in fact the social chapter of the Draft United Nations Code (Article 46):

> "With due regard to the relevant provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and in accordance with national laws, regulations and practices in the field of labour relations, transnational corporations should/ shall provide to trade unions or other representatives of employees in their entities in each of the countries in which they operate, by appropriate means of communication, the necessary information on the activities dealt with in this code to enable them to obtain a true and fair view of the performance of the local entity and, where appropriate, the corporation as a whole".

Paragraph (a) of appendix II of the Charter of Trade Union Demands for the Legislative Control of Multinational Companies takes an even stronger approach to the relationship between national laws and ILO standards. It requires that, if national laws conflict with ILO standards, the latter prevail. In effect, therefore, it takes a fundamental rights approach whereby ILO standards are at the minimum made applicable. It states as follows:

> "Regarding employment and industrial relations the following obligations should be imposed on the multinational companies:
>
> (a) multinational companies shall follow the laws, the rules and the practices of the host country regarding the labour market **only** if these are not inferior to the standards of the International Labour Organization in which case those of the ILO shall be followed".

On the issue of a "no lowering of standards" clause, certain IIAs contain a clause whereby the parties agree not to compete for inward FDI by lowering employment standards. In this connection, Article 1114 of NAFTA is of some relevance. It specifies that:

> "... it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition,

> expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement".

Though limited to health, safety and environmental measures, the approach of this provision can be adapted to employment issues in general, as well as to other emerging issues.

Indeed, the draft MAI contains three alternative formulations for a no lowering of standards clause (box 3). They cover not only health, safety and environmental standards but also labour standards. The Chairperson's "Proposals on Environment and Related Matters and on Labour"[10] include *inter alia* a binding "not lowering measures" provision whereby a contracting party:

> "shall not waive or otherwise derogate from, ... its domestic health, safety, environmental, or labour measures, as an encouragement to the establishment, acquisition, expansion, operation, management, maintenance, use, engagement and sale or other disposition of an investment of an investor" (OECD, 1998, p. 144).

It is interesting to note that the draft MAI text uses the phrase "shall not" whereas Article 1114 of NAFTA referred to above uses the phrase "should not", implying that the latter is not legally binding.

In some cases, the no lowering of standards approach may be implied by IIA provisions that encourage the co-ordination of domestic labour legislation. For example, the Agreement on Arab Economic Unity provides in article 2 that:

> "For attaining the unity mentioned in Article (1) the contracting states shall work for accomplishing ... [C]o-ordinating labour and social insurance legislation...".

Box 3. Draft MAI formulations for a no lowering of standards clause

Alternative 1

[The Parties recognise that it is inappropriate to encourage investment by lowering [domestic] health, safety or environmental [standards] [measures] or relaxing [domestic] [core] labour standards. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such [standards] [measures] as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.]

Alternative 2

[A Contracting Party [shall] [should] not waive or otherwise derogate from, or offer to waive or otherwise derogate from [domestic] health, safety or environmental [measures] [standards] or [domestic] [core] labour standards as an encouragement for the establishment, acquisition, expansion or retention of an investment of an investor.]

Alternative 3

[1. The Parties recognise that it is inappropriate to encourage investment by lowering domestic health, safety or environmental measures or relaxing international core labour standards.

2. A Contracting Party [shall] [should] accord to investors of another Contracting Party and their investments treatment no more favourable than it accords its own investors by waiving or otherwise derogating from, or offering to waive or otherwise derogate from domestic health, safety, environmental or labour measures, with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposition of an invesment.

3. A Contracting Party [shall] [should] not take any measure which derogates from, or offer to derogate from, international health, safety or environmental laws or international core labour standards as an encouragement for investment on its territory.]

Source: OECD, 1998, pp. 143-144.

Some developing countries may regard a no lowering of standards clause as a form of reverse protectionism in that it prevents them from competing with more developed investment locations on legitimate cost grounds connected with a less regulated investment environment. Thus, an IIA may also attempt to impose an obligation on the investor's home country not to engage in protectionism based on employment policies. Article VI, 2(a) of the 1972 International Chamber of Commerce Guidelines for International Investment has an interesting formulation in this regard. It provides that the investor's country's Government "[s]hould, in formulating policies aimed at securing full employment, rely on stimulating domestic demand through appropriate economic and social policies, rather than on restrictions on the outflow of direct investment".

On this issue it is interesting to note that paragraph 6 in Chapter I of the draft revised OECD Guidelines provides that "Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest" (OECD, 2000).

* * *

Notes

1 In parallel with employment policy instruments developed at national and international levels, a number of corporations, mainly TNCs, have developed and adopted individual or industry-wide principles that define what they consider to be acceptable standards for their employees to follow. These corporate codes of conduct usually address workplace and other employment-related issues. The motivations for the adoption of these codes include the recognition of -- among other things -- the existence of a certain social responsibility (UNCTAD, 1999, chapter XII).

2 Unless otherwise noted, all instruments cited herein may be found in UNCTAD, 1996. The Guidelines were revised several times, lastly in 1991. At the time of publication of this paper, the OECD Guidelines were in the process of being reviewed extensively and updated, with the draft text having become available during January 2000. This paper is based on the existing text. The draft text of the revised version is divided into ten sections: Concepts and

Principles, General Policies, Disclosure, Employment and Industrial Relations, Environment, Combating Bribery, Consumer Interests, Science and Technology, Competition and Taxation. Where appropriate, reference is made to the draft text, although it must be underlined that it is a draft only, subject to changes. The draft Guidelines and the present implementation procedures can be consulted on the OECD's web site at http://www.oecd.org/daf/ investment/ guidelines/newtext.htm. Additional background information on the OECD Guidelines for Multinational Enterprises, as well as the other three instruments of the OECD Declaration on International Investment and Multinational Enterprises, may be found on http://www.oecd.org/daf/investment/ guidelines/ declarat.htm.

3 It also refers to the Discrimination (Employment and Occupation) Recommendation No. 111 (1958) and the Workers with Family Responsibilities Convention No. 156 (1981).

4 See ILO Tripartite Declaration, paragraph 27 and the Termination of Employment Convention No. 158 and the Maintenance of Social Security Rights Convention No. 157 (both 1982) and the Termination of Employment Recommendation No. 119 (1963) and the ILO Tripartite Declaration, paragraph 28.

5 In the draft OECD Guidelines under review, TNCs are encouraged to observe "standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country" (paragraph 4 of the draft Employment Chapter). In the commentary to the text, it is stated that compensation and working-time arrangements are understood to be included in paragraph 4 of the draft text.

6 In that regard paragraph 34 makes reference to the Conditions of Employment of Plantation Workers Convention and Recommendation No. 110 (both 1958), the Workers' Housing Recommendation No. 115 (1961), the Medical Care Recommendation No. 69 (1944), the Medical Care and Sickness Convention No. 130 and the Medical Care and Sickness Recommendation No. 134 (both 1969).

7 Paragraph 36 specifically refers to the Guarding of Machinery Convention No. 119 (1963), the Benzene Convention No. 136 (1971), the Occupational Cancer Convention No. 139 (1974), the Working Environment (Air Pollution, Noise and Vibration) Convention No. 148 (1977), the Workers with Family Responsiblities Convention No. 156 (1981), the Occupational Safety and Health Convention No. 155 (1981), the Health Protection and Medical Care (Seafarers) Convention No. 164 (1987), the Occupational Health Services Convention No. 161 (1985) and the Asbestos Convention No. 162 (1986).

8 See, for example, Levi Straus Business Partner Terms of Engagement: UNCTAD, 1994, p. 325, box VIII.6.

9 Where Canada is the party complained against, the procedures set out in Article 41 providing for suspension of benefits do not apply. Rather, the procedures adopted under Annex 41A apply. These set out a system under which Canada's federal courts enforce fines filed against provinces of Canada that are bound by the Agreement.

10 It is notable that the Chairperson's Proposals on Environment and Related Matters and on Labour referred, in its preamble, to the ILO and noted that it is "the competent body to set and deal with core labour standards worldwide".

Section III

INTERACTION WITH OTHER ISSUES AND CONCEPTS

This section examines how employment issues -- in whatever instrument or agreement they may be addressed -- tend to interact with other issues and concepts covered by this Series. Employment issues are closely affected by their interaction with other aspects of international investment agreements (table 2).

Table 2. Interaction across issues and concepts

Concepts in other papers	Employment
Scope and definition	+
Admission and establishment	++
Incentives	++
Investment-related trade measures	+
Most-favoured-nation treatment	+
National treatment	++
Fair and equitable treatment	+
Taxation	0
Transfer pricing	0
Competition	0
Technology transfer	+
Social responsibility	++
Environment	+
Home country measures	++
Host country operational measures	++
Illicit payment	0
Taking of property	0
State contracts	0
Funds transfer	0
Transparency	0
Dispute settlement (investor-State)	+
Dispute settlement (State-State)	++
Modalities and implementation	+

Source: UNCTAD.

Key: 0 = negligible or no interaction
+ = moderate interaction
++ = extensive interaction

- **Admission and establishment.** IIAs that allow for some discretion before investments are made enable Governments to direct TNCs to activites which have scope for creating more employment and which are also more likely to transfer and diffuse high levels of skills.

- **Incentives.** Such an objective can also be promoted through the use of incentives. A system of incentives (e.g. agreed tax deductions for training) may be used to attract FDI to areas of high unemployment and into skill-intensive technologies that offer opportunities for training and diffusion. Export incentives and facilities in export processing zones may, for example, lead to FDI in labour intensive activities. On the other hand, such zones may not promote a number of employment standards.

- **Home country measures.** Where home countries set standards that foreign affiliates of their TNCs need to meet, there is a potential for interaction between such measures and employment issues. Some of the codes of conduct regarding the then apartheid South Africa are an example in this respect (box 4).

- **Host country operational measures and national treatment.** The intermingling of these two issues underscores the importance of a coherent approach towards the goal of a host State's employment policies. Performance requirements may include priority for the employment of nationals, the promotion of local personnel, the use of local sub-contractors etc. Similarly, measures sought to enhance job growth in, and the development of human resources of, a host State may have been tailored in a manner that flexibility remains in an IIA to provide for some preferential treatment of domestic labour by foreign investors. Such measures might give rise to national treatment issues under an IIA if they do not equally apply to nationals of the host country.

- **Social responsibility.** Contributions to the generation of employment and the ensuring of security and continuity of employment are substantive standards of social responsibility.

There are mutually supportive effects between the two, where strengthening one strengthens the other.

- **Dispute settlement.** Where a specific measure that is intended to implement an employment policy standard runs counter to a host State's obligations under an IIA, a claim may be triggered that is dealt with in accordance with the dispute settlement provisions therein. In this connection, some IIAs incorporate the use of specialist institutions and/or their specific criteria to assist in the settlement of disputes.

Box 4. Promoting employment standards through home country measures

Efforts to deal with international concern with the labour situation in the then apartheid South Africa exemplify home country measures in the area of employment. In 1977, the Ministers for Foreign Affairs of the States members of the European Community adopted a Code of Conduct for Companies with Subsidiaries, Branches or Representation in South Africa.[a] The Code, which applied only to African employees, called on TNCs to: facilitate labour union organisation and activities; counter the effects of the migrant labour system; improve wage rates; promote policies of "equal pay for equal work"; take steps to improve the living conditions of employees, including housing, health, education and leisure; and desegregate places of work (UNCTC, 1986). The Code called for a reporting procedure. However, the Code was voluntary. In addition, there was no consistent reporting system. Moreover, some Governments issued public reports on its implementation but others did not. Furthermore, those member countries that reported on the implementation of the Code did not rate the performance of individual corporations.

Source: UNCTAD.

[a] Similar efforts resulted in Canada's Code of Conduct Concerning the Employment Practices of Canadian Companies Operating in South Africa and the 1977 Sullivan Principles – a private undertaking by Reverend Leon Sullivan, a member of the Board of Directors of General Motors – which where designed "to promote racial equality in employment practices for United States firms operating in the Republic of South Africa" (UNCTC, 1986, p. 90).

CONCLUSION: ECONOMIC AND DEVELOPMENT IMPLICATIONS AND POLICY OPTIONS

The role that FDI might play in employment promotion, opportunity and security of employment, human resource development, improving conditions of work and life, promoting healthy industrial relations, and dealing with emerging issues related to labour standards, depend to a large extent on the amount and type of FDI that a country receives. But government policies can also have a significant impact on strategies to pursue specific employment objectives (UNCTAD, 1999, ch. IX).

Traditionally, Governments, employers, employees and local trade unions and employer organisations have been the main actors in employment policy. The growth of international corporate production systems has added to this a transnational angle by emphasizing the social dimension of globalisation. This is reflected in the fact that employment issues enter international discussions on IIAs. This brings with it a number of questions. Should IIAs in general be used as instruments to promote employment issues, or should this be left for specialized labour instruments? Should such standards be binding or non-binding? How should these standards be defined? Should corporate codes of conduct be promoted instead of (or in addition to) governmental action? The discussion of these questions entails some political sensitivity. It requires a balancing of arguments that the prescription of certain standards could in certain circumstances actualy lead to a form of disguised protectionism on the one hand and those arguments that emphasize the need to promote certain minimum standards, on the other hand.

In light of the foregoing discussion, the following policy options present themselves:

- **Option 1: No specific provision on employment issues.** As indicated before, most IIAs have no specific provisions relating to employment and related issues. It is relevant to

note in this connection that the approach of TNCs to employment issues often depends on their management culture and corporate strategies. In particular, TNCs may attempt on their own volition to meet labour and employment standards that are higher than national or international prescribed norms. This may be encouraged through corporate codes of conduct. Nevertheless, the increasing internationalization of the issue suggests that references to employment issues in IIAs could possibly become more common. Thus other options are discussed below.

- **Option 2: A general hortatory provision.** IIAs could limit themselves to a simple exhortation that the parties should promote or observe some or all of the employment conditions discussed above. In other words, they would simply exhort the parties to encourage employment promotion; opportunity and security of employment; human resources development; good conditions of work and life; and industrial relations rights. One could add to this emerging issues. Alternatively, the clause may not refer to any of the specific issues. Such an approach could serve the purpose of acknowledging that certain standards exist, but it does not spell out what these standards are nor whether the contracting parties need to observe any particular one of them. Thus this option would be attractive in cases where there is little consensus between the parties on the nature and content of what should be covered but where there is a recognition of the political significance of, and linkage between, employment issues and the promotion and protection of investors and their investments.

- **Option 3. No lowering of standards.** A "no lowering of standards" clause could be employed with the principal objective of ensuring that countries do not compete for FDI by deliberately lowering employment standards. Here the basic choices are between:

  - a binding or non-binding provision; or
  - a provision referring to domestic measures only or one

that also (or in the alternative) refers to core international labour standards.

- **Option 4: Cross reference to other international instruments.** A number of international instruments exist that may be used to serve this approach. At the level of international agreements, these include:

  - **Option 4 (a): Observance of TNC related employment issues.** This model could be based on the contents of the ILO Tripartite Declaration or the OECD Guidelines' Employment Chapter. The extensive and detailed contents of the ILO Tripartite Declaration and the more general contents of the OECD Guidelines' Employment Chapter offer two distinct options:

    (i) a clause could be included that incorporates these ILO and OECD instruments into IIAs by reference thereto, without the text of the documents being reproduced;

    (ii) IIAs could contain an annex through which the ILO Tripartite Declaration and/or the OECD Guidelines' Employment Chapter is appended to an agreement.

  - **Option 4 (b): Additional observance of ILO core labour standards.** This approach would have the implication that, in addition to the observance of TNC related employment issues as contained in the ILO Tripartite Declaration and the OECD Guidelines' Employment Chapter (before the January 2000 draft), IIAs would require that the ILO's fundamental principles and rights at work, set out in the ILO's Declaration of June 1998, become the subject of obligations of observance.[1] Such an approach could be of interest to a country that wants to meet the demands of a more comprehensive labour standards programme that goes beyond those directly related to TNCs.

- **Option 5: Mandatory legal duties to observe employment provisions.** Another level of dealing with employment issues in IIAs would be to render the treatment of certain employment and related issues into a mandatory legal obligation for the contracting parties. This could be done as a matter of a purely international legal obligation, for example, through a social clause, or it could go further and create directly effective rights under the national laws of the contracting parties. This would offer workers in those countries effective legal standards upon which to base their claims.

* * *

The inclusion of employment issues in IIAs has been – and is – a controversial matter. These issues have traditionally been the preserve of national laws and practices. However, the work of the ILO in this field, coupled with an increasingly integrated global economy and market- and production place, combine to put the debate on employment issues in the international arena. Given that TNCs, as the most prominent agents of international economic integration, are particularly visible as producers and employers around the world, the inclusion of clauses concerning corporate practices in the field of employment may increasingly be seen as consistent with the aims of IIAs. Whether or not, however, this will actually occur depends on the negotiating objectives and bargaining strength of the parties concerned.

Note

1 The draft revised OECD Guidelines also refer to all the core labour standards set out in the ILO's Declaration of June 1998.

REFERENCES

Anderson, Kym (1996). "Environmental and labour standards and trade policy", in Will Martin and L. Alan Winter, eds., *The Uruguay Round and the Developing Countries* (Cambridge: Cambridge University Press), pp. 435-462.

Günter, H. and Bailey, P. (1992). "The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy", in R. Blanpain, ed., *International Encyclopedia for Comparative Labour Law and Industrial Relations* (Deventer: Kluwer), pp. 1-82.

Hepple, Bob (1997). "New approaches to international labour regulation", *The Industrial Law Journal,* 26, pp. 353-366.

International Confederation of Free Trade Unions (ICFTU) (1998). "A New Strategy for Trade and Development" (Brussels: ICFTU), http://www.icftu.org

_____ (1999). "A possible framework for multilateral investment" (Brussels: ICFTU), http://www.icftu.org/english/els/esc198mi.html.

International Labour Organization (ILO) (1998a). *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its Eighty-sixth Session* (Geneva: International Labour Office).

_____ (1998b). *Consideration of a Possible Declaration of Principles of the International Labour Organization concerning Fundamental Rights and its Appropriate Follow-up Mechanism: Report of the Committee on the Declaration of Principles* (Geneva: International Labour Office, International Labour Conference Provisional Record, 86th session).

_____ (1998c). *Labour and Social Issues Relating to Export Processing Zones* (Geneva: International Labour Office).

_____ (1998d). *World Employment Report 1998/99: Employabililty in the Global Economy. How Training Matters* (Geneva: Internationial Labour Office).

International Legal Materials (ILM) (1992). "Treaty Between the United States of America and the Argentine Republic Concerning the Reciprocal Encouragement and Protection of Investment", *International Legal Materials,* 31, pp. 128-137.

_____ (1993). "North American Agreement on Labor Cooperation", *International Legal Materials,* 32, pp. 1499-1518.

Israel, Fred L., ed. (1967). "Treaty of Versailles", *Major Peace Treaties of Modern History 1648-1967* (New York: Chelsea House Publishers), pp. 1265-1533.

Muchlinski, Peter (1999). *Multinational Enterprises and the Law* (Oxford: Blackwell Publishers).

Multilateral Investment Guarantee Agency (MIGA) (1999). "Environmental Assesment Policy" (Washington: MIGA), http://www.miga.org/disclose/environ.htm.

Organisation for Economic Co-operation and Development (OECD) (1992). "The OECD Declaration and Decisions on International Investment and Multinational Enterprises, 1991 Review (Paris: OECD).

_____ (1998). "The Multilateral Agreement on Investment: The MAI Negotiating Text, 24 April 1998 (Paris: OECD), http://www.oecd.org//daf/investment/fdi/mai/maitext.pdf.

_____ (1999). "Review of the OECD Guidelines for Multinational Enterprises: Possible Revisions to the Chapter on Employment and Industrial Relations" (Paris: OECD), http://www.oecd.org/els/pdfs/labour/docs/multi.pdf.

_____ (2000). "The OECD Guidelines for Multinational Enterprises: Draft, Text and Commentary", 10 January 2000 (Paris: OECD), http://www.oecd.org/daf/investment/ guidelines/newtexte.pdf.

Trade Union Advisory Committee to the Organisation for Economic Co-operation and Development (TUAC) (1996). "Foreign direct

investment and labour standards" (Paris: TUAC), http://www.tuac.org/statemen/statemen.htm

United Nations (1976). "International Covenant on Civil and Political Rights", *United Nations Treaty Series,* 999, pp. 172-186.

United Nations Centre on Transnational Corporations (UNCTC) (1986). *Transnational Corporations in South Africa and Namibia: United Nations Public Hearings: Reports of the Panel of Eminent Persons and of the Secretary-General.* (New York: United Nations), United Nations publications, Sales No. 86.II.A.6.

United Nations Conference on Trade and Development (UNCTAD) (1993). *World Investment Report 1993: Transnational Corporations and Integrated International Production* (New York: United Nations), United Nations publication, Sales No. E.93.II.A.14.

_____ (1994). *World Investment Report 1994: Transnational Corporations, Employment and the Workplace* (Geneva: United Nations), United Nations publication, Sales No. E.94.II.A.14.

_____ (1996). *International Investment Instruments: A Compendium*, vols. I, II and III (New York and Geneva: United Nations), United Nations publication, Sales Nos. E.96.II.A.9, 10, 11.

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United States, State Department, The Secretary of State (1992). "Treaty Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment", http://www.state.gov/www/issues/economic/tr_9804_boliviabit.htm.

World Bank (1997). *World Development Indicators 1997* (Washington, D.C.: The World Bank).

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