

Corporate social responsibility: Myth or reality?

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Editorial

These days, corporate social responsibility (CSR) is common currency but a “currency” that is rather devalued. The phrase is so over- and poorly used that it begins to lose any meaning. Any proper definition of CSR would require a categorical standard of values. This is lacking. In fact CSR now means many different things to many people.

It has often become a convenient vehicle for companies to boast of their “social achievements”, distributing awards to countless business heroes, trumpeting their contributions to charities and lauding their own “struggles” for noble causes ranging from the elimination of child hunger to the preservation of endangered species – and even to the welfare of their employees.

The financial scandals in a number of major companies have led to demands for “accountability”. In fact, various corporations have used CSR for damage limitation and in order to avoid regulation, often through public relations operations aimed at restoring their tarnished image. According to a recent survey in the United States, only 18 per cent of Americans still have confidence in their top executives. This is the biggest loss of consumer and investor confidence since the Great Depression of 1929. Corporate social responsibility is often about image. Yet it could be about more than that. But for CSR to get beyond the stage of fine words and good intentions, not to mention parts of marketing strategies, more will have to be demanded of companies.

First, it must be clear that, despite all the talk about the voluntary nature of CSR, companies do actually have binding responsibilities vis-à-vis society, the countries in which they operate and the workers they employ. International labour standards and labour legislation must be respected by all companies, and governments have a duty to ensure their full implementation, including respect for the rights of workers.

Freedom of association and the right to collective bargaining, enshrined in two of the fundamental Conventions of the ILO, are not mere options. They are international obligations. Indeed, the ILO Declaration on Fundamental Principles and Rights at Work, unanimously adopted in 1998, makes clear that all ILO member States have an obligation, by the sole virtue of their membership of the Organization, “to respect, to promote and to realize” workers’ fundamental rights, defined as: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective

abolition of child labour; and the elimination of discrimination in respect of employment and occupation. And this whether or not they have ratified the relevant Conventions.

Yet the latest annual survey published by the International Confederation of Free Trade Unions (ICFTU) clearly shows the great deficit in the implementation of the principles of freedom of association. It details abuses in 134 countries. More than 200 trade unionists were killed in the course of one year and thousands were sacked for legitimate trade union activities. There can be no legitimate claim that corporate social responsibility will ever take the place of governments' securing full observance of workers' fundamental rights, through legislation and law enforcement.

And CSR must be more than mere adherence to law. It should ideally make a real input to social progress and overall development. According to many of its proponents, CSR is about the impact of companies on society's needs and goals. The point is well taken. But this is not at all the same thing as trying to redefine society's expectations in line with CSR. Respect for democratic institutions and processes should therefore be central to the concept. Independent trade unions are democratic institutions and the only legitimate voice for workers. Hence, CSR might be useful if it opens up the possibility for workers to define and defend their own interests. As ICFTU General Secretary Guy Ryder points out in his contribution to this issue of *Labour Education*, "Corporate social responsibility is useful if it provides the space for workers to protect their own interests – and damaging if it tries to fill that space." In other words, it is not the mission of companies unilaterally to decide what is good for people whom they can make no claim to represent. Workers' solidarity and collective representation should be recognized and taken as an important means of consultation and decision-making. Workers need legitimate power, not the human resources management concept of "empowerment" and subordination.

Similarly, where fundamental workers' rights are fully respected, sustainable development – often referred to as an objective by CSR promoters, and a key concern for trade unions – is also much more likely to be achieved. Organized workers are able to speak and act freely in both the workplace and the community. Participation by workers and their unions in addressing issues related to the environment is a powerful force for progress in terms of both the quality of development and its more quantitative aspects.

Democracy remains the best guarantor that social and environmental issues will be addressed in a progressive manner. And besides legislation, the voluntary initiatives most likely to succeed are those that rely on the strengths of democracy by engaging other stakeholders, including through tripartite initiatives, use of non-binding instruments and various forms of partnership and agreements.

Indeed, one of the few solid indicators of the impact, if any, of CSR would be the corporate practice of constructive industrial relations and the negotiation of agreements with trade unions. This is actually difficult to assess and puts clear limitations on the claims of the emerging social audit industry (see article by Philip Hunter and Michael Urminsky on page 47). In the absence of free trade unions and a collective agreement, there is no way to guarantee or verify that freedom of association exists. As one of our contributors stresses, "the group that is best capable of moni-

toring practices at the workplace is the one that labour standards seek to protect: workers and their trade unions”.

Certainly, one of the merits of corporate social responsibility is to have made it plain that in the era of globalization, national or local social dialogue is no longer sufficient. Improvement in the quality of life and in working conditions requires global social dialogue in addition to efforts at national and regional levels. Talking to oneself, as many companies have done through the adoption of unilateral codes of conduct intended to revamp their image, is not dialogue. Hiring consultants or “social auditors” ostensibly to verify (or rather justify) one’s behaviour is not dialogue. Social dialogue requires talking with – and listening to – legitimate interlocutors.

Global framework agreements between multinational corporations and global union federations (GUFs), a visible sign of global social dialogue, are gradually becoming more common. This is a welcome trend which could take corporate social responsibility one step further towards the social responsibility of business. Framework agreements are voluntary in the same sense that collective bargaining is, but they are legitimate and commit the parties to common principles. Good global industrial relations also provide a sensible way to solve problems, based on the recognition that conflict exists between workers and employers. In the interest of both parties, progress depends on dealing with conflict in a satisfactory manner rather than trying to suppress or ignore it.

The future of corporate social responsibility is not in replacing government responsibility. In fact, CSR will fully realize its potential only when it operates on internationally recognized standards. Global rules do not need to be invented. ILO core labour Conventions providing for full respect of freedom of association, the right to collective bargaining, non-discrimination in pay and employment, and the prohibition of forced labour and of child labour, are universally recognized as benchmarks. CSR begins with acceptance of all of them, spreading them throughout the companies and their suppliers, having a positive attitude towards trade unions and engaging in an active social dialogue.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is a particularly relevant instrument for promoting the social responsibility of business. It was adopted by governments, employers and trade unions working jointly in the ILO. It seeks to maximize the positive contributions that investment by multinational enterprises can make to economic and social progress and help resolve difficulties to which such investment may give rise. The OECD (Organisation for Economic Co-Operation and Development) Guidelines for Multinational Enterprises are government expectations for good corporate practice, primarily addressed to enterprises based in the countries that adhere to them.¹ But the Guidelines apply to worldwide operations of companies based in adhering countries. And more countries are now in the process of adhering to them. The Guidelines are comprehensive, with chapters covering general policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. The ILO Declaration on multinationals and the OECD Guidelines are the only instruments in the area of corporate social responsibility that are based on universal principles and standards.

These are the yardsticks against which the contribution of corporate social responsibility initiatives towards social justice and their meaningful impact on the world of work and on improving the quality of life of workers, if any, will be measured.

And hence their relevance, or not, to trade unions.

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Note

¹ Adhering to the Guidelines are the 30 OECD countries – Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States – plus Argentina, Brazil, Chile, Estonia, Israel, Lithuania and Slovenia.

Corporate social responsibility: Challenges and opportunities for trade unionists

The notion that companies are responsible not only to their stockholders (owners), but also to a broader set of stakeholders and to society at large, is one of the essential ideas behind what is now referred to as corporate social responsibility (CSR). Yet there are differing perceptions of CSR. They bring with them challenges and opportunities for trade unions – and for the ILO. The challenge for labour is to prevent CSR from becoming a substitute for the proper role of governments and trade unions. This will require a nuanced approach.

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Corporate social responsibility (CSR) has emerged as a significant subject of public policy, in many countries as well as internationally. Considered by some to be “the business issue for the twenty-first century”, CSR is assuming an increasing part of the larger debates over both globalization and sustainable development. There is no universally agreed definition of CSR. Differing perceptions of CSR have resulted in many misunderstandings and have created obstacles for trade unions in addressing the opportunities and challenges of CSR.

The meaning of corporate social responsibility

Some trade unionists look upon CSR as a desirable goal, while others in the unions see in it a dangerous attempt to create a substitute for the traditional roles of both governments and trade unions. And, of course, many trade unionists regard CSR as just “PR” (public relations). This article will consider various aspects of CSR and their implications for workers and their trade unions. It does not make recommendations about specific initiatives or organizations, but it does identify

some of the underlying issues that trade unionists should take into account. It is based on conclusions reached by a special Global Unions meeting (Stockholm, April 2003) held to consider the implications of CSR for trade unions.

CSR has a tangible dimension that cannot be ignored by trade unionists. It has spawned a new industry of consultants and enterprises offering CSR services to business. It has changed the industry of investment managers who organize funds and other investment vehicles as well as those enterprises that offer company information to investors. CSR is manifest in the newly created CSR departments found in numerous corporations, in “multi-stakeholder” initiatives involving non-governmental organizations (NGOs) (and sometimes trade union organizations), and in public-private partnerships linking business and governments. Governments, intergovernmental organizations and regional institutions such as the European Union have developed work plans and have created special units to promote CSR. Business schools and universities have also created CSR departments and units. CSR is the subject of numerous books, articles, web sites and entire journals. Thousands of businesses have adopted codes of

conduct, ethical principles and guidelines in the name of CSR.

CSR is also the proliferation of increasingly elaborate reports by corporations on their social responsibility or their “sustainability performance”. Part of this phenomenon is explained by an accounting industry that is positioning itself to sell assurance¹ for non-financial reporting in the anticipation that companies will eventually be forced to provide such reports and to have them verified.

Trade unionists cannot ignore the concept behind this phenomenon. As a concept, CSR has been used to counter or complement trade union objectives and is the subject of a debate over the relationship of business to society. The outcome of that debate will affect workers and their trade unions.

The term “corporate social responsibility” is not new, at least in academic literature, but the concept has evolved. Consider the following five definitions:

- “Corporate responsibility involves a commitment by a company to manage its role in society – as producer, employer, marketer, customer and citizen – in a responsible and sustainable manner. That commitment can include a set of voluntary principles – over and above applicable legal requirements – that seek to ensure that the company has a positive impact on societies in which it operates.”²
- “Corporate social responsibility are actions which are above and beyond that required by law.”³
- “It is not about ‘doing good’, it is not even about being seen to be doing good, it is about recognizing a company’s responsibility to all its stakeholder groups and acting in their best interests.”⁴
- “Corporate social responsibility is the overall relationship of the corporation with all of its stakeholders. These include customers, employees, communities, owners/investors, government, suppliers and competitors. Through effective CSR practices, organizations

will: achieve a balance between economic, environmental and social imperatives; address stakeholders’ expectations, demands, and influences; sustain shareholder value.”⁵

- CSR is a “concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.⁶

Among the most frequently recurring elements in the various definitions of CSR are its voluntary nature and its emphasis on management initiatives and on managing social impact, as well as the idea that companies have stakeholders whose interests must be taken into account.

Sometimes questions about the meaning of “CSR” lead to discussion of whether it is, in fact, the right term to use. Some prefer “CR” (corporate responsibility) because they believe that the word “social” does not include “environmental”. Others prefer “OR” (organizational responsibility) or “SR” (social responsibility) because they do not believe that business enterprises should be singled out or treated differently from other organizations or even governments. Still others prefer the term “corporate citizenship”, with its implication that a company should be regarded as an individual, having both rights and responsibilities. In any event, the term “corporate social responsibility” is used more often than the other terms.

The sources of the current concept

The current form of CSR emerged in the 1990s and represents a convergence of ideas and developments. The most significant source for the current CSR concept comes from concern over the environment. It is related to the idea of sustainable development, developed by the Brundtland Commission in the late 1980s and accepted by the Rio Earth Summit in 1992. Trade unionists played a major role in linking the environmental with the social during this period. They also succeeded in obtaining

recognition that there was a social dimension to sustainability. This became an integral part of the sustainable development concept.

One of the most important drivers of CSR is the idea that there is a “business case” for social responsibility. Behind this idea lies the widely accepted belief that measures that are good for the environment can also be good for the financial performance of a company.

Another aspect of the environmental influence on the concept of CSR was that the non-financial performance of an enterprise could be objectively measured, reported, audited and certified in ways similar to those that are used to measure, report, audit and certify the financial performance of a company. This thinking lay behind rapid and widespread acceptance of the term “triple bottom line” which links the financial, environmental and social performance of companies.

Yet another aspect of the environmental influence was the ecological approach to social issues represented in the concept of “stakeholders”. Stakeholders are considered to be any person or group affected by the activities of an enterprise. Corporations are expected to approach social issues by identifying the “impact” of their activities, just as environmentalists demand that corporations identify the impact (the “footprint”) of their activities on the environment.

A second important source of the current concept of CSR can be traced to the consequences of liberalization, deregulation and privatization policies in the last 20 years. Embraced by governments seeking “low-cost, low-maintenance policy”, CSR fits in well with the growth of public-private partnerships and the increasing use of NGOs as service providers for new forms of philanthropy. A widely held view was that, as business assumed more of the tasks that society had previously expected governments to perform, the expectations of business with respect to its social responsibilities would increase.

A third source of the current concept of CSR relates to the codes of conduct

adopted by companies and meant to be applied to the labour practices of their suppliers and subcontractors. These “supplier codes” were a response to negative publicity related to exploitation and abusive labour practices in the production of famous brand-name goods. These codes raised questions as to how the companies that were adopting them could implement them – and how they could prove to the public that these codes were actually being respected. The search for answers to these questions motivated a lot of private standard-setting in the social area and led to the creation of an industry of private labour inspectors, or social auditors, as well as related multi-stakeholder initiatives which came to have a profound impact on the CSR phenomenon.

The supplier codes were important to the evolution of the CSR concept because they addressed questions of business responsibility raised by two significant and long-term developments. The first was the impact of the new forms of business organization and relationships, brought about in large part by outsourcing and subcontracting. Increasingly elaborate international chains of production (value chains) were making it easier for business to avoid its responsibilities at the same time that various pressures were making it difficult for many governments, especially in developing countries, to fulfil their responsibilities.

A second and related development was the increasing importance of intangibles, including brand names and reputation, in determining the worth of an enterprise. The supplier codes became a means of “risk management” for brand reputation. Codes and management systems addressing other reputation risks, such as possible bribery and corruption scandals, were also developed. Risk management became one of the strongest components of the business case for CSR and codes of conduct became a central feature of CSR.

Another source for the present concept of CSR is the incorporation of ideas drawn from human resource development (HRD) concerning the retention or training of the

workforce. Existing thinking and practices in this area fit well with the CSR concept. Companies came to describe their HRD policies as an aspect of their social responsibility towards their employee “stakeholders”, and as evidence that they were taking the “high road” to being competitive. Industrial relations and collective bargaining are hardly ever mentioned, even where the subject is the company’s relations with its employees. Of course, the impact of successful employee retention on society is less significant for companies that outsource most of their work. Moreover, these kinds of HRD policy cannot have much of a role in low-skill, labour-intensive industries operating in environments where basic human rights are not respected.

The nature of CSR

The most controversial issue in the definition of CSR centres on the idea that it is about the voluntary activities of companies “above and beyond legal requirements”. The question is not whether companies should respect the law – some defend the voluntary nature of CSR by saying that it assumes compliance with law (“takes compliance as a starting point”). Although it is increasingly accepted that CSR is about voluntary activities, this has not ended the controversy over the voluntary nature of CSR. Two unresolved questions keep the controversy alive. The first concerns the adequacy and role of business regulation and the second is whether business should determine its social responsibilities where society has not incorporated its expectations of business into legally binding requirements. Some see CSR as an alternative to regulation, and some promoters of CSR want acceptance of its voluntary nature to translate into acceptance that voluntary initiatives are the sufficient and preferred means of addressing the social consequences of business activity.

If CSR is to be a voluntary concept, then it is important that it be distinguished from other concepts concerning the relationship

between business and society. The term “corporate accountability” (at least in the English language) is now being used by some to refer to the obligations imposed on corporations by governments, and to the corporate governance framework established to hold management accountable. Thus, corporations are said to be “accountable” in a binding sense both to their shareholders and to the governments under whose laws they are created and must operate. There is little difference in English between the meanings of the words “accountability” and “responsibility” (a similarity that does not exist in some other languages). There is, however, a need for terms that can be used to distinguish between the regulatory and corporate governance idea in this use of the term “corporate accountability” on the one hand, and the voluntary activities idea most often meant by the term “corporate social responsibility” on the other. It is widely accepted that regulatory and corporate governance frameworks can shape corporate behaviour more than CSR principles or initiatives. There is also growing recognition that these regulatory frameworks are inadequate.

Distinguishing the voluntary from the binding is not the only important distinction. The voluntary nature of CSR is often interpreted by business to mean that, since CSR activities are not binding, they are always optional and therefore can be determined solely by business. Through the use of voluntary codes and other forms of private standard-setting, companies decide what they consider to be their responsibilities to society. Implicit (and sometimes explicit) in these self-definitions is that there must always be a “business case” – that is, a positive financial result from the responsible behaviour. Often, this private standard-setting has resulted in a redefining or reinterpreting downward by business of already-established norms. Norms need not be binding to be applicable and the expectations of society with respect to the behaviour of business are manifest in non-binding instruments at the national and international level as well as in other forms of “soft law” and practices which

may vary among cultures and societies. If CSR is only a voluntary concept, then there must be another concept that could be called “the social responsibilities of business”. This would enable us to distinguish the CSR activities, which are optional, from the legitimate expectations of society which are always applicable, even where they are not binding.

It is in the nature of CSR to be a management concept – it really does not distinguish the company from its management and is, in the end, only about management decisions and systems that management should put in place to make and implement decisions. Understanding the social impact of a company involves understanding that the management of a company, on the one hand, and the company as a whole, on the other, are not the same thing. As UN Secretary-General Kofi Annan observed in July 2000 when describing the participants in the Global Compact, “Labour unions can mobilize the workforce – for after all, companies are not composed only of their executives.”

CSR is international in nature. Although it can take different forms in different countries, it is more often than not about the internationally applicable behaviour of multinational companies. CSR has a relationship to globalization, is the subject of an international debate and has attracted the attention of intergovernmental organizations.

An environment and not an option

Trade unions did not create CSR. However, neither the concept nor the phenomenon will disappear should trade unionists choose to ignore either.

CSR should not be viewed as an end in itself. Nor should it be regarded as a tool to be used as needed and returned to the toolbox. Rather, CSR is a convergence of ideas and real developments that is changing the environment in which trade unions relate to employers, business organizations, NGOs, governments and international and intergovernmental organizations. This

new environment is not an option. Trade unionists can, however, help to shape it. But they must first recognize both the challenges and the opportunities that the environment holds for workers and their trade unions. Rising to the challenges and taking advantage of the opportunities will require a nuanced approach.

CSR has provided tools to obtain leverage over companies. The new environment has resulted in codes of conduct, in greater support for trade union-driven shareholder actions and in improved follow-up procedures to the OECD Guidelines for Multinational Enterprises. While these opportunities should not be overlooked, the challenges for trade unions must not be ignored.

Challenges and opportunities

The following considers some of the challenges and opportunities for workers and their trade unions in seven aspects of the CSR concept and phenomenon:

The challenges and opportunities of a voluntary concept

The experience of workers and their trade unions is that, in the end, their rights and interests are advanced or protected only through the proper application of good laws and regulations or through their own self-organization for such purposes as collective bargaining. Trade unionists know that paternalism is no substitute for the proper role of government. Their experience is that regulatory frameworks are needed to ensure that business activities are socially responsible.

The challenge for trade unionists is to prevent CSR from becoming a substitute for the proper role of governments and trade unions. The opportunity for trade unionists is to use CSR as a way of promoting a culture of legal compliance and respect for standards as well as to promote good industrial relations and respect for the role of trade unions. This suggests

that trade unions should take a nuanced approach to CSR issues, similar to the approach that many trade unionists now take with respect to the codes of conduct that are unilaterally adopted by companies and intended to be applied to their suppliers. The beneficial effects of these codes are considered to be indirect and depend on whether they create space for governments and trade unions to function properly.

Of course, the use of CSR by business to avoid regulation or to promote privatization of the proper functions of government should be opposed. The greater problem, however, may lie with the use of CSR by governments at the international level. Governments seek to balance, on the one hand, their own binding obligations with respect to property rights in trade and investment agreements with, on the other hand, urging voluntary actions by business to respect human rights.

There is growing recognition in many countries, as well as internationally, that certain frameworks meant to hold business accountable are inadequate. Some of the most important of these frameworks have received international attention and are the subject of international standards. They include corporate governance, accounting and reporting as well as bribery and corruption.

The challenges and opportunities of the stakeholder idea

The idea that companies are responsible not only to their stockholders (owners), but also to a broader set of stakeholders, is one of the essential elements of the CSR concept. Much of CSR is about how management should identify and “engage” stakeholders and how managers should determine, measure and report the impact of company activities on stakeholders. Of course, identifying and engaging all stakeholders is impossible and the practice is most often to identify and engage NGOs as surrogates for the real stakeholders.

In the CSR world, NGOs are considered to be synonymous with civil society – but

there is a difference, and not all NGOs are part of civil society. Indeed, many of the most important civil society organizations are often not considered to be NGOs. Depending on the situation and how they function, organized religion and political parties are key civil society organizations. As a concept, civil society is more than the relationship between the individual and the state and is more about the relationship of individual members of society to each other. The growth of some kinds of NGO results from attempts to substitute for the failure of civil society and explains why the visibility and importance of NGOs is increasing, even in situations where genuine civil society institutions are weaker than ever.

There are some conceptual difficulties with the stakeholder idea. One is that not all stakeholders are equal. Another is that not all stakeholders have a legitimate claim on the behaviour of the company arising out of the interests of society. Indeed, there are some stakeholders whose existence does not add to the responsibilities of the company and may even reduce them. Consider situations where a company has outsourced work to other enterprises, even where this is in order to avoid responsibilities. In such cases the number of “stakeholders” has increased but the responsibilities of the company have not changed or may have decreased.

Some misuses of this overused term reflect conceptual difficulties. The term “stakeholder” is supposed to contrast with the term “shareholder” and concerns relationships with a company. “Stakeholders” is an inappropriate term to describe the relationships of governments with constituents. Citizens in democracies are more analogous to shareholders.

Trade unions have welcomed acceptance of the stakeholder idea and have used it in their efforts to push for corporate governance frameworks that take the interests of society into account. They have supported the stakeholder idea up to a certain point – not, however, when it substitutes for social partners. The most effective and proven means of increasing

the beneficial impact of business activities upon society has been through industrial relations and especially collective bargaining in the framework of effective protection of rights and regulations by governments. Collective bargaining, of course, requires partners and recognition that companies are more than their management. Indeed, other than governments, the only real counterbalance or check on corporate power has been trade unions. As mass representative organizations, trade unions are almost always among the largest civil society organizations. But as representatives of employees and as vehicles for collective bargaining, trade unions are also private economic actors that are important organizations in their respective industries or economic sectors.

This dual nature of trade unions underlies the idea that industry has two sides. The existence of two sides in turn is the basis for social partnership and social dialogue. These concepts are reflected in the tripartite structure of the ILO, through the consultative arrangements at the OECD and in the many and various social dialogue structures that have been established in many countries. Some private CSR “multi-stakeholder” organizations, including the UK-based Ethical Trading Initiative and the Global Reporting Initiative, recognize this dual nature of trade unions and distinguish between trade unions and NGOs in their structures.

Often, company CSR departments do not distinguish between NGOs and trade unions and many do not consider trade unions at all. This can be true even for companies whose employees belong to trade unions. One reason for this is that, within the company, CSR activities tend to be located in a separate place from human resource/personnel functions. Where CSR departments fail to understand the dual nature of trade unions as industrial organizations that are also civil society organizations, they also fail to appreciate how a company can develop genuine roots in a community through the trade unions of its employees.

The challenges and opportunities of standards and standard-setting

Trade unionists seek labour standards and their application. The CSR phenomenon and especially the codes of conduct for suppliers have provided an opportunity to promote greater recognition and appreciation of ILO standards than ever before. Indeed, it was the international trade union movement that introduced the use of ILO international labour standards into the debate over codes of conduct covering labour practices.

Trade unionists face, however, a number of serious challenges with respect to standards. Business is using codes of conduct and other forms of private standard-setting in the social area to redefine or reinterpret standards so as to make their responsibility seem less than it really is. For instance, many companies promise to respect freedom of association only where it is lawful and accept no responsibility in this regard for operating in environments where this basic human right is not permitted. Although the right to collective bargaining is now recognized as one of the fundamental rights at work, it is rarely included by business even where respecting workers’ freedom of association has been accepted.

Many businesses will claim that ILO Conventions do not apply to companies. This is to ignore the fact that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy constituted recognition, by employers as well as governments and workers, that the underlying principles of many ILO Conventions could and should be applied to the behaviour of business. The fact that ILO Conventions establish definitions and are accompanied by jurisprudence to clarify their meanings in specific circumstances has not discouraged business and its CSR consultants from redefining more conveniently terms such as “child labour” or from promoting employer-dominated mechanisms to substitute for freedom of association.

One way that companies use private standards to lower expectations of their

behaviour is by not distinguishing the different purposes of codes. Codes that are appropriate for one enterprise to apply to the labour practices of its suppliers or subcontractors will not be appropriate to apply to activities that the enterprise directly owns or controls. The best supplier codes rightly stress observing minimum internationally recognized human rights standards such as those identified by the ILO as being fundamental rights at work. But existing expectations concerning the responsible behaviour of business go well beyond respecting basic human rights. There is, for instance, a big difference between respecting freedom of association, on the one hand, and having good industrial relations, on the other. Business should not avoid the broader range of expectations of society, especially when set forth in legitimate and always applicable instruments such as the OECD Guidelines for Multinational Enterprises.

Business is used to participating in technical standard-setting processes where the purpose is to create or promote markets. An example of this can be developing standards so that products can be interchangeable. In recent years, there has been an increase in private standard-setting activities in the social area, which are modelled on the processes involved in establishing market-promoting technical standards. This kind of social standard-setting lacks both the genuinely representative structures and the competence necessary to give it legitimacy. Trade unionists must work to make sure that private standard-setting and self-regulation do not negatively impact on the legitimate standard-setting functions of the ILO or of governments.

Private standard-setting can take many forms. Programmes and organizations that seek to collect and disseminate “best practice” in this area can even be considered to be engaging in a form of social standard-setting.

The challenges and opportunities of reporting and verification

Trade unionists seek corporate transparency. A “true and fair” view of the performance of the employer is considered indispensable in collective bargaining. Trade unions were among the first to demand that companies account for their social impact and to support the idea that companies must report on their social responsibilities. “Social reporting” has become one of the most important CSR activities – and an opportunity for trade unionists.

Agreeing on what a company should report to the public about the social impact of its activities or its contributions to society can be one of the most important forms of standard-setting. For this reason, the Global Unions decided to participate in the Global Reporting Initiative, an international multi-stakeholder initiative designed to develop guidelines for company reports. Sometimes referred to as “sustainability reporting” and “triple bottom line reporting”, this non-financial reporting is heavily influenced both by financial reporting practices and by experience from reporting on environmental impacts. The emphasis is on quantifiable information that is also considered objective (unbiased or neutral), comparable and auditable.

Among other things, reporting standards involve identifying aspects of CSR and deciding on “performance indicators” that relate to these aspects. One of the many challenges is choosing indicators that really indicate the aspect to be measured. For instance, consider the number of strikes or of days lost due to strikes. These figures would be poor indicators for aspects such as the quality of industrial relations or for respect of freedom of association. The same figures could be present in situations where there were good industrial relations, bad industrial relations or no industrial relations as well as in situations where freedom of association was respected or where it was repressed. Another challenge is deciding the appropriate boundary of the reporting company. The human resource policies applied to

the core headquarters employees will say little about the impact on labour of companies who outsource most of their work.

One of the major influences on determining reporting content is a nascent industry of consultancies offering assistance to companies in preparing reports, as well as other enterprises, often linked to the accounting industry, offering services designed to enhance the “credibility” of these reports by providing “verification” or “assurance”. The more important drivers for “assurance” will not be campaigning organizations seeking to make companies prove their CSR claims, but the companies themselves who want to reduce liability for their public claims – and investors demanding reliable reporting of non-financial performance that has a bearing on the financial performance of the company.

The influence of this reporting and assurance industry on reporting standards is becoming a significant challenge to trade unionists. Many of the practices and principles that underlie financial and environmental reporting may not be appropriate to the social dimension, where a high level of intangibles must be taken into account. Albert Einstein said, “Not everything that can be counted counts, and not everything that counts can be counted.”

Trade unionists need to be careful about verification. Consider the behaviour of “social auditors” engaged by companies to “independently monitor” workplaces in their supply chain. These enterprises regularly report compliance with respect for freedom of association, including in places where there is no trade union or where the government does not permit the exercise of the human right to unionize. These “social auditors” rarely understand the link between the suppression of trade union rights and the exploitation that their activities are ultimately intended to prevent. For various reasons, such “social auditors” are disposed to show that workers can have a “voice” without the genuine representation that comes from trade unions or to demonstrate that it is possible to source from countries with repressive regimes without using exploited labour.

Many of the ways in which workers can be intimidated, discouraged or prevented from joining or forming trade unions are difficult to detect. Because of this, the only real test that workers’ freedom of association is respected is the presence of an independent or free trade union which is actually permitted to function. Similarly, the only good test for respect of the right to bargain collectively is a collective agreement that is respected. The CSR industry has handled the subject of trade union rights poorly for various reasons, including the confusion of management interests with those of the company and the failure to recognize that governments, and not management alone, must function properly if human rights are to be respected.

Trade unions were among the first to demand that companies, applying codes of labour practice to their suppliers, have these suppliers “independently monitored”. Later, it became clear that what was being demanded was unrealistic – the word “monitoring” implies a continuous presence or a frequently repeated activity of the kind that companies and the “social auditors” that they engage cannot perform. The only real system of “independent monitoring” of workplaces is by the workers themselves through their trade unions. Workers are able to speak up about workplace conditions through their trade unions or directly because of the protection afforded by their trade unions. This is not to say that there is no role for private workplace inspection or verification of supplier code compliance. The challenge for trade unionists is to ensure that standards for “social auditors” and private workplace inspection are developed that are compatible with the best practices of the labour inspectorate, promote a culture of compliance with law and are consistent with the role of industrial relations. In the view of many, this is a job for the ILO.

The challenges and opportunities of socially responsible investment

The interest in socially responsible investment (SRI) is part of the CSR phenomenon. It has led to the growth and popularity of investment funds claiming to invest in companies that are socially responsible, and to the growth in the number of enterprises that provide information to investors about the social or environmental performance of companies. This has increased opportunities for trade unionists to obtain leverage over corporate behaviour through means such as introducing shareholder resolutions at annual company meetings. Such use of workers' capital has helped to shape the CSR environment. These tactics have been applied mainly in countries where there is an "equity culture" and where workers' or other institutions, such as religious groups, with an interest in the social responsibility of business, have an influence on the investment decisions or the proxy voting of pension funds.

The interest in SRI may also be of use for trade unionists in the debate over corporate governance. It offers opportunities for trade unionists in some countries to promote a long-term perspective on share value performance in capital markets that serves the interests of worker beneficiaries of funds by encouraging responsible corporate behaviour.

There are different ways that SRI can be used to influence corporate behaviour. One is by choosing investments through screening. In applying a screening strategy, investors either do not invest in companies (or divest themselves from companies) that fail to meet agreed criteria concerning various aspects of CSR, or else invest in "ethical" or "responsible" companies that meet certain criteria. The screen can operate on either positive or negative criteria. While there is logic to a CSR screening system perfectly constructed and universally applied, the actual situation poses obstacles to creating any such system which may not be possible to surmount. These include getting the right criteria (the choice

of standards) as well as obtaining the right information about company compliance. One risk of screening is to eliminate from share ownership the very institutions that would be likely to engage corporate boards and management over reform. Screening is a different, but not necessarily competing, approach to active share ownership.

SRI challenges trade unionists. The justification for insisting that companies be socially responsible requires a "business case", usually based on risk management and liability and associated with protecting intangible assets such as brand value or company reputation. The danger is that investors or enterprises supplying CSR information about companies will reinterpret or redefine the social responsibilities of business to conform to this need. The problem is that the "sustainability" of an enterprise is not always the same as the "sustainability" of society, as expressed in the concept of sustainable development. In other words, there is not always a business case for socially responsible behaviour. This is one of the reasons why checks on corporate power through regulation and industrial relations are needed.

SRI is about the role of shareholders in making companies more socially responsible through their investment decisions, through the exercise of their voting rights acquired through share ownership or through participation in a dialogue of company owners and company management. There are, however, important limits to this approach. Even in situations where workers are important shareholders, efforts to strengthen the rights of shareholders in the corporate governance framework will not necessarily advance workers' interests. Workers have both common and competing interests with their employer. Although workers' capital can be a positive influence and its power should be developed, it can never be a substitute for trade unions.

The challenges and opportunities of social rating, awards and social labels

CSR has spawned various means of judging companies. For trade unionists, the most useful have been those that can be used to embarrass companies into changing their behaviour or that otherwise inhibit their behaviour. Sometimes, judgements can be comparative, as in the social ratings of companies that enterprises provide to investors. Some of these enterprises want trade unions to provide information about companies. Under certain circumstances, providing this kind of information could raise practical and ethical problems. Ethical questions could, for instance, arise in situations where a rating agency offered to compensate a trade union for information that the agency would make proprietary.

Comparing companies could pose problems for trade unions choosing to do so. Rating companies comparatively could interfere with the central trade union purpose of engaging management and defending the interests of union members. Ratings can be affected by where a company does business or by its home country. The trade union experience with multinational enterprises (MNEs) is that the host country environment is a more reliable predictor of company attitudes and behaviour than the home country environment of the MNE. National trade unions may not be appropriate organizations to judge the overall behaviour of an MNE.

Not surprisingly, business enterprises prefer positive judgements to “naming and shaming”, and the CSR phenomenon features positive incentives such as awards and labels. These can concern labour issues, and they range from human resource practice awards at home to labels related to supply chain codes abroad.

Awards that purport to promote “best practice” can be seen as a form of standard-setting. The implicit message of awards seems to be that companies do not require regulation or collective bargaining to be “good employers”. These kinds of award are usually based on management reports and employee surveys conducted by man-

agement. Trade unions are often bypassed, and “experts” engaged to judge the reports may not be familiar with industrial relations. The source of good working conditions is always presented as the generosity of management, even where these conditions were collectively negotiated. Not surprisingly, companies with poor industrial relations records or anti-trade union policies are just as likely, or more likely, to win awards. Awards for human resource management or conditions of work may well be the most paternalistic aspect of CSR.

There is little difference between giving a company an award and authorizing a company to use a label. Labels for products that, in effect, certify the labour practices involved in the manufacture of the product pose special problems. Unlike product content or safety labels, the claim cannot be verified by testing the product itself. A label covering labour practices could only be credible if there were constant policing of the workplace – a condition that exists only where secure and independent trade unions are permitted to perform their proper functions and even then, only where they are supported by enforceable and enforced labour regulation in an open and democratic society.

Social labels for products are unlikely to be credible. There is reason for moral concern where industry associations or governments authorize the use of labels intended to create a commercial advantage without also creating a liability for the abuse of the label. Although social labels have the potential to provide leverage over a company where problems are discovered, the label itself may not promote dialogue within the company.

The challenges and opportunities of engaging employers

The CSR concept can be contradictory. It stresses the importance of identifying and engaging stakeholders but, at the same time, stresses unilateral management action. The experience is that CSR is more about management systems and check-

lists than genuine dialogue. Not surprisingly, management prefers to choose its “stakeholders” for dialogue. Too often, companies engage NGOs over workplace issues and avoid trade unions. Although the “empowerment” of workers is a recurring CSR theme, this term almost never refers to the genuine power that workers acquire through their trade unions.

Co-operation between trade unions and NGOs has worked best in this area when it has been based on a full understanding of their respective and complementary roles. This issue is not about competition between NGOs and trade unions. It is, however, about the meaning of representation and the responsibility of business with respect to trade unions and industrial relations. Although both trade unions and NGOs can be advocacy organizations, only trade unions are representative organizations of workers. This is true even in industries or countries where trade union membership is low (where, for instance, employers resist recognizing trade unions or governments set low standards or fail to enforce standards). In many countries, national industrial trade unions should be considered the representative organizations for workers in an industry, even if not all workers are members or not all companies in the industry are parties to collective agreements. Similarly, at the international level, the various Global Union Federations (GUFs) are the representative organizations of workers in their respective industries or economic sectors. GUFs are the international trade union organizations representing workers by sector.

Industrial relations and social dialogue require representative structures. There is, of course, a big difference between the CSR approach to workers and the industrial relations approach. Industrial relations are based on the understanding that, in the relationship between labour and management, not everything can be “win-win”. In this relationship, there will always be conflict and competing interests. Collective agreements anticipate problems and are about an orderly means of resolving them. CSR seems to be more about dealing

with problems if found or asserting the absence of problems through the application of management systems. The challenge for trade unionists is to identify ways to engage employers in the CSR environment so that it involves genuine social dialogue and promotes good industrial relations. This requires representative structures that are also democratic and legitimate.

In recent years, a number of “framework agreements” have come into effect between multinational companies and the GUFs. Some consider framework agreements to be negotiated codes of conduct with complaints systems and therefore superior to “unilaterally adopted” company codes of conduct. This is, however, not a useful way of looking at these agreements, which are qualitatively different from codes of conduct. The importance of these agreements does not stem from any complaints procedures or even their content. The agreements are important because they constitute a formal recognition of social partnership at the global level. Although they are closer to collective agreements than to codes of conduct, framework agreements are intended to complement but not substitute agreements at the national or local level. Because GUFs are the representative organizations of workers in an industry at the global level, framework agreements do not pose the serious problems that can arise where national trade unions “negotiate” with companies’ codes of conduct or similar CSR instruments that are meant to be applied globally. National or local agreements should not be negotiated at the world level, and global agreements should not be negotiated at the local or national level. The challenge for trade unionists is to make sure that what is on the negotiating table determines who is around the table.

Conclusion

CSR is neither an objective nor an option but an environment offering challenges and opportunities that can also be shaped. The trade union response to CSR will re-

quire nuanced approaches. Trade unionists have much experience in such approaches. They recognize both common and competing interests with their employer. It should be no surprise that, while trade unionists recognize an interest in the sustainability of their employers, they also understand that this kind of sustainability is not the same as is meant by “sustainable development” in terms of society and the environment. Trade unionists encourage business to take the “high road” with respect to their competitive behaviour. However, they also understand that the business case for social responsibility is, more often than not, insufficient to guarantee socially responsible behaviour and that countervailing power, in the form of regulations and trade unions, is needed.

A nuanced approach is incompatible with an approach that encourages activities uncritically by letting “1,000 flowers bloom”. Trade unionists should resist the argument that, even where initiatives and activities do little good, they are better than nothing. It is now clear that many CSR activities are having a substitute effect for the role of government and are also substituting for genuine dialogue.

Trade unionists can do much to inform the CSR debate. They can recall their experience with paternalism. They can remind governments and business that collective bargaining and social dialogue are the private mechanisms that have been the most important and effective means for society to maximize the positive and minimize the negative social consequences of business activities.

Because CSR is based on voluntary activities, it is of critical importance that a different term such as “the social responsibilities of business” be used to refer to the legitimate expectations of society with respect to the behaviour of business, whether or not these expectations are binding. CSR must not be a means for business to redefine or reinterpret its existing responsibilities. CSR must not become a substitute for

the proper functions of government. Business does not possess the political legitimacy to define its responsibilities or substitute for government. Many of the problems brought about by globalization are governance problems that business is in no position to resolve.

Because private business activities are not the whole problem, they cannot be the whole solution.

CSR has an international dimension that requires an international response. This response can include engaging business internationally and through various international initiatives where this is appropriate. The ILO has much to contribute to the debate over the social responsibilities of business and to the CSR phenomenon. The most important contributions that the ILO could make concern standards and standard-setting, as well as social dialogue and tripartite consultation. The challenges for the ILO will be to resist adopting a management system approach to CSR and to protect its leading and central role as a standard-setting organization for the world of work.

Notes

¹ In the context of CSR, “assurance” usually means “verification” – Ed.

² United States Council on International Business, *Advancing Corporate Responsibility – A statement by the USCIB Corporate Responsibility Committee*, November 2002.

³ Cited as “McWilliams and Siegel 2001” and found at the web site of Response Consulting, <http://www.response-website.com>

⁴ Response Consulting, <http://www.response-website.com/What-is-corporate-social-responsibility>

⁵ George Khoury et al.: *Corporate social responsibility: Turning words into action*, The Conference Board of Canada, Ottawa, 1999. <http://www.conferenceboard.ca>

⁶ Commission of the European Communities: *Communication from the Commission concerning corporate social responsibility: “A business contribution to sustainable development”*, July 2002, COM (2002) 347 Final, p. 5.

Sustainable bargaining: Labour agreements go global

Global framework agreements between multinational corporations and global union federations are becoming more common. What can they achieve, and how do they relate to ILO standards?

Ian Graham
Journalist

Most of the world's biggest employers are now global. And most of the world's unions are affiliated to the sector-by-sector Global Union Federations (GUFs). Companies and unions are beginning to take the obvious step. They are signing global agreements.

The first of these dates back to 1988. Since the turn of the millennium, the trend has been gathering pace. By March 2003, there were 21 global agreements.

Often called "framework agreements", these packages cover issues ranging from trade union rights and collective bargaining rights to information and consultation, equal opportunities, safety and health, minimum wage standards and the banning of child labour and forced labour.

The companies signed up so far are Accor, AngloGold, Ballast Nedam, Carrefour, Chiquita, DaimlerChrysler, Danone, Endesa, ENI, Faber-Castell, Fonterra, Freudenberg, Hochtief, IKEA, Merloni Elettrodomestici, Norske Skog, OTE, Skanska, Statoil, Telefonica and Volkswagen.¹

On the union side, each agreement has been reached with the appropriate GUF – namely, the ICEM (organizing workers mainly in chemicals, energy, mining and process industries), the building and woodworkers' IFBWW, the metalworkers' IMF, the food, agriculture, hotel and allied workers' IUF or the skills and services international UNI.

But most multinationals already have their own codes of conduct, and these usually cover labour relations. So what is the difference between framework agree-

ments and codes of conduct? At the global level, there is a crucial difference between a unilateral company code of conduct and a union-management agreement. It is like, at the national level, the difference between a unilateral company declaration of policy, perhaps contained in a "mission statement" or, in more detail, in an employee handbook, on the one hand, and a collective bargaining agreement on the other. An internal code has generally been written by the company itself for its own purposes. Its code applies, if at all, through processes controlled by the company. Framework agreements give the signatory GUFs the right to raise any alleged breaches of the agreed provisions with corporate headquarters management. Often, the agreements specify regular meetings for that purpose, but even without such meetings, channels exist for communication when needed, including on urgent matters. In other words, the purpose of unilateral company measures is often to certify or try to prove in one way or another, that a company respects a certain number of standards. Framework agreements assume that there will inevitably be problems inside companies – they do not assume that companies are perfect and they in no way guarantee company conduct. Rather, they provide practical, effective and timely means to resolve problems in the areas addressed by the agreements. In effect, framework agreements are part of a global social dialogue process that is the mirror image of unilateral codes. The agreements promise little, but can deliver a lot.

Supplementing regulation

However, while some firms might see voluntary initiatives as a substitute for tighter regulation, that view would not be shared by most unions, particularly with reference to framework agreements. They would be seen as industrial relations that can deepen and improve regulation of the workplace, but not as a replacement for binding legal frameworks.

The agreement between construction multinational Ballast Nedam and the IFBWW “provides an added value for Ballast Nedam”, said IFBWW General Secretary Anita Normark at the signing in March 2002.² “The verification of the efforts of the company to live up to international standards can be facilitated through the use of a global union network which IFBWW can provide with 289 affiliates in 125 countries!” But, she added, “It is also important for governments to provide a legal framework for the implementation of global ILO and OECD standards.”

“The starting point is the need for minimum and agreed global labour and environmental standards”, said IUF General Secretary Ron Oswald.³ These should be “established internationally through bodies such as the ILO and put effectively in place and enforced at national level”. There is, he insists, “no substitute for good national legislation and nationally enforced social and environmental protection. Nothing that we do with corporations or that corporations themselves do should be seen as substituting for this.”

Not coincidentally, the agreements concentrate on many of the issues covered by ILO Conventions, particularly core Conventions. The texts make prominent mention of those standards, often referencing them by number and name. Most cited are the two Conventions best known to trade unionists – No. 87 on Freedom of Association and Protection of the Right to Organise, and No. 98 on the Right to Organise and Collective Bargaining. The effective exercise of these rights enables workers to protect their rights and interests in a number of other areas. However, several

of the agreements cite specific ILO Conventions as the most important *examples* of those to be applied. In these cases, there is an implicit commitment to ILO standards in general. It is important to note that the selection of Conventions is related to the scope of agreements. It may not be considered necessary, for example, for an agreement that is restricted to direct employees of a major multinational to cover child and forced labour.

In fact, the relationship between ILO standards and the GUFs now parallels the interaction between national industrial legislation and national industrial unions. From the nineteenth century onwards, it was clear that even the best labour legislation needed to be backed by a strong union presence in the workplace. Conversely, that presence could be assisted by good industrial law. And the more farsighted employers realized that good law and good agreements with the workers’ representatives were in their own best interests. Today, those same lessons are being learned at the global level.

“Give Freudenberg Group credit for demonstrating a social conscience”, urged the industry journal *Rubber and Plastics News*.⁴ But, it continued, “Give Freudenberg even more credit for being smart.” The company had just signed a global agreement with the ICEM. “While confirming policies it probably already pursues, Freudenberg has taken a big step toward keeping labor relations on an even keel”, *Rubber and Plastics News* reported. “That gives it an edge over competitors that take a more combative approach to labor.”

ILO touchstones

Fifteen global framework agreements are analysed in some detail in the ILO’s new *Guide to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*.⁵ It finds that nearly all the agreements incorporate the Declaration’s fundamental principles on the elimination of child and forced labour, discrimination in employment, and respect for freedom

of association and collective bargaining. On the other hand, some issues covered in the ILO Multinationals Declaration feature less often in the agreements. For example, less than one global agreement in five includes ILO standards on vocational guidance and training.

This may well change as the number of global framework agreements increases and as existing agreements are renegotiated. As the *Guide* says, “The ongoing process of achieving decent work involves the building of sound relations within the workplace and community of operation, based on closer commitments among business, unions and government to work together. Because of its global scope, the Declaration is well suited for use, directly or indirectly, in providing baseline content for framework agreements.” In addition, the OECD Guidelines for Multinational Enterprises have provided definition in some agreements to respect for freedom of association and may, in the future, be even more closely linked with framework agreements.

Meanwhile, the sectoral coverage of the framework agreements is continuing to grow. The automotive industry is one of the latest sectors to join the trend. In June 2002, Volkswagen (VW) signed its Declaration of Social Rights and Industrial Relations with the International Metalworkers’ Federation (IMF) and the VW Global Works Council. A few weeks later, DaimlerChrysler adopted a similar document, Social Responsibility Principles, in an agreement with its World Employee Committee, signed in conjunction once again with the IMF.

The pioneers of framework agreements were the food and allied workers’ international IUF and the French-based multinational Danone. Negotiations for their first agreement began in 1985. Since then, they have signed additional agreements on trade union rights, on skills training and on the measures to be taken “in the event that new techniques [or] organizational processes are implemented, or in the case of substantial changes in production volume, transferral of substantial part of production, partial or full closings of facilities and, in general, in all situations

whereby working conditions or the nature of employment contracts are significantly affected.”

Of these texts, “the most crucial for the IUF is the agreement covering respect for trade union and collective bargaining rights”, said IUF General Secretary Ron Oswald.⁶ “It refers to ILO Conventions, specifically Nos. 87, 98 and 135 since we believe it is crucial that ILO Conventions be encased in such an agreement.”

But “The most challenging and innovative of these internationally applicable agreements is the one that relates to handling the impact of changes in company strategy on employment”, he said. “The agreement specifically addresses procedures for negotiation when restructuring exercises are proposed.”

Put to the test

Due to that provision, the Danone package underwent the toughest real-life test so far faced by any of the framework agreements.

“In 1998, a proposed plant closure in France was subject to lengthy consultations according to French labour law”, Oswald explained. “Local unions subsequently invoked the international agreement, admittedly later in the process than we would have liked. Invoking the Danone/IUF agreement led to an additional review of the closure proposal and an alternative buyer appeared with a significant number of jobs guaranteed as a result.

“For many reasons, this example understandably strained and tested the relationship we have with Danone. However, we had always known that experience was bound to have an impact on the implementation of such a complex agreement and we subsequently proceeded to jointly analyse what took place in this case. Following a frank and healthy process of analysis by both parties, we have now agreed that even closer attention to this agreement in the early stages of proposed restructuring represents the best way to find mutual benefit in it in the future.”

Two million workers and counting...

The recent VW and DaimlerChrysler agreements each cover more than 300,000 employees. In all, some 2 million workers worldwide are employed by the 21 companies that have signed framework agreements. Generally, companies headquartered in Western Europe have taken the lead, but there are also examples from New Zealand (Fonterra) and South Africa (AngloGold).

When one or more companies in a sector sign up, there will be some pressure for others to follow suit. That pressure may also be felt by the unions. A company that has signed a framework agreement may feel exposed if its competitors fail to do likewise after a certain time – exposed, that is, to criticism both from the competitors and from the company's own shareholders. So the GUFs will feel a particular need to keep up the momentum.

Here, another factor comes into play. In the nature of things, the first companies to sign the agreements have tended to be those that already have a good working relationship with the unions even though there may have been major problems in the past. The toughest corporate nuts have yet to be cracked. When a major multinational and a GUF move straight from conflict to the signing of a framework agreement, a further important step will have been taken in global industrial relations.

Meanwhile, one way forward could be to reach sectoral-level global agreements on specific issues. One of the reasons that this has not yet happened is that, for the most part, there is an asymmetry in the mandates of the negotiating partners. While most industrial manufacturers are in sector-wide bodies at the global level, the relationship between these councils and their member companies is not the same as that between the GUFs and their affiliated unions. In the only existing global collective bargaining agreement (as opposed to a framework agreement) in the maritime industry, a new employers' federation, IMEC, had to be created as a counterpart to the ITF.

The potential difficulties with industry associations are well illustrated by a chemical industry initiative that had its origins in an ILO sectoral conference. In February 1999, governments and chemical industry employers and unions met under ILO auspices. They agreed that negotiations should begin for trade union participation in the chemical industry's existing Responsible Care programme. This aims to ensure universally high health and safety and environmental standards wherever the industry operates.

Detailed negotiations were indeed launched between the ICEM and the companies' International Council of Chemical Associations (ICCA), and by the beginning of 2001, everything seemed set for a worldwide sectoral agreement. However, the deal was scuppered at the last minute, apparently at the behest of two big anti-union US companies. Nonetheless, the ICEM still hopes to reach agreement, possibly at the regional level. So this innovative ILO-backed approach may yet bear fruit.

If global framework agreements become as commonplace as the GUFs hope, another problem could arise. The global union federations have fairly small secretariats. They can cope with the present handful of agreements, but if hundreds or thousands of such deals are signed, it will be difficult for the GUFs to service them centrally.

For this reason, the rise of framework agreements has gone hand in hand with another important development – global union networks within major multinationals. In future, the likelihood is that framework agreements will be serviced primarily by unions organizing within the company concerned or through facilities negotiated with employers.

The idea of framework agreements is spreading, but it could still do with some more promotion. Here too, the ILO may be able to help by stimulating and supporting global social dialogue. After all, the precondition for any such deal is to get the unions and the companies together at the global level. Where better to do that than at the tripartite ILO?

The basis for this role has been laid by the ILO Tripartite Declaration on Multi-national Enterprises and Social Policy. As Director-General Juan Somavia points out, this text is a universal basic reference point for social responsibility in the world of work. Its principles, he says, “foster mutual understanding, participation, transparency and social responsibility – all prerequisites to sustainable partnerships among global and local actors and markets”.

In a global marketplace, no task is more urgent.

Notes

¹ An online list of current global framework agreements, with onward hyperlinks, is maintained by the International Confederation of Free Trade Unions at <http://www.icftu.org/displaydocument.asp?Index=991216332&Language=EN>

² IFBWW press release, 19 March 2002. Available online at <http://www.zulu.worldcom.ch/ifbww/cgi-bin/enpolicies.cfm?Id=257>

³ Ron Oswald. IUFAs Agreements. 2001. Available online at <http://www.icftu.org/displaydocument.asp?Index=991215155&Language=EN>

⁴ *Rubber and Plastics News*, “Freudenberg’s global labor pact makes sense”, 2000. Available online at <http://www.icem.org/agreements/freudenberg/freurp.html>

⁵ Available online at <http://www.ilo.org/public/english/employment/multi/download/guide.pdf> Print copies can be ordered from multi@ilo.org. Subtitled *Knowing and Using Universal Guidelines for Social Responsibility*, this guide is a valuable tool for anyone wanting to use the Multinationals Declaration. It gives practical information on corporate social responsibility in general, drawing on worldwide experience of tackling issues such as health and safety and child labour. It also stresses the value of informed social partnership arrangements at local level, with multinationals sharing information with governments and workers’ representatives. As it points out, keeping negotiations free of threats of transfer of operations or transfers of workers is critical to building confidence across the table.

⁶ Oswald, op. cit.

The social responsibilities of business and workers' rights

Corporate social responsibility is useful if it provides the space for workers to protect their own interests – and damaging if it tries to fill that space. Respect for basic rights, union recognition, collective bargaining and social dialogue, including at the international level, are key ingredients of industrial democracy and social responsibility.

Guy Ryder

General Secretary

International Confederation of Free Trade Unions (ICFTU)

The social responsibilities of business cannot be treated in isolation. They are part of a larger picture in terms of the economy and governance. They also relate to certain fundamental principles about the kind of societies that we all seek to build, based on human rights, social justice and democracy.

Democracy comes from the involvement of the people, not the good intentions of the elite. Democracy is based on rights, the ability of people to defend their own interests. Alternatives to democracy, including “enlightened dictatorship”, do not produce a climate in which workers’ rights and interests can be fully protected. Democracy, political and industrial, is the only way to transform society positively in a fundamental and sustainable way.

The central mission of the international trade union movement is to use its influence and the tools available to it in order to provide the space for workers to represent their own interests by organizing into trade unions and engaging in free collective bargaining. It is to ensure that solidarity can weigh in and improve their odds against powerful forces, governmental or private, that seek to exploit or dominate working people.

Tipping the balance

It is to tip the balance towards fairness and rights that we use the ILO supervisory machinery to put pressure on governments to respect workers’ rights. It is also a major reason why we seek to move the international financial institutions away from protecting the powerful and towards encouraging the respect of the rights of the powerless. It also explains, in part, our efforts to get the World Trade Organization (WTO) to recognize that there must be effective support for workers’ rights and not only for property rights.

And it is in order to weigh in on the side of working people that we join with our international trade union partners, the Global Union Federations and the Trade Union Advisory Committee to the OECD, to get enterprises to respect workers’ rights. All of these activities have as their object, in one way or another, to allow workers to fight for a better deal and to change the balance of power in the workplace and in society.

No substitute for unions

Organizing is critical to workers’ ability to protect their rights. It is also central to development and to the fight to eliminate poverty. The combination of effective

governance and strong and free trade unions can bring those on the fringes of society into the mainstream. Both are the natural enemies of exclusion. The best way for working people to pull themselves up by their bootstraps has always been through forming unions. That provides the power to fuel democracy, dignity and prosperity.

Corporate social responsibility is useful to the extent that it provides the space for workers to protect their own interests and it is damaging to the extent that it tries to fill that space.

A corporation that thinks that it is meaningfully engaging workers by indulging in dialogue with itself, even if this is disguised by bringing “hired guns” into the process, is either fooling itself, seeking to fool others, or both. Neither the use of professional CSR enterprises nor a process of creating rather than recognizing interlocutors is a viable alternative to engagement with workers and their organizations. Social dialogue and industrial democracy require the respect of rights, in particular the right of workers to form their own organizations. The only real “voice” of workers comes from trade unions that they control. There is no substitute. “Empowerment” in the form of human relations, transmission belt management, cannot replace representation and real power.

Nor should there be expectations that CSR can replace the obligations and functions of the State. Corporations, large and small, have no political legitimacy. They cannot compensate for a lack of democracy or for a lack of governance. They cannot replace either the will of the people or the central role of public service in making societies function. The need for companies to behave responsibly is not a new discovery for trade unions. And we have never seen it as a privatization of the duties of governments.

Current CSR processes entail a danger that there will be, in effect, private setting of labour standards or a redefinition of them. Key rights, such as trade union rights, will be missing or will be defined or interpreted out of existence. That is already often the case. In addition, for un-

derstandable technical reasons, the focus of activity may well be on those standards that are most easily measured. Both of these problems can occur even if ILO standards are used.

Regulation and voluntary action

Another danger is the notion, which is creeping into the concept of corporate social responsibility, that it must be only “voluntary”. This can obscure the wider responsibilities of business in response to laws or instruments, such as the OECD Guidelines, that are prescribed by governments and not determined by business itself. It is in that broader context of the social responsibilities of business, which include issues like corporate governance, corruption and bribery, paying taxes and so on, that more narrow issues must fit, rather than the other way around.

Companies can make a difference by being responsible, as broadly defined. Most companies would agree that they cannot replace government and should not be expected to do so. They would also accept, in principle, the need for regulation and legislative frameworks. However, there is a contradiction between, on the one hand, the avoidance of government roles that they do not have a mandate to perform and, on the other, dogmatic support for deregulation. It is high time for business to respect government and those that work for government and to support strong and effective governance at both national and global levels. It is in that context that companies will have the greatest latitude to do what is right.

Within the available range of instruments, methods and processes related to corporate behaviour, certain fundamental distinctions need to be made. They parallel the differences already mentioned concerning the role of trade unions and the role of the State.

Expanded global social dialogue, which we are trying to encourage through the UN Global Compact and work at the ILO, can help encourage global industrial relations.

Social dialogue and trade union recognition at the international level, including framework agreements negotiated between Global Union Federations and global enterprises, are elements of emerging global industrial relations (see page 15). The number of such agreements has shot up from two to 21 in just six years. Agreements are voluntary, but, in effect, more binding than unilateral action where there is only one party. And the OECD Guidelines for Multinational Enterprises, although not legally binding on companies, are binding on adhering governments. These Guidelines represent governments' expectations of corporate behaviour and include government-based procedures that apply regardless of whether or not a company has endorsed them.

The government role in the Guidelines makes them stand out from purely private, voluntary initiatives. The global social dialogue and negotiations process involving legitimate global interlocutors also set them apart from other voluntary, private efforts. Both the Guidelines and emerging global industrial relations are more binding, more sustainable, and more likely to lead to real responsibility and accountability than other approaches.

Other, widely diverse methods, including trade union campaigns, use of workers' capital, corporate codes of conduct and reporting mechanisms, may influence corporate conduct privately and from the outside. They may generate engagement by companies with trade unions or they may encourage government action, but they do not inherently produce either. Our work is a combination of trying to use the existing tools more effectively and trying to influence a proliferation of initiatives in the area of CSR so that they are rights-friendly and industrial relations-friendly.

The trade union movement has taken a fairly pragmatic approach in terms of using various pressure points to get companies to recognize their responsibilities, which often means to recognize unions. In fact, some of the most important work going on at the international level is, essentially, seeking and obtaining global union

recognition, not as an end in itself, but as a means to help solve at the global level disputes arising at the national level.

Sustainable development – a good framework

The context has changed in the global discussion since private, unilateral codes of conduct emerged a decade ago. We saw a widespread corporate acceptance of the need for both regulation and voluntary action in the debate surrounding the World Summit on Sustainable Development in Johannesburg. Sustainable development is a good framework of principles for the global debate in general, but also concerning the social responsibilities of business. It is more realistic and sensible than the “Washington consensus”, which simply amounts to trusting in market forces and putting the world on autopilot. And it is a step away from the sterile, unproductive debate over regulation versus voluntary action.

After all, at national level, voluntary action in the form of free collective bargaining in the context of a binding framework of rights remains the most successful and effective way to regulate the workplace.

Private, unilateral initiatives reach their limit for a lot of reasons, including the competitive environment. Even in the area of corporate governance, in the limited sense of shareholder rather than stakeholder rights, voluntary action, by itself, is not enough, in spite of the power of shareholders. Recent scandals make that abundantly clear.

Often, to be effective, voluntary measures need to produce regulation. And, in many areas, given the integration of the global economy, regulation needs to be global. Similarly, corporate initiatives on the environment in a particular industry are rapidly limited by the failure of others to adopt similar standards. A level playing field protects such initiatives from becoming undermined and irrelevant.

In the social area, sustainability depends on freedom of association and the right to collective bargaining. Respect for

these key enabling rights provides sustainability for the enterprise, for the workers and for society. Union recognition and social dialogue, and agreement at national and international levels, are clearly more effective and sustainable than unilateral action by companies.

The imbalance in global governance measures, with binding rules and economic pressure to protect property rights and only moral pressure available to protect workers' rights and the environment, will not continue indefinitely. There will be, sooner or later, global regulation in this area. It is incumbent on the global social partners, the two sides of industry, to use their expertise, built through years of experience with social regulation at national level, to help shape the future rather than simply await the decisions of others.

In that context, voluntary action, social dialogue and negotiations can play a central role. They can create possibilities for private action and agreement that will be workable and credible. These will have a particularly important impact if business leaders in specific sectors are willing to expand dialogue and negotiations to industry level with their trade union counterparts. It is vital to develop and maintain the space for private negotiation and agreement, if we are to be capable of taking full advantage of this important tool for self-regulation of the workplace. Industrial relations, based on guaranteed rights, are creative and dynamic enough to advance the interests of both sides of industry while, at the same time, remaining relevant and effective in the face of rapid global change.

OECD Guidelines – one tool for corporate social accountability

On labour conditions, we need a race to the top among multinationals, not a race to the bottom. The OECD Guidelines for Multinational Corporations can help to ensure corporate social accountability. Governments should boost them – and unions should use them.

John Evans

General Secretary

Trade Union Advisory Committee to the OECD (TUAC)

The current wave of globalization, and in particular the role of foreign investment as one of its main motors, has reopened the policy debate about the international rights and obligations of multinational enterprises.

There is a strange paradox in the evidence and in the international debate about the impact of foreign investment on labour rights and “decent work”. Surveys on foreign investors’ intentions suggest that in most sectors market access, good governance, skills and education levels are more important in attracting investment than low wages or submissive workers. Yet, rather than improving living and working conditions, the race to attract foreign investment often appears to pressure governments into reducing workers’ rights in order to minimize labour costs.

The most brutal examples are often in export processing zones (EPZs) where semi-manufactures or raw materials are processed into goods for export by foreign companies, outside the normal laws and regulations of the host country. They may operate very differently in different parts of the world, but EPZs tend to have one overriding characteristic in common: trade unions are tolerated in few, if any, of them. This is disturbing. An update in 2000 to an OECD report on trade and labour standards noted that the number of export processing zones worldwide had risen from some 500 in 1996 to about 850,

not counting China’s special economic zones. EPZs have become commonplace in many parts of Asia and Central America and are now spreading to Africa as a development model.

Multinational companies may also simply decide to switch countries, or at least threaten to do so, when faced with labour dissatisfaction (or the prospect of a cheaper labour market elsewhere), and this in good as well as in hard times. A study by Cornell University in 2000 found that, despite the longest boom in the history of the United States, workers were feeling more insecure than ever before. More than half the firms surveyed, when faced with union action, had threatened to close the plant and move to another country. In some sectors, this figure rose to 68 per cent. The fact that only 5 per cent of firms actually moved away does not lessen the perceived threat, increasing the imbalance of power between unions and employers in the labour market.

The trade union response to foreign investment must be to ensure that, in terms of labour conditions, we start a “race to the top” and stop the “race to the bottom” between multinational companies. To achieve this, we have to take a strategic view of the use of a range of different tools of corporate social responsibility and accountability whose relevance will vary in different circumstances. We also have to achieve synergy between the different instruments.

The OECD Guidelines – one element of a response

At the level of TUAC, in close cooperation with our global union partners – the International Confederation of Free Trade Unions (ICFTU) and the Global Union Federations (GUFs) as well as the World Confederation of Labour (WCL) and the European Trade Union Confederation (ETUC) – we are giving priority to maintaining and encouraging enforcement of the OECD Guidelines for Multinational Enterprises, revised and substantially developed by governments in consultation with labour unions, businesses and non-governmental organizations (NGOs) in 2000. The Guidelines are governmental recommendations for good corporate behaviour, primarily addressed to corporations based in countries that adhere to them but applying to their operations worldwide, which account for 85 per cent of total foreign direct investment.

The OECD Guidelines for Multinational Enterprises were first agreed upon in 1976, following public concern that multinational enterprises were becoming too powerful and unaccountable. This was in the light of the role of some US-based companies in the Pinochet coup that overthrew the Allende government in Chile. They were rapidly followed by the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and negotiations opened at the UN in New York to establish a UN Code on Transnational Corporations. The UN Code did not survive the political shift to deregulation in the 1980s, and the OECD Guidelines themselves fell into partial disuse as most OECD governments showed little political will to enforce them.

The collapse of negotiations on the Multilateral Agreement on Investment at the OECD in 1999, and the appearance of company codes and other initiatives of corporate social responsibility in the late 1990s, led to a swing back in the political climate on company responsibility. This opened the way for a substantial revision of the Guidelines, and notably

their implementation procedures, in 2000. The revision was concluded in June 2000 and resulted in major changes such as the strengthening of the implementation procedures, clarification of their global applicability, the coverage of all core labour standards, and their extension to suppliers and sub-contractors.

The Guidelines are recommendations for good corporate practice, primarily addressed to enterprises based in the countries that adhere to them: the 30 OECD countries – Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States – plus Argentina, Brazil, Chile, Estonia, Israel, Lithuania and Slovenia. But the Guidelines also apply to any OECD-based company's operations worldwide. More countries are now in the process of adhering to them.

The Guidelines are comprehensive, with chapters covering general policies, disclosure of information, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation.

Implementation

The Guidelines may not be binding in a legal sense at the international level, but they are not optional for corporations. If companies could simply pick and choose among the provisions of the Guidelines or subject them to their own interpretations, then they would have no value. Nor does their application depend on endorsement by companies. The OECD's Guidelines are the only multilaterally endorsed and comprehensive rules that governments have negotiated, in which they commit themselves to help solve problems arising with corporations. Most importantly, the ultimate responsibility for enforcement

lies with governments. The key therefore is implementation.

Every adhering government has to set up a National Contact Point (NCP) for promoting and implementing the Guidelines. These NCPs may be organized in different ways. Some involve a single government agency, while others are multi-agency (involving several ministries). Some are tripartite (government, labour and business), e.g. in France, Belgium and Sweden, but governments are ultimately responsible. Whatever the form, representatives of labour, business and NGOs must be informed of the availability of the NCP, which itself is expected to develop and maintain relations with these groups.

When a company is believed to be in violation of the Guidelines, a trade union, an NGO or another interested party can raise the case with the NCP. The NCP should then try to resolve the issue. A range of options is available, including offering a forum for discussion for the affected parties, conciliation or mediation. In deciding what course of action to take, the NCP is required to make an initial assessment as to whether the case “merits further examination”. It must then respond to the party that raised the case. If the NCP decides that the issue does not merit further consideration, it must give reasons for its decision.

The OECD commentaries to the Guidelines provide some guidance on how to interpret the wording “merits further examination”. Accordingly, the NCP should determine whether the issue is “bona fide” and relevant to the implementation of the Guidelines. In this context, it will, among other things, take into account the identity of the party concerned and its interest in the matter, whether the issue is material and substantiated and how similar issues have been, or are being, treated in other domestic or international forums. There is nothing to prevent a party from raising a case that is being handled elsewhere. The French trade union centres raised the closure of Marks & Spencer’s French stores as a case with their NCP in 2001, while the issue was also being dealt with in French courts.

When going ahead with a case, the NCP should help the parties resolve the problem. In doing so, it can:

- seek advice from relevant authorities, trade unions, business, NGOs and experts;
- consult the NCP in the other country or countries concerned;
- seek the guidance of CIME (the OECD committee responsible for the Guidelines) in cases where the interpretation of the Guidelines is in doubt; and
- offer conciliation or mediation to assist in dealing with the issues.

Having followed one or all of these avenues, and if the parties are still unable to agree on how to solve a problem, the NCP is normally required to issue a public statement on the case. It could also make recommendations to the parties on how the Guidelines apply to the case. NCPs may, therefore, inform a company that its activities breach the Guidelines. Whilst the Guidelines are not legally binding, the mere fact that the conclusions of NCPs are to reach the public domain can have an impact and affect company behaviour.

Some 25 cases have been raised by trade unions since the review, and a further half-dozen have been raised by NGOs. So far only a handful of cases have been settled. A majority of the cases refer to corporate conduct in non-adhering countries and/or violation of trade union rights. Another common issue is the closure or transfer of companies or parts of companies.

2000-2003 – an assessment

TUAC conducted a survey of its affiliates and Global Union Federations to evaluate the impact of the Guidelines in the two years since their revision. On the basis of this, some tentative assessment was made of how they are functioning in practice and what could be done to improve their implementation.

The results of the survey are mixed. There have been some positive developments and improvements in the functioning of NCPs, including the establishment of NCPs in Chile, Estonia, Lithuania and Slovenia, and the successful handling of cases by the Czech NCP. But there are also problems in several countries. The central problem is that probably still less than half of the signatories of the OECD Guidelines have NCPs which are really functioning. Although this is an improvement on the situation before 2000, we have still not arrived at a critical mass of governments who take their responsibilities seriously.

How NCPs respond to these cases is crucial to the Guidelines. Depending on the nature of the problem, a case can take more or less time to resolve. It is normal that NCPs need to take some time to establish procedures to deal with the cases. But it is clear that it generally takes too long for the NCPs to respond to cases. The “worst” case in this respect is the United States, where five cases have been raised by trade unions in the US NCP, of which not a single one has led to conclusions by the NCP. The time aspect is an issue that must be addressed in the future. It could be difficult to agree on a time frame, but CIME should give guidance on this. TUAC is concerned that some NCPs are not making a serious effort to deal with the cases raised.

Four of the cases have so far led to conclusions by NCPs. They concern Siemens, Bosch, Marks & Spencer and French companies’ operations in Myanmar. The Siemens case was raised by the Czech trade union confederation CMKOS in the Czech NCP, as the company had prevented the workers from establishing a trade union. The case was settled after the company agreed to negotiate and to take part in a social dialogue. One reason for the good outcome, according to the CMKOS, was the fact that it was raised in the NCP. The case also got some attention in the press, and this helped to achieve a solution. Some other cases have been withdrawn following satisfactory outcomes.

Another problem is that the Guidelines are relatively unknown, compared with some other instruments, such as the UN Global Compact. To tackle this issue within TUAC, we have organized a project to raise awareness among trade unions, including the publication of a user’s guide for trade unionists, which is now available in 14 languages.¹ With our partners, we are running workshops and seminars on the Guidelines, particularly in non-OECD countries. In 2003, with the support of the European Union and the Friedrich Ebert Foundation, we are organizing workshops in Central America, North and southern Africa, and Asia. The Asian and Pacific Region of the ICFTU is also organizing a series of workshops in Asia. Overall, however, we continue to feel governments must do much more.

One of the themes for the 2003 G8 Evian summit was “responsibility” and TUAC has called on the OECD and OECD governments to put in place a programme to improve the effectiveness of the Guidelines so as to:

- ensure that all NCPs are operating and meet the standards of the best performers;
- set targets for efforts to promote the Guidelines;
- raise awareness of the Guidelines, both in the OECD so that the Guidelines are included in relevant meetings and activities, and also in other relevant inter-governmental forums;
- establish an outreach programme with non-members, including regional meetings/seminars to raise awareness of the Guidelines;
- review experience with particular chapters of the Guidelines; and
- provide guidance on the time frame for dealing with cases.

Linking government support to Guidelines' compliance

Governments also need to do more to link their own support to compliance with the Guidelines. No government has yet made observance of the Guidelines a condition for the receipt of public subsidies. However, some are moving in this direction, which would be a powerful stimulus to Guidelines' observance. In order to receive export credit guarantees, Dutch companies have to state that they comply with the Guidelines. French enterprises have to sign a letter saying that they are aware of the Guidelines. Furthermore, trade unions in the Czech Republic, Finland and Sweden have noted that discussions with their governments on linkages between the Guidelines and export credits are still ongoing.

There are also other areas where a linkage to the Guidelines should be developed. References to them should be made in bilateral investment treaties between adhering and non-adhering countries. This would make non-adhering countries aware of the expectations that multinational enterprises are facing. In addition, the European Union has a number of instruments that operate under the direction of the European Commission and to which the Guidelines could be associated or linked, so as to create conditionality or leverage on European-based multinationals. Trade unions have requested the Commission to audit these mechanisms as a first step towards this goal.

The link to global framework agreements

There are other instruments in an evolving "toolbox" that the global union movement can use to counteract the social downside of globalization. These include work by the Global Union Federations to develop collective bargaining relationships with companies at an international level. Some 20 global framework agreements have been concluded – most in the

last two years – between the federations and companies in sectors such as mining, chemicals, food, forestry, services and automobiles (see page 15). The Guidelines could become a benchmark alongside ILO standards in these agreements.

Some trade unions are using the Guidelines in a broader context of corporate social accountability. They have been used in connection with shareholder resolutions in some countries, including the United States. The Lithuanian Trade Union Confederation is using the Guidelines in its discussions with multinational enterprises and in collective bargaining. The Finnish trade union confederation SAK is planning to raise the Guidelines in European Works Councils in Finnish-based companies. The Guidelines have been used by the Brazilian Social Observatory as criteria for studies on multinational enterprises operating in Brazil. The Danish trade union confederation LO has let the Guidelines form the basis for some discussions on corporate social accountability. TUAC is also part of a joint Global Unions Committee which is reviewing the social performance of enterprises in which workers' pension and saving funds are invested and is beginning to train union trustees.

Conclusion

The Guidelines are not an alternative to effective legal regulation of companies, worker capital strategies or the negotiation of collective agreements, but they can be an important complement. Ultimately, their effectiveness depends on governments and whether they make sure that they have properly functioning NCPs. The Guidelines can be an effective instrument if governments take their responsibilities seriously. But trade unions and NGOs must also look to their own responsibilities and make use of them. For labour, perhaps the greatest danger is not globalization itself. Rather, it is to accept policy paralysis as a result of globalization. Some of the tools to prevent this paralysis

already exist. The union movement must make sure it uses them effectively, but governments cannot absolve themselves from their own ultimate responsibility for managing markets globally.

Note

¹ The *Users' Guide on OECD Guidelines for Multinational Enterprises* is available from TUAC – OECD, 26, avenue de la Grande-Armée, 75017 Paris, France (e-mail tuac@tuac.org). The guide has been translated from English into 13 languages, including French, Spanish, Italian, Portuguese, Hungarian, Russian, Korean, Czech, Latvian, Estonian, Thai and Bahasa Indonesia. It describes step by step how to raise a case on a company; it also contains the addresses of all the NCPs, TUAC, the ICFTU and the Global Union Federations. Editions in some languages are available online at <http://www.tuac.org>

Corporate social responsibility – new morals for business?

More and more companies think that “corporate social responsibility” is good for business. But is it good for workers? We asked Philip Jennings. He heads UNI, the international skills and services union representing more than 15 million workers worldwide. He also currently chairs the General Conference of the sector-by-sector Global Union Federations, of which UNI is one.

Philip Jennings

General Secretary

Union Network International (UNI)

Chairperson

General Conference of Global Union Federations

Labour Education: *Corporate social responsibility (CSR) is a major new business trend, centring on the “triple bottom line” of companies’ economic, social and environmental performance – Profits, People and Planet. Is this a good development for organized labour?*

Philip Jennings: It’s a good thing for organized labour that companies, because of their own transgressions, have finally been obliged to take corporate social responsibility seriously. Business leaders are looking to CSR because, as one commentator said, they “have lost their own moral compass”. We have just been through a meltdown of corporate ethics. Governments, regulators, consumers, investors and trade unions are all insisting that the companies clean up their act.

Environics, a research group on global issues, recently surveyed 20,000 people in 35 countries on trust in leadership and institutions. They found that national and multinational companies were at the bottom end of the table.

CSR can be a positive force for change. It is important that trade unions are involved in establishing CSR standards, not least because union members have a thorough knowledge of the companies where they work.

We have plenty of insights to offer. For instance, when WorldCom wanted to merge with Sprint to form the world’s biggest telecoms company, UNI gave evidence to the European Commission’s hearing on the merger plan. We advised them that WorldCom couldn’t be trusted. The Commission blocked the merger. Soon afterwards, WorldCom was at the centre of the biggest corporate collapse in history.

Is CSR a viable substitute for regulation?

No. The fact that business is suddenly prepared to take all these voluntary initiatives in no way justifies less regulation. On the contrary, the recent corporate scandals suggest that we need more. And we need to reregulate the regulators, many of whom were found wanting. In the United States, for example, the Securities and Exchange Commission has new powers and Congress introduced a raft of new company law legislation. We need tighter legal control not just of non-executive directors but also of auditors, managers and consultants. That is in the wider public interest. Our concern is that deregulation fuelled a lax attitude to ensuring businesses do the right thing. Recent experience shows that they failed the “voluntary” test.

So is CSR the new paternalism? Is it likely to encourage or discourage the signing of further global agreements or framework agreements between individual companies and the Global Union Federations?

New paternalism? No, it's more like a new realism. I think that one test of a good CSR policy is to examine the company's record on union recognition, and look at how that process of CSR is being managed inside the company. However, woolly statements on CSR are no substitute for positive labour relations policies. For example, is the company mainstreaming the ILO standards and the OECD Guidelines for multinationals within its overall industrial relations policy? If companies are looking for standards upon which to base their CSR policy, then they should use the ones that already exist. They should apply the ILO Tripartite Declaration and become familiar with the OECD Guidelines. A word of advice to investors: if you're thinking of putting money into a multinational company, ask them if they have a global agreement with the Global Union Federations. If not, why not?

But the global agreements cover only a very small proportion of the world's workforce. Aren't they just a drop in the ocean?

At the moment, the global agreements cover around 2 million workers. I think that's already quite impressive, but all right, I agree there's still a long way to go. What we urgently need these days is some benchmarking of companies' respect for global trade union rights. Global framework agreements help to meet that need. If a leading company says it's prepared to sit down and sign an agreement with unions at the world level, it is setting a good example to other companies in its sector and beyond. I'm confident that many more of these agreements will be signed in the near future, and they'll no longer be seen as a novelty.

It's sometimes said that the initial impetus behind CSR came from the environmental move-

ment, rather than organized labour. Do the global unions have some catching up to do?

The unions are certainly not Johnny-come-latelies in all of this. If anybody thinks that, I'm surprised. The whole point of trade unions' work and struggles over the past century has been to instil some social responsibility into employers. If anything, some of the NGOs were rather slow to recognize the importance of the trade union agenda, and its close relationship with other current concerns. Who achieved legal regulation of workplace health and safety – and then went on to emphasize the close link between the environment inside the workplace and the environment outside? Who championed women's equality at work? Who secured new European-wide rights for workers, to information and consultation where we can raise the CSR agenda?

But in any case, this is a rather sterile discussion. The important thing is that the NGO community and the trade unions have realized that we have interests in common, and that together we form an alliance for real global change.

This January, you and other global union leaders took part in the World Economic Forum in Davos. At the same time, the global trade union movement was equally well represented at the World Social Forum in Porto Alegre. The unions delivered identical messages to the two events. Do global unions occupy the middle ground between a Davos-style "classic globalization" and Porto Alegre's "other globalization"? What do you think of the results of the two forums?

What we were trying to do was to bring the same global union message to both meetings. It was certainly better received in Porto Alegre than in Davos, but that's just too bad. Our views are our views, wherever we go. We still think there's a useful platform for us in Davos, and we intend to go on using it.

In fact, the agenda of the World Economic Forum has changed beyond recognition over the past ten years, largely

due to pressure from the unions and the NGOs. It's a different kind of debate now. There's a more serious attempt to examine employment, human rights, trade and development, corporate governance, world health and so on. The Davos forum is still funded by the private sector, but there's no doubt that its agenda has changed.

As for the World Social Forum, there have been both regional and national initiatives to consolidate its organization and its role. I'm sure that it will be an important force for good.

You recently criticized American-headquartered multinationals for their failure to sign up to the UN's Global Compact. Why are they so wary of it?

Because so many American companies are anti-union.

Unionized American workers earn 26 per cent more than their non-union colleagues, according to figures published this February by the US Government's Bureau of Labor Statistics. And yet, the United States has one of the lowest union membership rates in the industrialized world. Why should that be? Well, let me quote to you from a press release sent out by the American national labour federation AFL-CIO, on the same day as the Government released those statistics:

New research by Peter D. Hart Research Associates indicates that America's workers need and want unions – half of US workers say they would form a union tomorrow if given the chance. That translates into 30 to 40 million workers who would join a union if given a free choice – but too few ever get that chance. Employers routinely violate workers' freedom to improve their lives through unions. Ninety-five percent of private-sector employers fight their workers' efforts to form unions, including a third who illegally fire union supporters, according to Cornell researcher Kate Bronfenbrenner... Independent research shows that the American public does not know what workers must endure just to exercise their right to a

union. Because the freedom to improve one's life with a union is a basic civil and human right, the labour movement will involve community and elected leaders in demanding a free choice for workers.

So there you are. Basic labour rights, including freedom of association, are at the heart of the Global Compact. I'm not at all surprised that so few American-headquartered companies have signed up.

A number of guidelines for companies' CSR reporting are now available, some of which are quite detailed and precise. Do the global unions have any views concerning the various formats proposed?

I read somewhere that there are now several hundred CSR reporting formats on offer in various parts of the world. That's obviously far too many, and most of them are unlikely to survive.

We in the trade unions are involved in the Global Reporting Initiative (GRI), where we are represented alongside the companies, the accountants, the NGOs and so on. So we're fully involved in drawing up GRI's main guidelines and its sectoral supplements. As long as it stays that way, as long as the unions have their full say, then I think it's an important initiative.

Similarly, we are on the inside of the SA 8000 process for standard-setting in social auditing. We're on the SA 8000 Board, and that helps to give legitimacy to the whole process. And unions are part of campaigns like the Ethical Trading Initiative and Clean Clothes.

Frankly, I'm rather more concerned about the role of the International Organization for Standardization (ISO) in all of this. It seems to us that the ISO has been getting involved in this issue without proper consultation with the unions and the ILO. Standard-setting on CSR has more to do with the ILO's competencies and experience than with those of the ISO.

CSR performance obviously has to be monitored by someone. Social rating agencies are beginning to mushroom. Would you see a role for the ILO in verifying the verifiers?

The ILO is *the* global rating agency for social standards. Full stop. It has been setting and monitoring international standards for a very long time now. It has more experience than anybody else in that field.

Of course, the ILO must move with the times. World mechanisms for monitoring multinational corporations still leave much to be desired. The OECD Guidelines for multinationals have recently been strengthened to help ensure greater corporate transparency. The ILO should also revisit this issue, in a sensible way. It already monitors governments' compliance with its standards. Why not take the next

step in relation to what the corporate community is doing? Monitoring of CSR fits in well with the ILO's experience.

Are you saying that the ILO should be able to hold individual companies to account?

It already holds governments to account. Multinationals are no less powerful than governments. The ILO should also be exploring ways of making the companies accountable for their social performance.

Interviewer: Ian Graham

Corporate social responsibility in Europe: A chance for social dialogue?

The European Commission is out to encourage corporate social responsibility. In 2001, it published a Green Paper aimed at creating a "European framework" for CSR, and a Communication followed in 2002. Unions have reacted cautiously. They want to preserve Europe's social dialogue.

Anne Renaut
Journalist

Corporate social responsibility (CSR), originally a predominantly American concept promoted for the most part by big companies, crossed the Atlantic during the 1980s.

In 1995, a group of firms published the "European declaration of businesses against social exclusion", initiated in particular by the then President of the European Commission, Jacques Delors. This declaration led to the creation of a European network of 57 companies, CSR Europe (Corporate Social Responsibility Europe), which aims at an exchange of best practices on social responsibility. CSR Europe is currently chaired by former EU Commissioner Etienne Davignon.

For their part, the heads of state and government meeting at the European Council in Lisbon in March 2000 appealed to "companies' corporate sense of social responsibility regarding best practices on lifelong learning, work organization, equal opportunities, social inclusion and sustainable development".

In July 2001, the Commission published a Green Paper aimed at "promoting a European framework for corporate social responsibility",¹ followed a year later by a Communication on "CSR: a business contribution to Sustainable Development".² This Communication led to the establishment, in October 2002, of a European Multistakeholder Forum (companies, unions, NGOs).

The Commission sees CSR as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis". It is "over and above legal requirements". Social responsibility is manifested towards employees "and, more generally, all the stakeholders concerned" such as trade unions, NGOs, shareholders, customers, public authorities and suppliers.

However, although many of these practices – ranging from management of a restructuring to occupational health and safety or the fight against child labour – are often the result of dialogue between management and trade unions, Europe's unions seem to be "rather on the defensive" according to the European University of Labour Studies, which has examined CSR concerning employment and working conditions in four European countries (France, Germany, Hungary, United Kingdom).³

"The unions have been taken by surprise," explains the university's Delegate-General Claude-Emmanuel Triomphe. "Social responsibility is their turf. But now they get managers telling them, 'We're doing social responsibility', without asking what the unions think." He adds that "for a certain number of companies, this is first and foremost a marketing strategy" and "the recent trend for CSR, which has come straight from the United States, can be violently anti-union".

Consequently, the unions are “torn between defiance over the use of social issues for PR purposes and the need to adapt this tool so that it promotes social progress”.

Unilateral and private

The social partners are divided at the European level. The companies are insisting on the “voluntary” nature of CSR, while the unions fear that these unilateral, private initiatives will weaken existing norms, such as laws and collective agreements.

“Codes of conduct, charters and labels should not be regarded as an alternative to governmental responsibility”, the European Trade Union Confederation (ETUC) emphasizes. “Nor as an opportunity for companies to sidestep trade unions and collective bargaining.”

The European Parliament, meanwhile, believes that the starting point for CSR should be voluntary, but without excluding regulation if necessary.⁴

The employers want nothing to do with CSR along the lines of the European social model, characterized by strong social legislation and structured social dialogue. In a letter to the European Commission’s President Romano Prodi, the European employers’ federation UNICE, CSR Europe and the European Round Table (ERT), an industry lobby, declared their opposition to “a European model of corporate social responsibility based on European values, according to standardized approaches”.⁵

The ETUC, meanwhile, advocates a “partnership approach” to CSR, established as a priority on the basis of “good industrial relations”.⁶ CSR must, the ETUC says, “be developed in a legislative and/or contractual framework, adapted on an ongoing basis”.⁷ The ETUC also deplors the fact that the EU Commission’s Communication makes only one passing reference to “social dialogue”, namely that “approaches should involve consultation with local stakeholders”.

“If it had been left to companies on a voluntary basis, how many European Works Councils would there be today?”

asks the ETUC, recalling that the directive (EU legislation) on these works councils was adopted despite the opposition of the employers, and that it took 25 years to obtain a European company statute with worker participation.

For the ETUC, “socially responsible” practice means providing high-quality jobs (through training); informing and consulting the workers; anticipating restructuring; and respecting basic social rights, such as the ILO Conventions and the principles of the European Social Charter adopted in Nice – a charter that the ETUC would like to see made legally binding.

“Unless it incorporates social dialogue, CSR cannot develop in Europe”, argues Claude-Emmanuel Triomphe. “As soon as it incorporates social dialogue, it will also incorporate its contractual and legislative contents. I think it can also add to them. I don’t believe in CSR as a force for curtailment. Europe’s social culture is an extremely strong one.”

“In the US”, he adds, “a company can adopt a code of conduct without reference to the unions. In Europe, that would be impossible” – except perhaps in the United Kingdom and some Central European countries.

Apart from major social legislation, the European social model does indeed assign an important place to social dialogue. At the European level, UNICE and the ETUC are empowered to reach agreements that may have the effect of a directive and therefore of law. Such agreements include those on fixed-term contracts (1999), part-time working (1997) and parental leave (1996). At the enterprise level, many CSR practices are the result of collective bargaining.

EU Social Affairs Commissioner Anna Diamantopoulou also advocates a CSR that is “based on European values”, because “the point is not to copy what already exists, but to give added value”.⁸

For the time being, however, the Commission plans only to promote an exchange of “good practice”, still within a voluntary framework, but fostering convergence and the transparency of verification instruments.

Will that be enough? Codes, charters, labels and social reports “are no substitutes for necessary regulation by international or national authorities”, declares the ETUC. “Today, for its work, Europe relies a great deal on the exchange of practices”, says Raymond-Pierre Bodin, Director of the Dublin-based European Foundation.⁹ “The moment comes when that is no longer enough. Political decisions have to be taken about which course to follow. But the political leaders are absent from the debate about the European social model.”

Public label

In this respect, Belgium has just undertaken an interesting initiative about which trade unions have mixed opinions. Its government is the first in the world to launch a “public” social label, with the aim of “promoting socially useful production” (see article by Bruno Melckmans on page 41).¹⁰

The Belgian experiment is being closely followed by the European Commission, which would like to see a harmonization of the different labels within Europe so that, for instance, they refer to the same criteria – the ILO standards or the OECD Guidelines. The idea would be to “label the labels”, in other words to keep each label’s own logo, but add the 12 stars of the EU flag on the basis of common criteria. The initial enthusiasm for social labels has dampened somewhat, however, with growing recognition of the difficulty of developing viable and meaningful labels.

The ETUC is pressing for another means of fostering corporate social responsibility – the introduction of labour rights clauses into the EU’s Generalized System of Preferences (GSP).¹¹ Under the GSP, developing countries are granted reductions or suspensions of customs duties on their exports to the European Union (EU). After a campaign by the ETUC and the International Confederation of Free Trade Unions (ICFTU), the EU built all the basic ILO rights into its GSP: abolition of forced labour (1995), trade union rights and non-use of child labour (1998) and non-

discrimination (in the GSP for 2002-2004). Thus, the clause on forced labour has been the grounds for Myanmar’s suspension from the EU’s GSP since March 1997.

At the sectoral level, meanwhile, European trade union federations such as those in commerce, metalworking and textiles have engaged in discussions on social responsibility, within the framework of the European social dialogue.

The European commercial workers’ federation UNI-Europa Commerce, which is part of the global union federation UNI and has a web page on CSR,¹² launched a formal dialogue on this subject with the employers’ federation EuroCommerce on 6 November 2002. The Vice-President of UNI-Europa Commerce, Jörgen Hoppe from Denmark, says that CSR must be “win-win”, and the State must set an example when awarding public contracts. Indeed, he sees the law simply as “backing” and believes it is sometimes necessary to “adapt” codes of conduct to the circumstances.

The textile workers’ European federation ITGLWF/ERO signed three agreements with the employers’ Euratex in 1995, 1997 and 2000. These refer to the core ILO Conventions and are transposed into national collective agreements. In 2002, these same social partners began discussions on the implementation and monitoring of the agreements. The ITGLWF/ERO proposed that they should be assessed in the light of the ICFTU’s model code,¹³ the pilot monitoring exercises of the NGO, the Clean Clothes Campaign (CCC),¹⁴ and the various verification stages set out in the SA 8000 standard.¹⁵ In leather tanning, a one-year training project (on the code’s contents, implementation and monitoring) has been launched in 12 pilot firms, with a view to their certification under SA 8000.

Monitoring

Nonetheless, “there is no optimum solution for monitoring”, admits ITGLWF/ERO General Secretary Patrick Itschert.

Undoubtedly, the main difficulty with CSR is its evaluation and verification. In this regard, the European Commission intends to encourage the convergence of existing instruments, such as social reports and certification standards.

Regarding social reports, the Commission supports the Global Reporting Initiative,¹⁶ an organization that is partly financed by the UN, is multipartite (trade unions, companies, NGOs and governments) and has been working since 1997 on the development of economic, social and environmental criteria for sustainability reporting comparable to those for financial reporting. More than 150 companies state that they have used the GRI guidelines which, however, remain voluntary.

In France, a law passed in 2001 concerning the New Economic Regulations requires that companies include in their annual reports an assessment of the “social and economic consequences” of their activities.

On monitoring, there are a few initiatives which involve trade unions, such as those by the Ethical Trading Initiative, an organization supported by the British Government, and by the Clean Clothes Campaign, as well as the SA 8000 standard.

SA 8000, cited by the Commission, is one of the farthest advanced, although by October 2002, only 162 plants had been certified under SA 8000, and eight auditing firms had been accredited. Developed by the American-based NGO Social Accountability International (SAI), together with companies, NGOs and trade unions, this standard covers nine fields ranging from child labour to health and safety, working times, remuneration and forced labour. It draws its inspiration from the ILO Conventions, the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights. It functions in a similar way to the ISO 9000 quality standards of the International Organization for Standardization, but it adds a requirement to seek the views of stakeholders (workers and NGOs) and an appeals mechanism that enables interested parties to lodge complaints.

As for social rating agencies, of which there are only about ten in Europe, very few of these involve trade unions. However, several European trade union centres are represented on the Board of Vigeo, the new European social rating agency founded in 2002 by Nicole Notat, the former leader of the French trade union confederation CFDT. She says that the ILO’s core Conventions will be a “major reference” for Vigeo (see interview on page 63).

But the ETUC believes that the ILO is still the most appropriate monitoring body. While CSR is on the agenda at meetings between the Commission and the ILO, the Commission suggests “making ILO instruments more effective”.¹⁷

Notes

¹ European Commission: *Promoting a European framework for Corporate Social Responsibility*, Green Paper, 18 July 2001. See also the Commission’s CSR web site at: http://www.europa.eu.int/comm/employment_social/soc-dial/csr/csr_index.htm

² European Commission: *Corporate Social Responsibility: A business contribution to Sustainable Development*, Communication, 2 July 2002.

³ European University of Labour Studies: *Responsabilité sociale de l’entreprise, emploi et conditions de travail*, report for the European Foundation for the Improvement of Living and Working Conditions, Dublin, December 2002.

⁴ European Parliament: *Corporate Social Responsibility*, Parliamentary resolution on the Commission’s Green Paper, 21 May 2002.

⁵ UNICE, CSR-Europe and the ERT: *Corporate Social Responsibility*, joint letter to Romano Prodi, 4 June 2002.

⁶ ETUC information note on developments in CSR, 24 July 2002.

⁷ ETUC: *Corporate Social Responsibility in a legislative and contractual framework*, resolution adopted by the ETUC Executive Committee, 10-11 October 2001.

⁸ Ms. Diamantopoulou’s address to the Multi-stakeholder Forum on CSR, 16 October 2002.

⁹ Interview with Mr. Bodin in *La Lettre de l’ORSE* (Observatoire sur la responsabilité sociale des entreprises), no. 23, 13-20 September 2002.

¹⁰ See also the Belgian economics ministry’s web page on the social label: in French at http://mineco.fgov.be//protection_consumer/Social_label/home_fr.htm; in Dutch at http://mineco.fgov.be//protection_consumer/Social_label/home_nl.htm

¹¹ Concerning the GSP for 2002-2004, see: <http://www.icftu.org/displaydocument.asp?Index=991216388&Language=EN>

¹² http://www.union-network.org/UNIsite/Sectors/Commerce/index_CSR.htm

¹³ See ICFTU, Global Union Federations and Trade Union Advisory Committee to the OECD: *A Trade Union Guide to Globalization*, December 2001: <http://www.icftu.org/pubs/globalisation>

¹⁴ <http://www.cleanclothes.org>

¹⁵ <http://www.sa-intl.org>

¹⁶ <http://www.globalreporting.org>

¹⁷ European Commission: *Promoting core labour standards and improving social governance in the context of globalization*, Communication, 18 July 2001.

Strengths and weaknesses of Belgium's social label

How can we encourage respect for basic rights in our own countries, but also in someone else's, at a time of economic globalization? Belgium has just proposed one solution, by launching a "social label". A caring notion, but one that raises quite a few questions.

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Governments are supposed to ensure that their countries respect the ILO Conventions they have ratified. And simply by being members of the ILO, they are under an obligation "to respect, to promote and to realize" the principles concerning the fundamental labour rights, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. They are to do so whether or not they have ratified the eight ILO Conventions, known as the "core standards", which enshrine these rights and basic principles.¹

But what happens when a company sells products that have been made somewhere else?

Belgium has just attempted a response to this question, by launching a "social label" that should soon be seen on products sold on its territory. This label will, its backers say, enable consumers to identify precisely which goods have been produced in line with the ILO core standards.

Naturally, the General Labour Federation of Belgium (FGTB/ABVV) supports all initiatives that could help to improve

the living conditions of working people. It therefore gave a favourable response to the Belgian Government's initiative. Favourable, but not unreservedly so.

The label proposed by the Belgian Government aims to promote, to the consumers, goods that have been produced under decent working conditions for those who make them. So the approach is one of incitement, as the granting of the label should add value to the promotion of the product.

The initial proposal by the Belgian socialist parliamentarian Dirk Van Der Maelen was to label not only products but also enterprises that scrupulously respected people's basic rights at work. This "enterprise" option was ruled out after persistent campaigning by the liberal parties (closer to the employers), who no doubt found it too constraining.

The FGTB regretted this development, as it believes that the enterprise is indeed the place where standards on decent working conditions have to be applied.² Moreover, recourse to the enterprises quite naturally implied direct monitoring by the producers themselves, who are clearly defined by their workplace. In turn, monitoring demanded respect for trade union freedom, which is a *sine qua non* for any real independence of action.

The FGTB still regards this principle of monitoring by the workers themselves as essential, for two reasons. The first has

* Mr. Melckmans is also a member of the committee for socially responsible production, which is legally designated to advise the Minister of Economic Affairs on the granting of the label.

to do with the actual effectiveness of the method – who better to verify the decency of a production process than those who are directly involved in it? The second is that such monitoring is conceivable only where there is respect for the freedom to organize an independent trade union, equipped with the basic means of trade union action.

Respecting the rules

Thus, at the heart of the structure are the ILO standards, which are an embryonic world social code. These standards guarantee not only rights but also the means of getting them respected (including freedom of association and collective bargaining). All efforts should be directed towards respecting these standards.

As far as companies are concerned, it is essential to promote collective bargaining at the world level and to build respect for basic rights into the results of these negotiations. Under these conditions, and on the well-known principle that there are two sides to a bargain, each side can then act to ensure that the other lives up to its commitments. This is the very basis of trade union action, and it is right that it should take its place alongside the legal, constraining provisions.

Apart from that, mechanisms such as “codes of conduct” and “labels” can be no more than auxiliary. Certainly, they cannot serve as a pretext for eluding legal or contractual obligations, nor for sidelining industrial relations systems based on negotiators who are representative of, on the one hand, the workers and, on the other, the employers. The rules must be respected. Full stop.

A warning should also be sounded about the slide towards a sort of *soft law*.³ Certain norms may emerge that aim gradually to privatize parts of the social legislation. This is a slippery slope, and we are very much aware of the danger that the social fabric could be quietly eroded by experiments that reduce the unions’ sphere of action.

A first in the world

The Belgian social label is backed by a law that was adopted in February 2002 and is the only one of its kind in the world. So far, at least. Other countries, notably Denmark and Italy, are currently preparing similar schemes and the Netherlands are likely to adopt a code of conduct for Dutch companies soon. The label could even go European. A resolution passed by the European Parliament clearly points to this possibility, but the European authorities are apparently waiting to see the results of the national experiments in member States of the European Union. Which is probably the right approach.

Under the present law, any enterprise that “puts products on the Belgian market” may ask to be granted the social label. However, it will have to prove that it does indeed respect the eight ILO core Conventions, and that any subcontractors do likewise. It will also have to undergo checks by social auditing firms that will be accredited by the Belgian Minister of Economic Affairs. And applications for the social label will have to be co-signed by the representatives of the workers in the enterprise concerned. A “committee for socially responsible production” has been set up, under the law, to rule on applications for the granting of the label.

The committee

The committee is composed of 16 members representing the government, the employers, the trade unions and non-governmental organizations (NGOs) of consumers and development cooperation. Its composition is not as the FGTB, ideally, would have wished. Ministerial offices and NGOs are overrepresented in relation to the social partners, i.e. the trade unions and the employers.

The FGTB has ceded one of its seats to the International Confederation of Free Trade Unions (ICFTU), in the belief that a social label with worldwide implications is best served by the inclusion of an inter-

national element in the committee set up to advise the minister. From the start, the FGTB and the ICFTU have worked closely together.

What the FGTB and the ICFTU fear is that the label mechanism could be moved away from its original purpose towards a derivative, even diversionary, role vis-à-vis the serious instruments. In the preparatory discussions before the rules were set for the application of the label, the FGTB and ICFTU tried to add, as a condition for granting it, the requirement that the enterprise respect the OECD Guidelines for multinationals. This request was rejected.

Monitoring and verification

As we know, the question of monitoring is essential to the credibility of the label itself. The fact that it will be applied to products and not to firms makes things more difficult. It will entail keeping an eye on the successive phases of a production process which, by definition, is constantly being renewed. Ideally, therefore, the monitoring should also be continuous and should be performed at all stages of production.

This last point is important, and it gives rise to new difficulties – where exactly does the production process for any particular good begin?

For example, does the granting of a label to a T-shirt imply monitoring the production conditions for the cotton that ultimately went into its manufacture? When granting a label to chocolate, can the conditions of cultivation and harvesting for the original cocoa beans be left out of consideration? As they are marketed through a trading exchange where the beans are mixed, it is not possible to follow the production chain back up beyond that exchange. Therefore, it would be impossible to grant a social label to a chocolate product, as it is well known that there are problems upstream from the trading exchange.

Certainly – contrary to the codes of conduct, which are often a unilateral, PR-oriented move by the company – the Belgian social label attempts to combine voluntary

initiatives with legal constraints. It also avoids contravening the rules of the World Trade Organization, as it does not ban any firm from doing business in Belgium, and the label is not imposed on anyone. It does, however, include a constraint that is absent from the codes of conduct: a firm that has requested and received the social label and is then caught cheating is liable to penalties of up to 2.5 million euros under the legislation, and its executives face prison sentences of up to five years. But what about implementation? At first, the idea was to create a real corps of public inspectors tasked with conducting on-the-spot checks on the conditions of manufacture of products for which a label was requested.

In reality, though, quite a few elements still have to be established or elaborated as regards, amongst other things, the accreditation of monitoring bodies, the quality of on-the-spot monitoring (in the producer countries), corrective measures and the complaints procedure.

Specifications for firms

Not surprisingly, discussion within the committee for socially responsible production tended to centre on drawing up specifications. Amongst other things, the FGTB and the ICFTU wanted the specifications list to include the maximum of guarantees on the effectiveness and transparency of the monitoring. The specifications communicated to firms by the Minister of Economic Affairs have not reassured us in this regard. Far from it.

The specifications set out the procedure, the commitments which the various partners must make and the guidelines and specific rules for the monitoring.

Unfortunately, the examples currently available show that, in the field of social auditing or certification, despite the good intentions of the auditors and the establishment of compulsory procedures, it is not easy to discern the reality of the situations assessed (see also the article by Anne Renaut on page 35). It is very difficult to evaluate parameters such as distrust on the

part of local workers, pressures exerted by local management, possible corruption and prior organization of the sites visited...

The consequence of all this is that, on the one hand, some people and organizations no longer believe that it is possible to conduct proper verification and, on the other, it is recognized that precise, detailed procedures will be absolutely essential.

That is why the FGTB and ICFTU tried to draw up specifications that contained a maximum of constraining prior rules – this despite the expressed wish of some committee members that the process should be self-regulated by leaving it up to the market forces, with as few precise criteria and rules as possible.

Criteria for auditors

At the request of the Minister of Economic Affairs, Mr. Charles Picqué, the committee decided to postpone discussion of a series of criteria at the level of a syllabus or procedure that auditors should follow when carrying out checks.

The FGTB and ICFTU have, with other members of the committee, proposed the creation of a working party with the aim of drawing up a specific syllabus. This would, on the basis of the eight ILO core Conventions, establish a standardized methodology for carrying out audits, as well as indicators for each criterion. The auditing bodies must be certified under the standard EN 45004, and this implies that a specific checklist must be developed for the social label.⁴

And the means?

A firm that wants the label for one of its products must put in an application and bear the costs of the procedure. It may therefore build this process into its advertising policy. This also supposes that the firm has the financial means to apply for the label and to finance the investigation.

What happens in the case of firms that do not have the wherewithal? And more par-

ticularly for those that do have decent conditions of production but are unable to proclaim this by means of a label? The law does provide for technical and financial assistance to enterprises in developing countries, so as to enable them to “respect the criteria of conformity for the granting of the label”, but this assistance does not cover the initial application itself, and it may in any case be uncertain whether the aid will be sufficient and how its use will be controlled.

A “false good idea”?

In the view of the FGTB and the ICFTU, care must be taken to respect a certain hierarchy of means, in order to ensure respect for working people’s rights.

The product label, as proposed by the Belgian Government could, if we are not wary, become a “false good idea”, with the negative effects outweighing the positive ones.

For the FGTB and ICFTU, the key to promoting workers’ rights is still to respect the conditions for *free trade union action*, wanted and led by the workers themselves.

For this reason, and to make its auxiliary role clear, the granting of a social label, to a firm or a product, should always be subordinated to at least this first condition, from which all the others flow.

The FGTB and the ICFTU therefore concluded that it is not possible to grant a label to a product made, wholly or in part, in a country where free trade unions are not tolerated, or in a country where there is only one tolerated union, which is linked to the government. Although the majority of the partners on the committee seem to back this idea, nowhere is it explicitly mentioned in the texts. Within the Ministry of Economic Affairs, which has responsibility for this dossier, some people still believe that “the idea is to create, with the enterprises that sign up to the proposed project, ‘social locomotives’ that will bring about improvements in well-being”, even in countries that have not been very respectful of rights so far. Let’s hope so, but it’s a bit of a gamble.

In reality, it is this first point about trade union freedom that should be the subject of monitoring anchored in the workplace, conducted by the workers themselves and possibly reinforced by a Belgian or international public initiative.

As regards the contents, the label clearly must cover all operations linked to the manufacture of the product, from the production of the raw material right up to the installation of the finished article.

Encouraging responsible consumption by building the social and environmental conditions of production into the evaluation criteria is a good thing in itself. But in this as in all things, priority should not be given to the “laws of the market” (with the consumer being supposed to favour the “good” producer).

Respecting the conditions for decent work (ranging from working conditions as such to the degree of social protection and freedom of association) entails mechanisms for monitoring and sanctions that are both serious and institutional. Respect has to be ensured by a general structure, applicable to all in the name of the public good (and not just to those who feel like it). That is how a well-made law is supposed to work in a functioning democracy. This is what we advocate and will continue to advocate.

Watch this space

All the partners recognize that the process which has been launched is a difficult one. That is why it is regarded as evolutive, meaning that it should evolve in line with the experience gained when examining re-

quests for the label. This is not without its dangers. A label can quickly lose its credibility, particularly if there are problems at the outset.

Nonetheless, the FGTB and ICFTU have agreed to keep on following the experiment, in the hope of being able to improve it. However, if the system is later shown not to be working, they reserve the right to draw the conclusion that the label was a false good idea.

Notes

¹ The core standards are Convention No. 29 on forced labour (1930), Convention No. 87 on freedom of association and protection of the right to organize (1948), Convention No. 98 on the right to organize and collective bargaining (1949), Convention No. 100 on equal remuneration (1951), Convention No. 105 on the abolition of forced labour (1957), Convention No. 111 on discrimination (employment and occupation) (1958), Convention No. 138 on the minimum age (1973) and Convention No. 182 on the worst forms of child labour (1999).

² “Enterprise” in the sense of the unit that carries out the production or part of the production locally.

³ Soft law is a non-constraining rule whose force derives purely from a willingness to apply it by those concerned who have agreed to submit themselves to it, that exists only for as long as that willingness remains, and which generally has not been passed by a legislator.

⁴ To be able to “certify” (products, quality systems or persons), a body has to be “accredited” (for example, by the State). So accreditation is the official recognition of the technical competence and independence of the bodies certified. It is done on the basis of criteria which constitute a standard. The criteria of the standard EN 45004 are those used to accredit monitoring bodies.

Social auditing, freedom of association and the right to collective bargaining

Many of the emerging methods of assessing companies' compliance with basic labour rights have their limitations. Ironically, the group that is best capable of monitoring practices at the workplace is the one that these standards seek to protect: workers and their trade unions.

Philip Hunter

Michael Urminsky

Multinational Enterprises Programme

ILO

Over the past decade, social auditing has taken on an important new role in the monitoring of labour and environmental standards. It has grown rapidly in recent years, involving various companies, consulting firms, labour unions and non-governmental organizations (NGOs) in industries such as forestry, agriculture, clothing and footwear, and textiles. The combined pressure of campaigns by trade unions and NGOs, negative media attention and an increasingly vocal public concern about working conditions have prompted some companies to have their factories audited. Concern about the credibility of such audits has been a major issue in the public debate about corporate social responsibility.

Recent research has begun to consider the methodologies and effectiveness of social auditing initiatives.¹

This article offers an analysis of audit methodologies and their coverage of freedom of association and the right to collective bargaining. It will examine six initiatives: Fair Labour Association (FLA), Social Accountability International (SAI), Social Accountability in Sustainable Agriculture (SASA), Insan Hitawastana Sejahtera's (IHS) 1999 Reebok audit, the auditing activities of the Trade Union Congress of the Philippines (TUCP), and the ILO's Cambodia Project.

It will concentrate on their efforts to audit freedom of association and the right

to collective bargaining. The article will answer the following question: is it possible, given current auditing methods, to audit successfully a production facility's compliance with freedom of association? It will be shown that auditing methods are underdeveloped with respect to these rights and freedoms, and need significant improvement and reconceptualization before offering a sufficient level of assurance.

Three notes of caution should be sounded. First, the field of social auditing is very dynamic and fast-paced. Even as they were writing this article, the authors were constantly trying to keep up to date with new and diverse activities of the different organizations described. Second, many organizations keep their methodologies confidential, and although the authors had access to some of these documents, they have specifically avoided using them. It can be argued that this results in unfair treatment of some of the initiatives. However, the initiatives under review all make public statements about the company's compliance with freedom of association and collective bargaining. Thus, it is not inappropriate to evaluate only the methods they have made public, as these are what they ask the public to place their faith in. Third, freedom of association and the right to collective bargaining are vast subjects and treatment of the entirety of the standards in a short text

would be impossible. Instead, the present article draws out elements of the different initiatives' methodologies on the subject and points to specific problems and areas that need further attention.

Auditing, inspection and monitoring

Auditing, inspection and monitoring are three terms used interchangeably to refer to the practice of evaluating a company's compliance with a set of standards. However, they represent distinct elements of this evaluation and thus provide a useful framework for the analysis of auditing a standard.

A social audit is undertaken by a company to evaluate the working conditions existing in a facility or supply chain. Unlike monitoring, it lasts anywhere from a few hours to a few days, and involves a number of steps, each one theoretically used in combination with the others. The performance of a social audit tends to involve three related processes: the document review, the site inspection and interviews with workers, management and third-party stakeholders. Although there is a great deal of diversity amongst the initiatives, they all usually follow this format – with the exception of the ILO's Cambodia project and the TUCP Sweatshops Verification Checklist, which provide no methodological advice but just a list of questions to be answered.

An auditor or team of auditors generally conducts the document review, site inspection and interviews. Social auditing does not involve continuous monitoring, although follow-up procedures are not uncommon.

The site inspection entails the direct inspection of production facilities, and sometimes includes informal discussions with workers and management. It tends to last between a few hours and one or two days. There are announced and unannounced inspections. The ability of the inspector to make skilled observations and judgements concerning a facility's condition is the key issue of the site inspection.

Monitoring is the ongoing and regular surveillance of a facility by one or more people. The most important characteristic of monitoring is the requirement of continuous engagement and presence at the facility. Unlike auditing, it is more capable of offering an in-depth and long-term view of a workplace.² Monitoring requires the continuous presence and engagement of monitors.

While all these areas are discussed throughout this article, it is primarily concerned with auditing practices.

Document review

The document review is an important part of the social audit. It can be used to monitor elements of all labour standards, but it is mostly used in the auditing of wages and working hours. With regard to freedom of association, the document review is not particularly effective. As envisioned by several of the initiatives, including the FLA, SAI, IHS and the SASA Pilot Audit Template, this review cannot provide the information necessary to confirm freedom of association, not least because it is rarely supported by the necessary methodological guidance. The ILO Cambodia Project and TUCP Sweatshops Verification Checklist, on the other hand, do not explicitly indicate the use of a document review. Only the FLA provides guidance on this element of social auditing for freedom of association and the right to collective bargaining.

Among the documents examined by auditors, company policies and collective bargaining agreements are mentioned by all of the initiatives, while the FLA includes personnel files and employment records. SASA emphasizes union membership lists and the minutes of recent union meetings, and also mentions the records of training and capacity-building sessions. It does not, however, include direction on what to look for in these documents, and neglects to tell us what auditors do to determine how many of these documents are examined. Moreover, there is no indication of what is

being audited in terms of freedom of association, and auditors are not given a clear definition of the standard. Although SASA provides the longest list of documents to be looked at, it does not provide support for this list, either in the form of methodological guidance or in that of methods of analysis. In this respect, the FLA is somewhat better, while SAI and the IHS Report also neglect to offer guidance. The latter, for example, states only that its Project Methodology included the “independent review of written documentation from factories including contracts and payment schedules, personnel rules, and safety procedures”.³ No indication is given about how these documents were actually used.

In contrast to this, the FLA does discuss some of the methodological issues of auditing for freedom of association during the document review. It requires its auditors to look for indications of anti-union discrimination in employment records and personnel files, and asks them to compare such documents in order to see if employees have been treated in the same way for “similar workplace infractions”. In cases where discrimination is considered possible, a record showing that certain workers “were treated differently than other workers for similar infractions” provides “an indication that the workers may have been fired for reasons of anti-union bias”. If this is the case, auditors are expected to “establish a clear record of the employer’s actual steps in disciplining the workers, in order to balance the written record against the oral record”.⁴

The FLA is the only initiative reviewed that specifically deals with anti-union discrimination, but even its coverage is insufficient. It focuses on anti-union discrimination as it relates to termination of employment and disciplinary action.⁵ However, ILO principles on freedom of association specifically prohibit “acts of anti-union discrimination” in all aspects of the employment relationship, including training opportunities, promotion, transfer, hiring and conditions of work. Anti-union discrimination is a difficult aspect of freedom of association to audit. Initiatives that try

to do so should be given credit. It would, however, probably be more realistic for an auditor to obtain indications that this may be happening – through interviews with workers or stakeholders – and then to place upon the employer the burden of proving that this is not the case.

Site inspection

The site inspection is also a valuable part of the social audit. It offers auditors an opportunity to view the production facility and gives them a chance to observe its conditions and environment, something particularly worthwhile in the auditing of health and safety standards. Unlike the document review, site inspections are rarely used for the verification of freedom of association. The main aspects of association covered by site inspections are the existence of facilities for union-management meetings and the posting of union announcements and material. Only the FLA provides direction on these issues, and this information is not completely reflective of the principle of freedom of association.

There are a number of issues that auditors need to deal with vis-à-vis site inspections. Their duration is of great significance, while the question of whether or not auditors have complete and free access to a facility is also important. With regard to freedom of association, the presence of union materials is noteworthy, for example the posting of notices advertising union meetings, and the availability of meeting rooms is also significant. These entitlements are issues dealt with by ILO principles concerning freedom of association and collective bargaining. The ILO Cambodia Project even asks if employers have “provided the shop steward with an office, meeting room, working materials and poster-displaying site”.⁶ These requirements could be considered to go beyond the principles of freedom of association and the right to collective bargaining, as the standards call for a certain amount of flexibility regarding the precise nature of the facilities to be provided to

workers' representatives. It would, however, be worth examining whether these are conducive to representatives conducting their work promptly and efficiently.

There are various other conceptual problems with the guidance and recommendations laid down by several initiatives on the site inspection process. The IHS, for example, reports the use of "labour relations experts" during the site inspection in its audit report, but does not provide any further information about this, neglecting to tell us what these "experts" did or what constitutes an expert. The FLA requires its auditors to "observe any posted rules unreasonably restricting workers' ability to communicate freely with each other".⁷ However, auditors are not told to observe the actual patterns of employee communication, nor are they given any guidance on what to look for as possible indicators of restrictions on employee communication. The term "unreasonably restricting" is also not defined, leaving the auditor to decide what counts as unreasonable. The use of terms such as this poses particular difficulties, because it is open to considerable interpretation by auditors. While standardizing these sorts of subjective judgements is difficult, if not impossible, mechanisms to ensure consistency are necessary. Mechanisms could be set up in the initiatives at least to move in this direction. SAI's auditor calibration meetings could be one example of such an activity. Finally, in some programmes, auditors are asked to observe spaces made available for worker-management meetings, "if workers meet with management and/or supervisors to discuss complaints".⁸ Two points should be noted here: discussions with workers' representatives are not mentioned; and the existence of a meeting room tells us nothing about whether meetings take place, how often they occur or how they are conducted.

The use of the site inspection as a method to audit freedom of association and the right to collective bargaining is clearly limited. It only offers the auditor a chance to verify whether two specific elements of the standard are respected,

namely the provision of facilities to workers' representatives and the posting of trade union notices.

Interviews

The interview process is perhaps the most valuable aspect of the social audit. It consists of discussions with various parties and offers the auditor a unique opportunity to speak with workers. Interviews provide the most direct source of information and, when used correctly, can offer detailed and reliable insight into a production facility's working conditions. It is not surprising that they are often a more developed part of the audit process. With regard to freedom of association, interviews tend to target workers and their representatives. The FLA, however, also includes a component on management interviews, and provides guidance on how to conduct them. It also covers interviews with local community groups and NGOs.

Local community groups and NGOs

Representatives from local community groups are interviewed primarily in order to gather external information. The FLA believes they are able to provide auditors with "helpful information" regarding union positions and inform them about the "approach" of the local government to trade union activity. They can also identify factories with registered unions and collective agreements, and provide detail on the character and outcome of recent labour disputes. In SAI's system, it is suggested that auditors consult NGOs on collective bargaining and the harassment of trade unionists. No indication is given by SAI about the purpose of these interviews, and no details are provided concerning the way they are conducted or how certain answers are to be treated. Whether or not the information provided by NGOs is accurate is also not discussed, and neither the FLA nor SAI inquires about the character of these organizations. Are they knowledge-

able about labour standards and freedom of association? What positions do they take vis-à-vis local trade unions? These are important questions that have significance for the rest of the audit. Cross-referencing this information with interviews with unionists would be useful, but puts the auditor in the unusual situation of becoming a moderator between parties, rather than a verifier of facts.

Management interviews

Management interviews can give an auditor considerable opportunity to explore the issues of freedom of association and collective bargaining with managers. However, only the FLA deals with manager interviews.

One aspect of bargaining that is emphasized in the FLA's management interviews is the nature of collective agreements. The auditor is encouraged to review the provisions of the collective agreement with managers. However, the guidance provided for this review refers only to provisions on grievance procedures and how workers' representatives raise concerns with management – nothing else. The FLA also inquires about training requirements for managers on freedom of association and management interference in union activities. These questions, while limited in scope and depth, are an extremely significant development, as other initiatives have not yet grasped the need to include them. Both the ILO Cambodia Project and the TUCP are instructive on these issues, although neither mentions them with specific reference to management interviews.

Worker interviews

The content of worker interviews tends to be quite consistent. The main issues discussed cover various aspects of freedom of association and include anti-union discrimination, disciplinary action and management interference in organizing efforts. The FLA also includes an emphasis on

grievance procedures, while SAI includes a concern about meeting rooms. The latter, moreover, asks its auditors to inquire about worker committee meetings and recent committee elections, in cases where the law restricts freedom of association; this is also a concern shared by SASA, which in this case seems to adopt all of SAI's recommendations.⁹ IHS, on the other hand, is a bit of an anomaly and perhaps even a concern from a trade union point of view. It confirms that "structured" interviews were conducted, and says that these interviews used a "formal worker survey". The content of this survey, however, covers little with regard to freedom of association, and seems more concerned with gathering information about union activities. It asks about membership dues and the benefits of union membership, and inquires about how frequent union meetings are and when they take place. The survey does address the issue of discrimination, asking if the company must first permit workers to join a union and whether such membership affects promotion.

With regard to the methodological questions about worker interviews, the FLA is the only initiative to provide guidance specific to freedom of association.¹⁰ It comments on the way interviews should be conducted, suggesting that auditors ask open-ended questions, and identifies the people with whom the auditor should speak. Auditors are encouraged to interview "officials of the most representative union" and "representatives of all other workers' organizations that have members at the facility".¹¹ They are also told to conduct interviews "off-site" and "informally" in cases where a union is not recognized or there is no collective bargaining agreement.

The interview process is beset with methodological problems, many of which are rarely discussed by auditing initiatives. Without a clarification of these issues, the evidence gathered from interviews remains unreliable and cannot provide meaningful insight into workplace conditions. How, for example, do auditors gain the trust of workers during an interview?

This is an important question, and one that goes to the very heart of social auditing. An interview between strangers, one that lasts only a short time and is conducted by someone often hired by factory management, is not likely to inspire confidence in the worker; the information he or she gives is unreliable from the outset.

Auditing freedom of association in difficult situations

Thus far, we have considered in a relatively detailed way the methods auditors are using to go about collecting information on freedom of association. However, one notable area has been left out, because it does not fall neatly into the conceptual framework of an audit – how auditors do their job in countries where freedom of association and collective bargaining are not allowed from the start, for example in China.

In countries where freedom of association is not respected at all and it is impossible for workers to organize freely, several organizations recommend that companies facilitate parallel means of freedom of association and collective bargaining. Auditors would generally be asked to look for ways that this is facilitated within the company. SAI, for example, suggests that the selection of a workers' "Social Accountability Representative could be a means for management to facilitate the independent association of workers".¹² However, this requirement is a departure from international labour standards, in that these instruments make no such provision, as a result of the fact that they are directed at governments.

However, this does not imply that there may not be ways to audit a company's respect for freedom of association and the right to collective bargaining in these situations. One school of thought suggests that auditors examine communication channels between management and workers, such as management-worker committees on health and safety or other subjects within a company. However, as manage-

ment is the group that would be organizing these meetings and dialogue, it is unlikely to meet the requirements of genuine voluntary dialogue. Another approach to considering company actions would be to examine how they approach freedom of association in the country. For example, are they active in lobbying for legal changes, forming coalitions of companies to advocate for such change and making public statements with respect to the subject? These may in fact be better indications of respect for freedom of association than management-organized dialogues or committees.

Conclusion

Freedom of association and the right to collective bargaining could be considered the Holy Grail of social auditing. This article has sought to analyse the coverage by various initiatives of these rights. However, in doing so, it must acknowledge the vastness and complexity of ILO standards on freedom of association and collective bargaining. While the initiatives have made some progress in developing methodologies to audit these rights, methods are inconsistent and do not cover the full range of issues dealt with by the standards. To their credit, many of the initiatives reviewed in this article acknowledge this and continue to develop their methodologies.

This article was designed not to be critical or comprehensive but to provide for discussion. It aims to help inform trade unions about developments in social audits, while at the same time demonstrating to auditors the value of fully understanding the rights that they are auditing for. Many proposals could be made in this respect, including mechanisms to monitor the monitors (perhaps placed within the ILO); clear requirements concerning social auditors' knowledge of labour standards, particularly international labour standards; and greater trade union involvement and consultation in auditing practices.

However, a broader and more fundamental issue remains to be discussed. Earlier in this article, three terms were noted – auditing, inspection and monitoring – and it was argued that these are at times used interchangeably by commentators and critics of the social auditing movement. This article has dealt with auditing practices, whether or not the initiatives themselves describe them as such. However, due to the complexity of freedom of association and the right to collective bargaining, it might be asked if one of the other methods is not better designed to address a company's respect for and observance of freedom of association and the right to collective bargaining.

Inspection was considered in this article and was found to be of quite limited effectiveness with respect to the rights under discussion. However, monitoring has not been considered here. It was described as “ongoing and regular surveillance of a facility by one or more people”. The interesting and somewhat ironic point is that the very organization and group of people capable of doing this – a trade union and the workers themselves – are the very group that we are interested in protecting through the development of these social auditing activities!

Notes

¹ See: Jem Bendell: *Towards Participatory Workplace Appraisal: Report from a Focus Group of Women Banana Workers*, New Academy of Business, 2001; Marina Prieto and Jem Bendell: *If You Want to Help Us Then Start Listening to Us! From Factories and Plantations in Central America, Women Speak out about Corporate Responsibility*, New Academy of Business, 2002; Melanie Beth Oliviero and Adele Simmons: “Who’s Minding the Store? Global Civil Society and Corporate Responsibility”, in *Global Civil Society 2002*, The Centre for the Study of Global Governance, October 2002; Centro Internacional de Política Económica: *Report: Social Audits and the Banana Industry in Costa Rica*, 1999.

² Social auditing and accreditation and certification systems sometimes involve follow-up inspections and, in the case of SAI, “surveillance visits”. Although these are meant to monitor whether corrective action has, in fact, been implemented, this activity should not be confused with monitoring as it is referred to in this article.

³ Insan Hitawasana Sejahtera: *Peduli Hak: Caring for Rights*, 1999.

⁴ Fair Labour Association, “Monitoring Guidance,” p. 30.

⁵ In the “Compliance Benchmarks” section of the *Monitoring Guidance* document, the FLA mentions other forms of anti-union discrimination without providing methodological guidance. Fair Labour Association, “Monitoring Guidance,” p. 39-41.

⁶ ILO: *Final Checklist*.

⁷ FLA: op. cit., p. 33.

⁸ FLA: op. cit., p. 33.

⁹ SASA: *Joint Pilot Audit Template*, p. 19.

¹⁰ SAI also provides guidance for its auditors on how to interview workers. This guidance, however, is not specific to auditing for freedom of association.

¹¹ FLA: op. cit., p. 15. SAI also suggests speaking with union representatives and leaders, but tends to emphasize the testimony of workers. It also suggests interviewing former workers.

¹² SAI: *Guidance 1999*, p. 24.

Corporate public reporting on labour and employment issues

Corporate reporting on environmental and social impacts has rapidly gained ground among large companies around the world. But what are the advantages and disadvantages of the various reporting systems – and how can unions harness the potential of reporting?

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Since the mid-1990s, voluntary reporting and disclosure mechanisms have become a prominent feature of the corporate social responsibility movement. These include individual corporate reports and reporting initiatives organized on a multi-stakeholder basis or by private sector actors. Any consideration of corporate reporting and disclosure needs to take account of these voluntary activities, as they form a prominent feature in the debate about corporate social responsibility.

Corporate reporting

Individual corporate social and sustainability reports are increasingly prominent. However, a detailed analysis of the labour and employment information in these reports demonstrates the poor quality of the information provided by them. Table 1 reveals a number of facts which allow us to question their usefulness. At a very general level, we can observe a great deal of selectivity in the labour and employment information that corporations are willing to report. Furthermore, when the nature of the information reported was classified into policy information, process information or performance information, we see levels of disclosure decrease for most variables as we move from policies to processes to performance issues. Also notable is the low reporting in areas considered to

be fundamental human rights, freedom of association and collective bargaining, non-discrimination, equal remuneration, child labour and forced labour. With the exception of non-discrimination, all fall under the 10 per cent range for policy, process and performance variables. We also see steady drops among these fundamental rights from policy to process to performance with the exception of performance reporting on non-discrimination.

The statistics in table 1 say nothing about the actual information that is reported. As standardized indicators are still being developed by many voluntary corporate reporting initiatives and mandatory ones are limited to only a few countries, it is not surprising that information published in reports differs widely.

A good example is a comparison of the information two companies reported on freedom of association and collective bargaining. South African Breweries (SAB), in its *Corporate Citizenship Review 2000*, reported on its respect for the “right of employees to join trade unions for collective bargaining purposes”¹ and on participation levels in trade unions compared to the national averages and changes in trade union membership between years. It also reported on decreases in lost working days due to industrial action and applications to industrial tribunals as well as the percentages of cases that were settled prior to the tribunal hearing, those found

Table 1. Reporting content by labour issue and character of information

Variable	Policy average	Process average	Performance average		
			Total	Quantity	Quality
Child labour	8.9	2.3	1.9	0.9	1.9
Forced labour	7.5	1.4	1.4	0.9	1.4
Non-discrimination and equal opportunity	30.5	11.7	16.9	13.1	15.9
Freedom of association	9.9	2.3	5.2	2.8	3.3
Collective bargaining	8.0	8.0	7.0	0.0	7.0
Equal remuneration	0.0	0.0	0.0	0.0	0.0
Wages	36.2	29.1	61.0	54.9	28.2
Hours	5.2	1.4	4.7	2.8	1.9
Training	43.7	35.7	49.8	27.2	43.7
Health and safety	45.5	40.8	45.5	39.9	42.7
Total employment	4.2	24.9	71.8	71.8	5.6
Job security	2.8	0.0	2.8	1.9	0.9
Employment of host country nationals	6.1	2.3	6.1	4.7	3.3
Technology	0.9	1.4	0.9	0.0	0.9
Disciplinary practice	0.0	0.0	0.0	0.0	0.0
Linkages with national enterprises	3.8	3.8	4.7	1.4	3.8

in favour of the company and those won by the plaintiff.

In contrast, the Michelin *Annual Report's* references to freedom of association and collective bargaining include a policy reference to respect for the right to trade union representation. The report then describes different relationships with unions in different countries, including the United States, Canada and several European countries, and attempts to justify these relationships with reference to national systems of industrial relations and the choice of workers rather than to the company's policy statement. The information reported by both companies does not really give an indication of the companies' actual effect on freedom of association and collective bargaining.

The distinguishing factor between these two reports is the emphasis on facts versus opinions. The SAB report focuses on its policy and facts such as statistics about trade union participation over time. Although the Michelin report also reported on the company's policy, it was more focused on describing the situation from management's perspective. These differences are illustrative of the diversity among social reports.

Voluntary reporting initiatives

To complement the individual corporate social and sustainability reporting which is occurring among large companies, a number of voluntary reporting initiatives have also been developed. The following paragraphs review the several voluntary reporting activities where labour and employment issues are discussed, including the Global Reporting Initiative (GRI), the Global Compact's new Reporting Requirements and Business in the Community's Corporate Impact Initiative. These give a sense of the diversity and goals associated with voluntary reporting initiatives.

A reporting format that is gaining ground in business circles is the one proposed by the GRI. The GRI is "an international multi-stakeholder effort to create a common framework for voluntary reporting of the economic, environmental, and social impact of organization-level activity. The GRI mission is to elevate the comparability and credibility of sustainability reporting practices worldwide. The GRI incorporates the active participation of businesses, accountancy, human rights, environmental, labour and non governmental organizations."² The purpose of

this non-governmental, voluntary initiative is to provide a common framework for global sustainability reporting, elevating it to a widely accepted and recognized standard similar to those used for financial reporting. It strives to supply a solid reporting benchmark, eliciting lucid, comparable and verifiable disclosure of economic, environmental and social performance.

The GRI guidelines consist of several sections. The first concerns the reporting principles or goals which a reporter should strive to achieve. These include transparency, inclusiveness, auditability, completeness, relevance, sustainability context, accuracy, neutrality, comparability, clarity and timeliness. The next section deals with report content and takes up the issue of reporting indicators. The labour and employment indicators recommended as core indicators under the heading "Social Performance Indicators: Labour Practices and Decent Work" cover employment, labour relations, health and safety, training and diversity and opportunity. The section entitled "Social Performance Indicators: Human Rights" incorporates a reference to the "Fundamental Human Rights Conventions of the ILO" and the Universal Declaration of Human Rights. It covers indicators on non-discrimination, freedom of association and collective bargaining, child labour, forced and compulsory labour, disciplinary practices, security practices, and the rights of indigenous populations. The indicators do mention Conventions Nos. 29 and 138 and also reference the ILO Guidelines on Occupational Health and Safety Management Systems. The indicators are relatively abstract and do not necessarily deal in detail with the issues being addressed. The latest version of the GRI guidelines has just been published, and it therefore remains to be seen how the issues will be described in future reports.

On 27 January 2003, the United Nations reformulated a company's commitment to the Global Compact. It dispensed with the requirement that companies submit examples of what they are doing and replaced it

with a requirement that participants must use their annual report or other prominent report to give an account of what they have been doing with respect to all of the nine principles of the Global Compact. While not really comparable to initiatives such as individual corporate reports or the Global Reporting Initiative, this development is interesting as it is yet another multi-stakeholder effort to encourage corporate social reporting, and one in which trade unions have a direct role.

Business in the Community is a movement of 700 member companies committed to improving their impact on society. The organization is business-led and has 189 member companies. One of its initiatives is the Corporate Impact Reporting Initiative, which helps member companies learn about measurement and reporting on community impacts. The initiative makes recommendations on how to report on the workplace dimension in a corporate report that was designed for human rights and workplace issues. These reports focus on what the company should be measuring and the essential components of good practice. The workplace guidance gives generic issues to measure but does not recommend actual measurements. These issues include workforce profile, staff absenteeism, number of legal non-compliances, number of staff grievances, upheld cases of corrupt or unprofessional behaviour, staff turnover, value of training and development provided to staff, pay and conditions compared against local equivalent averages, workforce profile compared to the community profile, impact evaluations carried out as a result of downsizing and perception measures of the company.

Voluntary reporting: Advantages and disadvantages

This review of labour and employment information in voluntary reporting initiatives demonstrates both the advantages and the disadvantages of these mechanisms. The disadvantages include the lack of reporting on certain issues, particularly subjects

considered to be fundamental human rights issues, as illustrated by the analysis of individual corporate reports. However, there is also a lack of standardized information between the reports, as demonstrated by the comparison of two companies' reporting on freedom of association. The voluntary nature and progressive character envisioned in initiatives such as the GRI and the Corporate Impact Reporting are unlikely to have a standardizing effect on corporate social reports. Nevertheless, voluntary disclosure practices are producing information, and the multi-stakeholder character of two of the initiatives discussed – GRI and the Global Compact – at least gives trade unions the opportunity to shape and improve the quality of these voluntary reporting initiatives, so as to make them useful tools for advocates of workers' rights.

Public policy mechanisms

In contrast to voluntary reporting initiatives, there are a number of public policy mechanisms that require reporting by companies and other actors on the labour and employment impact of corporate activity. This section will consider two of the most significant governmental and inter-governmental initiatives that exist – national and international reporting.

National reporting requirements are not new, but they are often not considered and discussed with major emphasis on corporate voluntary reporting. Governmental reporting and disclosure requirements do exist in several European countries; yet in most countries, companies are under few or no legal obligations to publish social reports. This section reviews efforts in France and Belgium on mandatory reporting and outlines the weaknesses and advantages of these requirements.

France requires by law a *bilan social* (social report) from all enterprises employing more than 300 employees. This document is prepared annually by the company and submitted to a committee of workers and management that discusses and approves

it during a meeting on the subject. After the committee gives its approval, the social report is distributed to the works council, trade union delegates, shareholders and the labour inspector as well as to any worker requesting it.

The *bilan social* is a document containing statistical information that the government defines. It contains only statistical information; the decision to omit comments and qualitative observations is the result of a desire to avoid any subjective interpretation of indicators and to make a distinction between the facts (the social report) and the comments as represented by the meeting of the works committee. The French decree 77-1354 passed in 1977 outlines 134 measures and indicators that need to be reported in the *bilan social*. It includes chapters on employment, payment, health and safety, working conditions, training, labour relations and living conditions. In 1999, a proposal was made by the French Economic and Social Council to update the indicators, modify the structure of the *bilan social* and improve its circulation. In a related development, France revised a law concerning the new economic regulations. This new law makes it mandatory for corporations to report on employee, community and environmental issues, how the corporation's subsidiaries respect the ILO core Conventions and how the corporation promotes these Conventions to its subcontractors.³

Since 1995, companies in Belgium have been required to include in their annual report a *bilan social* that consists of data on the nature and the evolution of employment in their companies. It is required for all companies employing more than 20 wage earners. The *bilan social* is prepared by the company and is submitted to the National Bank of Belgium, which is responsible for the collection and distribution of the annual accounts based on Belgian enterprises' *bilans sociaux*. There are two versions: a full social balance sheet, which has to be prepared by large entities, and an abbreviated social balance sheet, which has to be prepared by medium-sized entities.⁴ The chapters include one on the state

of the workforce, fluctuations in the workforce, measures adopted for the promotion of employment and organized training. In a related development, the Belgian government also recently passed a law concerning a social label for companies (see page 41).

These two reporting initiatives are not the only ones. Within the European Union, several other governments are engaged in discussions and activities on social reporting and disclosure, but limited space prevents us from discussing all of these. The countries concerned include the Netherlands, whose Social and Economic Council stated that it would be “undesirable to extend existing legal reporting requirements” to include social responsibilities. The Government of the United Kingdom has also been looking closely at the issue of mandatory corporate social reporting, though no decisions have yet been made.

This section demonstrates some important points about corporate reporting and disclosure. First, it shows that standardized mandatory reporting is possible and feasible, since it has been happening in France for over 20 years and in Belgium for close to ten. This refutes one of the arguments often put forward by industry – that the complexity of companies prevents the standardization of reports, since each company is very different. The experience of the French *bilan social* also offers an important conceptual tool for differentiating between the statistics and the interpretation of those numbers. This was one of the problems that voluntary reporting efforts reviewed in the earlier section do not address. Finally, it is also useful to note that in Belgium, the reports are distributed fairly widely, something that perhaps is not directly done in the case of voluntary reporting.

ILO Tripartite Declaration survey process

The ILO Tripartite Declaration – or Multinational Enterprises (MNE) Declaration – is the only universally agreed set of standards directed at multinational enterprises in the employment and labour fields. The

MNE Declaration suggests specific actions for companies in respect of certain labour rights, namely freedom of association and collective bargaining, non-discrimination and equal opportunity, child labour, health and safety, training, employment promotion, wages and conditions of work. The MNE Declaration contains 21 paragraphs directed towards multinational and national enterprises. The most relevant part for this discussion is the survey procedure that the ILO undertakes every three years on the effects of the Declaration.

A resolution of the International Labour Conference, adopted in June 1979, stated that “a report must be made periodically for the follow-up given to the Tripartite Declaration on Multinational Enterprises”. The ILO has to date conducted seven surveys of the effect given to the Tripartite Declaration to support this resolution. However, while the current survey carried out by the ILO is one way of reviewing the follow-up to the Tripartite Declaration, it need not be the only way, assuming that tripartite agreement can be found for a new proposal. The current survey can clearly be criticized. It is poorly designed from a methodological point of view, the analysis of the survey contains no statistical data that would allow comparison of trends across time and the survey reads as something that appears to balance the opinions of constituents with widely divergent views about the observance of the Declaration in different countries. However, there have been some efforts to improve the survey recently.

In a paper submitted to the Subcommittee on Multinational Enterprises and Social Policy, the International Labour Office outlined options that broadly mean the maintenance of the current survey process with a few improvements to the survey. These included supplemental questionnaires to MNEs and Global Union Federations and a simplified standard questionnaire covering the Declaration, with more detailed questions on one of the areas of the MNE Declaration.⁵ The fourth option proposed reducing the frequency of the Global Survey to free up resources for in-depth

national surveys and studies. The results would then be used to stimulate dialogue and action among ILO constituents at the country level regarding the role MNEs play in development and the realization of the Decent Work Agenda.

The Subcommittee's reactions to the fourth proposal were mixed at best. The workers' representative preferred to see all four options used in order to improve the survey and referred to them as "natural additions to the survey process". Thus, we saw some support from workers for revisions to this process. Government representatives tended to have a preference for the fourth option, arguing that it could help strengthen operational activities but also that it could help address certain structural problems within the global survey by replacing it. The employers' representative had "some reservations" about country-level surveys, but she agreed that the survey should be less bureaucratic, shorter and simpler. It is unlikely that the eighth survey will follow this fourth option, but the idea should not be forgotten.

National surveys seem an opportune point of departure, as this idea was strongly favoured by workers and governments, and employers did not reject it outright. As proposed at the ILO's 285th Governing Body meeting, there could be a focus on in-depth surveys at the country level, either instead of or in cooperation with a global survey. These national surveys would produce a solid information base that could track the effect of foreign direct investment (FDI) in a country on the areas addressed by the Tripartite Declaration. It could then be followed up with dialogue between tripartite partners at a national level so that these partners are aware of the actual impact that multinationals are having on employment and workers' rights and can shape appropriate policies to respond to the effects of FDI. They could help governments build a firm understanding of actual impacts of FDI and serve to provide clear and accurate information that can inform more specific and relevant discussions and policy at a national level.

The survey process, which is part of the ILO Tripartite Declaration, is something that needs improvement. All parties agree upon this. It is useful to consider this in the context of broader public corporate reporting by companies around the world. The survey is clearly not the only source of information on companies, particularly as trade unions, non-governmental organizations (NGOs) and companies publish a great deal of information themselves. The advantage of the Tripartite Declaration's survey process is its tripartite nature and the emphasis placed upon dialogue among tripartite constituents. This dialogue could be more focused and worthwhile at the country level, where more in-depth discussions could take place and clear linkages to national policy and practice can be established. The precise nature of this national process would need to be discussed in each individual context, but the broad outline is its tripartite character and the link between producing quality information, dialogue based on this information and an agenda for action by tripartite partners.

Building a trade union agenda on corporate disclosure and reporting

Recent developments in corporate reporting and disclosure need to be carefully considered by workers' organizations. There exist various mechanisms for corporate reporting and disclosure of labour and employment information. However, there are clear weaknesses at all levels. Nevertheless, these are the mechanisms with which the trade union movement has to work. Clearly, corporate reporting and disclosure are of value to the trade union movement. Trade union involvement in voluntary initiatives such as the GRI, in national initiatives such as the French *bilan social*, or in the survey associated with the Tripartite Declaration, demonstrates that the unions see a use in such public information and a need to improve it. The challenge for unions will be to design a strategy to do so. This strategy should be based on three fundamental premises. Firstly, the information any

mechanism produces must be useful. Secondly, trade unions should recognize the limitations of the respective mechanisms and seek to build other mechanisms that fill the gaps. Thirdly, if possible, linkages should be built between the mechanisms to ensure that they do not duplicate efforts but contribute something useful.

Notes

¹ South African Breweries: *Corporate Citizenship Review 2000*, 31 March 2001, p. 31.

² <http://www.globalreporting.org> [Visited on 17 December 2002.]

³ Sarj Nahal: *Mandatory CSR Reporting: France's Bold Plan*.

⁴ The level has been agreed at a turnover of 20 million former French francs, except for certain cases.

⁵ ILO: GB.285/MNE/2.

The ILO Conventions: A “major reference”

In 2002, former French trade union leader Nicole Notat founded Vigeo, a social rating agency of which she is now the President. Vigeo has three particular features: a European dimension (in contrast to the continuing national perimeter of the ten similar agencies in Europe); the presence of trade unions in its Board of Directors; and lastly a twin clientele of investors and companies. The ILO's international Conventions will be a “major reference” for its criteria according to Ms. Notat.

Nicole Notat
President
Vigeo, Paris

Labour Education: How will the Vigeo rating work and what role will trade unions play?

Nicole Notat: Declarative rating is what all social rating agencies around the world do: they inform savings and asset managers about companies from a point of view other than that of classic financial information. And this is done on the basis of public information gathered about the company. If the trade unions in a company release a series of items of information, these are taken into consideration in the same way as information provided by the other stakeholders.

In contrast, the requested rating is based on information gathered on the spot and on documentation. It is carried out at the request of the company which pays for the rating. This evaluation informs the firm about its results and also informs the stakeholders who will be notified. This rating is more in-depth: it revolves around a detailed reference system and is fed by documentary analysis, interviews and on-site surveys at the headquarters and various sites. The trade unions and staff representative bodies are heard transparently *ex officio* like all the other stakeholders.

The publication of the results of this evaluation by the company helps to enrich the information available to stakeholders.

How many trade unions will there be on the Vigeo Board of Directors?

There are eight trade unions from seven different countries (see box). My goal is not to have all European trade unions as Vigeo shareholders. The presence of a trade union body illustrates the involvement of trade unions as a player in a company's social responsibility and commitment to the creation of a European evaluation agency.

Each category of associate has three representatives on the Board of Directors, regardless of its capital contribution. Thus, there are three company representatives, three trade union representatives (CFDT (France), CC.OO (Spain) and CSC (Belgium)) and three investor representatives, who are joined by six qualified individuals.

What criteria will you use to rate companies?

We have created a reference system for six areas of responsibility: human resources; fundamental human rights at work and in society; the environment; social commitment; customer-supplier relationship; and corporate governance.

We have based our reference system on ILO Conventions and Recommendations

as well as on its major declarations, whether standardizing in scope, such as that of June 1998, or aimed at encouraging companies, such as the declaration on principles for multinationals adopted in 1977 and revised in 2000. In these areas, we have taken great care in ensuring that the ILO instruments – initially intended for States – are transposed as a reference cursor for corporate responsibility. Moreover, we incorporate the OECD guiding principles, national regulations, and everything related to agreements, sectors or groups.

The six areas are examined with regard to the 43 criteria relating to the company's policies, practices and results.

We will evaluate items using quantitative indicators. However, not everything is quantifiable; for example, the area of social relations is not an exact science. We will therefore have an approach which is also qualitative at the same time and in addition will integrate comparative and dynamic aspects. This means that we will not take stock of a company's situation in an absolute way, but will consider it in reference to the challenges facing the sector and business location. To recreate this, we look at its development in terms of trends.

Will you draw inspiration from the Global Reporting Initiative indicators?

The function of GRI, which is an interesting initiative, is to provide companies with a reference framework for building their own reporting. The GRI indicators are useful for bringing together the information required to evaluate each of our criteria.

Will you rate companies involved in so-called "unethical" activities such as arms manufacturers or tobacco firms?

We do not rate a company on the basis of the type of products with which it is involved. We will not refuse a company an evaluation rating if it wishes (regardless of its type of business). If there are ethical funds which refuse to invest in a specific or given type of sector, they are obviously free to do so and it is their responsibility.

A tripartite Board of Directors

Seven investors

Eulia, AG2R, Crédit agricole AM, Inter-Investissements (Ionis), Dexia AM, Ofivalmo and SGAM.

Eight trade union organizations

CFDT (France), CC.OO (Spain), CISL (Italy), CSC (Belgium), UGTE (Spain), UGTP (Portugal), DGB (Germany) and ÖGB (Austria).

Thirty-five companies

Accor, Axa, BNP, Carrefour, Crédit Lyonnais, Danone, Schneider Electric, Suez, Thomson Multimédias, Vinci, Air France, Airbus, Alcatel, CCF-HSBC, EADS, Edev (EDF), EGG, Financière-Lafarge, Cogac (GDF), Péchiney, Pinault Printemps Redoute, Renault, Rhodia, Thales, Total-Fina-Elf, AGF-Allianz, Arcelor, Aventis Pharma, France Telecom, San Paolo IMI, McDonald's, Royal Bank of Scotland, Saint-Gobain, Spie, Vivendi Environnement.

How will you rate a company which carries out its business in a country which does not comply with ILO Conventions such as China?

We will have to evaluate whether the company acts purely and simply within the limits of local law or if, on the contrary, it incorporates the commitments and values of its group in Europe, obviously related to the local context. If there are no commitments in the group, we will refer in any case to the principles and fundamental rights described in the ILO Declaration of June 1998, which all member States are bound to respect and which, on this basis, concern multinationals. This is a form of reference ranking which acts in favour of what is commonly accepted and instituted by the international community.

What measures do you plan for repeated violations of your criteria?

Our criteria are not meant to be violated or respected because we do not set standards and are not a verifying or certifying body. Our criteria are units for observing, analysing and measuring what is happen-

ing in the company in the areas of social, environmental and societal responsibility which interest and will increasingly interest its stakeholders. With this in mind, basic human rights comprise a completely separate area of responsibility, which we evaluate as such. Each criterion relating to this is treated with discernment and precision, and will lead to a rating which takes account of the company's real practices. We will therefore be able to highlight and to inform our clients of zones where there are violations or vulnerability, or zones of innovation or excellence.

Experts will probe the company for 30 days for the inspection. What guarantee will you have that the company will keep its commitments throughout the year?

The dynamic which we propose only makes sense if it is organized on a lasting basis. There will be continuity in our involvement in accordance with the conditions that we discuss with the company.

The resulting evaluation rating is not valid forever. We will discuss the conditions for extending a first evaluation with the company, either via a new evaluation in an area or in a zone which requires it, or by monitoring assessments.

Won't the arrival of your agency in the company disturb social dialogue?

Vigeo will not influence how the stakeholders in the company behave, and each of them will have its full role and function to play, both upstream and downstream of an evaluation. The audit we carry out will be to rate the company and not to give advice. We will take on no consultancy functions whatsoever as this would constitute a conflict of interest between the rating audit and the consultancy. We do not wish to come to carry out a rating after a company adopted a strategy we had recommended ourselves. The result we reach is aimed at informing the company as much as its stakeholders.

Who will rate the rating agencies?

I believe that an institution or body is needed, with the necessary authority, which can at least label or certify agencies in relation to their professional ethics or their transparency in their activities. In any case, we will have our own quality charter.

Can the ILO play a part?

The ILO's standardizing work is mainly geared towards governments and public authorities, even though players from organized civil society (i.e. workers' trade unions and employers' organizations) are represented on a statutory basis in the ILO authorities. At present, the ILO is not authorized to have a role in this type of agency. Perhaps this will change at some stage in the future. It is up to the ILO's constituents to decide whether they believe this is a direction it should take.

Do you want to be accredited by the SA 8000 standard?

Our approach differs from the SA 8000 both in relation to the method and the scope of evaluation. We have already met with SA 8000 and will maintain continued relations. Certifying auditors is an issue that is of concern to us both.

Will Vigeo be independent if the shareholder companies are the first clients for this rating?

The guarantees of independence are undeniable. In Vigeo's governance structure and in the capital organization, no company holds more than one per cent of the capital and together they cannot hold more than 45 per cent of the capital. On the Board of Directors, the companies' body, like each of the other two bodies, has three representatives. This is without mentioning the fact that the Board of Directors has six qualified individuals out of 15.

Alongside this, there is a scientific advisory board made up of well-known independent figures whose role is to guarantee the agency's independence, professional ethics and precision in work on a day-to-day basis, and where applicable to

arbitrate on the tensions or conflicts between a client and the company. This advisory board will function regularly, with five people from a university background. At the same time, we are very vigilant about training our auditor-analysts. A process for validating analyses and ratings has been set up within Vigeo.

Through its work, is your agency not discharging governments from their responsibility to ensure compliance with standards?

Not at all. We are not transnational labour inspectors and do not limit ourselves to an assessment of compliance with fundamental standards. Our approach examines management integration of these standards (as well as other areas of social, environmental and societal responsibility) as a strategic investment affecting the company's overall performance. The non-financial rating acts as a substitute for neither the social partners' negotiating functions

nor the standardizing and inspection assignments undertaken by the public authorities. In terms of international labour standards, our role is to observe and to inform our clients on the company's situation relative to the universally established consensus formed around the base of standards set up by ILO and UN instruments while simultaneously taking account of regional or local legislation and agreements, best practices and innovations. In this way, we are contributing to the beginnings of top-down regulation of globalization.

It is a component which may lead public authorities to assume their responsibilities. This can be seen in France and Belgium and at European Union level. Public institutions are becoming committed to promoting the social responsibility of a company.

Interview by Anne Renaut

Workers' capital and corporate social responsibility

Retirement savings are just one of the many types of asset owned by workers. How they choose to invest these assets, and how they act as owners of company shares in particular, will have implications for corporate social responsibility.

Jon Robinson

Coordinator

Programme on workers' capital

Global Unions*

The bulk of the world's equities (company shares) are owned by the big institutional investors – insurance companies, mutual investment funds and pension funds – and not by individuals, at least not directly. Unfortunately, these institutional investors have not always been an ally of trade unions or trade unionists, as the institutions' short-term approach to investment often encourages companies to embark on activities that damage workers' interests. Company executives, whose remuneration is often linked to share price over the short term, will seek to keep their company share price as high as possible. These short-term attitudes from investors and executives have all too often resulted in company behaviour such as downsizing, outsourcing, cuts in research, training and safety costs and questionable mergers and acquisitions that clearly damage the interests of workers and union members.

Furthermore, those who manage pension fund investments on behalf of workers often look for quick returns to guarantee the continuation of their fund management mandate. This in turn can lead to

further pressure on companies to downsize, outsource or look for mergers or acquisitions. In fact, these investments are not only deployed against the interests of workers around the world but sometimes against the interests of the very same workers for whom the investments are being managed in the first place (see box on the case of Morgan Stanley).

The large institutional investors are, however, one of the few groups who can positively promote corporate social responsibility and, indirectly, much of the capital they invest belongs to the workers themselves as the beneficial owners of these investments.¹

The extent of workers' capital today

It is estimated that the total workers' capital² comprising the various pension funds worldwide is in the region of US\$11 trillion today (down from a peak of US\$13.5 trillion a few years ago).³ In the past, these retirement funds increasingly invested their assets in company shares or "equities" – a long-term trend despite some understandable aversion to equities today, due to recent corporate scandals and the falling stock markets. Of course trends in asset allocation will differ from country to country, with each having its own distinct investment culture, but according to recent

* The Global Unions group is an international trade union alliance formed by the International Confederation of Free Trade Unions (ICFTU), the Global Union Federations (GUFs, formerly known as International Trade Secretariats) and the Trade Union Advisory Committee (TUAC) to the Organisation for Economic Co-operation and Development (OECD).

research, they have converged somewhat over time, with between 50 and 60 per cent of their total assets allocated to equities.⁴

In countries like Canada, the Netherlands, South Africa and Switzerland, which already have collective pension funds, regulators are lifting restrictions, not just on how much those pension funds can invest in equities but how much can be invested in overseas equities. As a result, the cross-border nature of these pension funds' investments is growing. In some cases, like the Netherlands, where pension funds are large and the capital markets relatively small, the pension funds' overseas share holdings have already outgrown their domestic holdings.

With few exceptions, therefore, all equity markets are to some degree foreign-owned. In 1999, for example, foreign investors owned 22 per cent of the United States equity market, 24 per cent in the United Kingdom, 22 per cent in Germany and 42 per cent in France.⁵ Many of these foreign owners will be overseas pension funds. In fact, it has been estimated that in total, pension fund holdings already account for about one-third of the world's total share capital – and significantly more in some countries like the United Kingdom and the United States.

The sheer size and international nature of these pension funds make workers' capital one of the most important forces amongst the “global investors” of today. Collectively, these funds have the potential to influence companies and corporate behaviour on a global scale.

Pension fund investments

The cross-border nature of the capital markets means that the trustees who have overall responsibility for managing the funds must decide not only whether to include international investments in their portfolio, but also how to evaluate and monitor those international holdings if they do. Even if funds have little or no international investment, today's pension fund trustees should still take account of

The case of Morgan Stanley

One of the more bizarre examples of how short-term pressures from investment managers can work against employees' interests is the negative attitude of some analysts to the liabilities they associate with unionized companies. In November 2002, Morgan Stanley issued a highly contentious analyst's report advising American investors to avoid heavily unionized industries because their stocks underperform the broader equity market in the United States.¹ Referring to pension liabilities and post-retirement health-care benefits as “plagues”, Morgan Stanley's American equity strategist claimed that “investors do not want to own businesses with high fixed costs, pension funding issues and spiralling post-retirement healthcare obligations... found prominently in industries with outsized union representation”. Morgan Stanley later issued a note of “clarification” in which it claimed the analyst's remarks were not a statement of Morgan Stanley policy regarding unions or union workers.

¹ Morgan Stanley Equity Research North America: *Look for the Union Label*, 14 November 2002.

international issues, because other companies in the fund portfolio may well own substantial overseas assets, hire foreign workers, make foreign sales or subcontract from third parties based overseas.

In practice, most fund managers should already take social, environmental and ethical matters into consideration in the running of their fund. They will, for example, base decisions on their perception of the opportunity for added value, damage to reputation, potential risk of litigation, brand value and the impact of corporate behaviour and social and environmental factors on their investments. This should mean ensuring that companies, wherever they are based, are well run, respect internationally recognized labour standards and provide adequate disclosure to shareholders. In other words, ensuring that companies practice good corporate governance and apply positive social policies across all their operations.

Just as the trade union movement seeks to address the power and influence of multinational enterprises as part of its

response to globalization, so one of the challenges for the international labour movement is to help promote a “worker-friendly” view of capital ownership and shareholder value among pension funds and other investors.

Recognizing both the need and opportunity to develop such an initiative, union leaders from 19 countries with privately funded pension systems met in Stockholm in November 1999 under the auspices of the International Confederation of Free Trade Unions (ICFTU) and drew up a programme for cross-border action on workers’ capital. The programme included:

- establishing an international trade union network on pension funds and their investments;
- developing principles, guidelines or recommendations concerning the investment of workers’ capital;
- establishing a dialogue with pension funds and investment managers on international issues;
- seeking information and examples of best practice on pension fund investment policies, governance structures and education and services for trustees; and
- facilitating international trade union cooperation in all these areas.

This programme was subsequently endorsed by the Executive Board of the ICFTU and today the Global Unions’ Committee for International Co-operation on Workers’ Capital is working in partnership to influence corporate behaviour and promote the use of worker-friendly capital strategies by pension funds and investment managers. This will secure and enhance retirement provisions while at the same time protecting workers’ broader interests.

There is a range of legitimate strategies through which organized labour might advance a more worker-friendly agenda for workers’ capital. At one end of the range is the development of vehicles for “economically targeted investments” (sometimes

also referred to as “social investments”) which are established with the specific intention of directing capital assets to fill unwanted gaps in the capital markets or into specific socially desirable projects that create “collateral benefits” as well as simply financial returns.

At the other end of the range there is disinvestment (or the refusal to participate in undesirable investments) and there are various forms of shareholder activity in between. These not only include traditional screening of investments (by applying social criteria or “screens” in selecting the investment portfolio) but also involve pension funds voting as shareholders or sponsoring shareowner resolutions of their own at company annual meetings. Of course, shareholder rights vary from country to country, particularly in so far as they relate to the shareholder resolution process. This can be problematic even for experienced shareholder activists, and it can seem overwhelming for inexperienced pension fund trustees. However, with proper communication and cooperation between unions and, if necessary, other allies, these difficulties can be largely overcome.

Shareholder action and union cooperation

An early example of trade union cooperation in shareholder action on an international scale occurred in 2000 in what the *Wall Street Journal* called “one of the most ambitious global proxy contests ever launched”. A joint campaign by unions from Australia, the United Kingdom and the United States gained substantial support for two resolutions at the London and Melbourne annual general meetings of Rio Tinto. Each put to both meetings, the two resolutions concerned the independence of certain directors and the adoption of the ILO “core” labour standards. The resolution on the first issue gained 20.3 per cent of shareholders’ votes, while the one on ILO standards garnered 17.3 per cent of the votes. A similar exercise, supported

Shareholder resolutions on global labour standards

Since the mid-1990s, a wide variety of shareholders has begun filing resolutions on the subject of global labour standards. The number has more than doubled, to 49 such resolutions in 2001 and in 2002. For resolutions that have come to a vote, the average level of support for global labour standards proposals has risen from around 6 per cent in 1996 to nearly 10 per cent in 2002.¹

A recent proposal from the LongView Collective Investment Fund, supported by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and members of Global Unions, raised concern over Unocal's operations in Myanmar and asked the company to implement the ILO's core labour standards. It earned 32.8 per cent of the votes cast – the highest-ever shareholder vote for a resolution on labour standards. This level of support was subsequently bettered in Canada, when 36.8 per cent supported a resolution at the Hudson's Bay Co. against sweatshops, and in a number of resolutions in the United States concerning sexual discrimination, with support as high as 58 per cent in one recent case.

¹ IRRC: *Shareholder Initiatives Against Sweatshops*, IRRC, August 2002.

by the participants at the meeting of the Committee for International Co-operation on Workers' Capital in December 2001, helped raise the vote in favour of a similar resolution on workers' rights and Unocal's operations in Myanmar from 23 per cent in 2001 to 34 per cent in the 2002 proxy season.⁶

In the United States in particular, individual labour unions have been encouraging active share ownership for at least two decades. Pension fund trustees in the United States are obliged by law to treat the voting of company shares as they would any other asset and have a fiduciary duty to use the votes in the best interests of scheme beneficiaries. In other words, trustees are required by law to treat ownership of shares, including the right to vote at company meetings, as an asset of the pension scheme to be used in the interest of scheme members. In fact, unions and union funds have become the

largest single sponsors of shareholder proposals in the United States in recent years.⁷ What is more, research shows that, on the whole, these labour union proposals get "as much or more support than do similar proposals made by other shareholder groups".⁸ In addition, shareholders have become increasingly successful in recent years in using the proxy voting process to persuade a growing number of companies either to improve their international labour practices or to commit to third-party monitoring of them.⁹

One alternative to the more traditional forms of shareholder activism of screening, voting and sponsoring company resolutions, for which there appears to be increasing enthusiasm amongst institutional investors in parts of Europe, and the United Kingdom in particular, is the practice of "corporate engagement" by investors.¹⁰ It involves investors, either individually or acting in unison, entering into a dialogue with a company or its Board of Directors with a view to changing company strategy or policy. Corporate engagement itself is not new – many UK and US institutional investors have a long history of engagement, particularly on the traditional "corporate governance" agenda. What is new is that this agenda has now been expanded to the wider issues of corporate responsibility and, for an increasing number of responsible investors, includes social, environmental and ethical performance.

As such, it offers a complementary as well as an alternative approach to other forms of shareholder activism and avoids at least some of the difficulties associated with proxy voting and submitting resolutions at company annual meetings. Furthermore, the process of "engagement" by shareowners entails few if any additional risk elements for the investor. There is no selling of shares at disadvantageous prices. It is also likely to enhance company performance per se, thus making an engagement strategy less contentious than one based purely on stock selection.

Workers' capital and socially responsible investment

Of course, there are both “constraints” and “drivers” that play a part in determining the potential influence of workers' capital over the financial markets – and company behaviour – in the future. A major constraint is a stubborn perception, or misconception, about the legitimacy of socially responsible investment (SRI). There are those who will advise trustees and fund managers that to invest for anything other than the highest possible financial return is not in the best interests of the fund's beneficiaries and, at worst, is a breach of the trustees' fiduciary duties. But these arguments ignore the realities of current practice and a growing body of evidence to the contrary.

Firstly, according to the United States Social Investment Forum, “a solid and growing body of empirical evidence has conclusively dispelled the myth of [SRI] underperformance”. In fact there is little evidence of any systematic underperformance with a socially responsible approach to investment and numerous studies do suggest there are links between good social, environmental or ethical performance and good financial performance.¹¹ More specifically, there is evidence that, contrary to earlier perceptions, socially responsible investment can actually enhance portfolio performance.¹²

Secondly, the available statistics reveal growing interest by institutional investors in SRI, social accountability and corporate social responsibility more generally, which will increase levels of shareholder activism and of ethical investment in particular.

For example, according to the United States Social Investment Forum, assets in professionally managed, socially screened investment portfolios increased by 36 per cent between 1999 and 2001 – that is one-and-a-half times more than the rise in all the professionally managed investment assets in the United States.¹³ According to the same source, the total of all forms of professionally managed, socially responsible investment in the US grew to \$2.34 trillion in

2001, representing nearly 1 dollar in every 8 of the total under professional management in the United States.¹⁴

This growth in SRI is not simply an American phenomenon, although in other countries socially responsible investment represents a smaller proportion of all assets under management. In the United Kingdom, for instance, the total value of SRI assets increased from only £52 billion in 1999 to £224 billion (\$360 billion) in 2001.¹⁵

The phenomenal growth of SRI in the United Kingdom undoubtedly owes much to the legislation introduced in July 2000, which requires pension funds to disclose within their Statements of Investment Principles whether and to what extent they use social, ethical or environmental criteria in their investment selection.¹⁶ One survey, carried out shortly after these disclosure regulations took effect, found that 59 per cent of the biggest 500 British funds (owning three-quarters of the assets of those surveyed) incorporated some SRI principles into their investment process, while only 14 per cent took no account of social or ethical issues;¹⁷ almost the reverse of the findings in a smaller survey carried out before the legislation came into effect.¹⁸

Similar provisions which will encourage both greater disclosure and further consideration of SRI have already been enacted or are being considered elsewhere in Europe – including Belgium, France, Germany and the Netherlands – and in Australia where, from March 2003, all investment providers are required to describe the extent to which environmental, social or ethical considerations, including “labour standards”, are taken into account in their investment products.

Conclusions

Many pension fund beneficiaries want their retirement savings to reflect their ethical and social values and many union members want to exert more influence over corporate behaviour through their ownership of capital. Recent corporate

scandals and the growing interest in SRI in particular provide both a stimulus and further rationale, if needed, for unions to promote a more active ownership agenda for their members' pension funds.

It is sometimes argued that by promoting the interests of workers' capital and advocating various forms of shareholder action, unions are seeking to elevate the interests of shareholders above those of other stakeholders including, of course, the employees themselves. However, the global unions are determined that any workers' capital policy will complement rather than conflict with other labour activities, such as the development of collective bargaining, and the strengthening and implementation of initiatives such as bilateral company codes of conduct. They are also aware that shareholder activism cannot replace – nor should it be expected to replace – the fundamental responsibility of governments to ensure the protection of the rights of all citizens and the promotion of internationally accepted standards on the social responsibilities of business, such as the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, its Declaration on Fundamental Principles and Rights at Work and the OECD Guidelines for multinational enterprises.

But shareholder activism and investor opinion are significant factors in the global capital markets of today. The amount of assets accumulated within the world's pension funds means that the workers who own these assets are significant investors and have real potential to influence corporate behaviour on a global scale. But the full potential of workers' capital has yet to be realized. In this respect, governments have an important role to play as catalysts of greater shareholder activism – as they have done in the United Kingdom by legitimizing the consideration of social, environmental and ethical investments through their enactments on statements of investment principles. But to enable this potential to be fulfilled will require considerable organization, effort and allocation of union resources

at international, national and local level to provide more and better professional education of pension scheme members and pension fund trustees; broader and deeper worker representation on pension fund boards of governance; and the fostering of constructive relationships with the investment professionals who manage these funds.

Progress will inevitably be greatest where funded pension arrangements and the rights of shareholders are already most developed and the levels of union activity are high. Hopefully, the work of the joint ICFTU/GUF/TUAC Committee for International Co-operation on Workers' Capital will assist in ensuring that workers' capital will in future benefit rather than hurt the interests of workers, their families and communities. With sufficient effort and expertise and the right capital strategies, the owners of workers' capital have the potential to make a difference to the world in which we live, simply because they own so much of it.

Notes

¹ The beneficial owner is the person who has the ultimate right to the value of an investment, as distinct from the registered owner who may simply be a "nominee" company or investment manager.

² Throughout this article, "workers' capital" refers to the assets accumulated in collectively funded pension schemes in order to provide workers with financial security in their retirement.

³ *The Watson Wyatt Global Investment Review*, 2002.

⁴ *ibid.*

⁵ The Conference Board: *Institutional Investment Report*, 1999.

⁶ The "proxy season" is when most companies have their annual shareholders' meetings (usually in spring in the United States).

⁷ Typically, between 200 and 300 social and environmental resolutions are filed every proxy season in the United States and by 1999, 47 per cent of all resolutions on corporate governance issues were sponsored by unions/union funds.

⁸ Thomas and Martin: "Should labour be allowed to make shareholder proposals?" in *Washington Law Review*, 1998.

⁹ IIRC: *Shareholder Initiatives Against Sweatshops*, IIRC, August 2002.

¹⁰ Discussions between large shareholders and companies like Premier Oil over their continued involvement in Myanmar would be an example of “corporate engagement”.

¹¹ See, for example, “Social Funds in the US: Their History, Financial Performance and Social Impacts” in Fung, Hebb and Rogers: *Working Capital – the Power of Labor’s Pensions*, Cornell University Press, 2001.

¹² See, for example, the Domini 400 Social Index of 400 common stocks screened according to broad social and environmental criteria, which has outperformed the S&P 500 stock index on a total return basis since it went live on 1 May 1990 at: <http://www.socialinvest.org/areas/news>

¹³ Social Investment Forum: *2001 Report on Socially Responsible Investing Trends in the United States*. Available online at <http://www.socialinvest.org/Areas/research/trends/2001-Trends.htm>

¹⁴ The \$2.34 trillion managed by major investing institutions includes pension funds, mutual fund families, foundations, religious organizations and community development financial institutions, and accounts for nearly 12 per cent of the total \$19.9 trillion in investment assets under professional management in the United States (Nelson’s 2001 *Directory of Investment Managers*).

¹⁵ Russell Sparkes: *Socially Responsible Investment: A Global Revolution*, Wiley.

¹⁶ *The Pensions Act 1995 Occupational Pension Schemes (Investment) Regulations*, as amended by the SI 1999 No. 1849.

¹⁷ UKSIF: *Response of UK Pension Funds to the SRI Disclosure Legislation*, October 2000.

¹⁸ National Association of Pension Funds survey, 1999.

The social responsibility of business

As the only global organization founded on the principle of tripartite cooperation, the ILO is well placed to act as a catalyst and facilitator in the development of corporate social responsibility. How CSR develops and at what pace are both things that this UN body is in a position to influence.

Reg Green

Health, Safety and Environmental Affairs
International Federation of Chemical, Energy,
Mine and General Workers' Unions (ICEM)

Someone once famously said that “the business of business is business”.¹ That is no longer how an increasingly numerous and vocal group of people see things. Or rather, they have concluded that if the business of business is business, the parameters of what constitutes good business need to be redefined in the modern world.

Demand for corporate social responsibility (CSR) has developed largely in response to the real or perceived failure of legislation, regulation and enforcement to control and regulate the impact of company activities on people and the environment. It has also arisen alongside the scaling back of command and control measures by many governments around the world.

As competition increases amongst companies, workers fear that there will be a race to the bottom as far as wages and conditions are concerned. This fear has some basis, in that labour-intensive industries – other things being equal – tend to locate where labour is cheapest. But if competition has increased, so has scrutiny of companies. It is not only the State that polices companies in the modern world; there is also an active and informed non-governmental organizations (NGO) community which increasingly performs this function.

Trade unions cannot be considered NGOs in the normally understood sense of the term, because of the vested interests

of their members in the success of companies in which they work. Nevertheless, there is much that is familiar to trade unions in the CSR debate. Social wages, decent working hours, basic health and safety standards, abolition of child labour and protection against discrimination are just some of the trade union issues that fall within any reasonable definition of CSR. However, CSR also embraces a range of topics that have until recently not been part of the traditional trade union agenda – or only peripherally a part of it. CSR is today typically associated with the concept of sustainable development or “sustainability”. Trade unions are, in response, developing their sustainability agendas and linking these with improved and extended CSR.

One of the most significant developments in this regard has been the development and signing of global agreements between a number of Global Union Federations (GUFs) – including the ICEM – and multinational corporations (see page 15). Whilst these agreements help to promote CSR, they do not on their own guarantee it. They are, typically, framework agreements that set the general tone for corporate behaviour and relations between the corporation, its workers and their unions. They are therefore more properly to be considered as enabling mechanisms.

Global agreements highlight the importance of, and need to be based on, genuine

transparency, honesty, cooperation, participation and conflict identification and resolution – vital elements of any CSR commitment. Signatories to such agreements recognize that there are two sides to them – the commitments and obligations of the company on the one hand and those of the relevant GUF on the other. It is a *sine qua non* for any agreement to be effective that both sides to the agreement must derive benefit from it.

As they set out framework arrangements, global agreements between GUFs and multinational companies are founded on fundamental principles and do not usually include great detail. They more typically refer to standards – especially those of the International Labour Organization and, in particular, the ILO’s “core labour standards”.

If CSR is to mean anything, it needs to be based on the development of understanding and real social dialogue between stakeholders – including, very importantly the ILO’s tripartite constituents. The ILO has recognized, in its InFocus Programme on Social Dialogue, Labour Law and Labour Administration, that certain enabling conditions are necessary for social dialogue to prosper. These are:

- strong, independent workers’ and employers’ organizations with the technical capacity and access to the relevant information to participate in social dialogue;
- political will and commitment to engage in social dialogue on the part of all the parties;
- respect for the fundamental rights of freedom of association and collective bargaining; and
- appropriate institutional support.

The expectations for CSR

In a broad sense, corporate social responsibility is about fairness; companies should expect to have a licence to operate only if they behave fairly and decently towards

those they employ, the communities in which they operate and the countries in which they are located. However, understanding of fairness and decency differs – often radically – from person to person and from country to country. That is why it is important – in a “globalized” world – to develop some broad consensus upon which governments, workers and employers can operate. At the international level, the ILO has the oldest and some of the most effective structures for developing such consensus.

However, whilst consensus is an important element, it will not be sufficient. Even where there is general consensus, there will always be a need to have in place checks and balances that reward or protect the good and impose sanctions on the bad performers. Increasingly, these checks and balances have to be developed and applied on the basis of international agreement.

Does CSR let governments off the hook?

If the business of business has traditionally been business, then the business of governments is governing. But globalization, with its attendant supranational complexities, means that governments are often less able to govern as they have traditionally done. It is not so much that governments have lost the right or mandate to govern: there are more democratic governments in the world today than at any time in history – and the trend is hopefully further in that direction. It is rather that government mandates have to be exercised against a background of new and changing economic and political realities. Governments operate within fixed geographical borders. Increasingly, however, companies and financial markets operate globally. Their activities are far less constrained by normal considerations of time and space. Perhaps the biggest challenge for CSR will, therefore, be to demonstrate that it is capable of bridging the gap between the limitations faced by national governments and the growing concern for international fair play by the business community.

Are there limits to CSR?

People are entitled to expect governments to represent their broader social interests and aspirations and, in so far as they think about business activities at all, they probably see the business community principally as the provider of goods and services as well as jobs. It is, however, necessary to ensure that there is a clear separation between the powers and responsibilities of governments and the rights and obligations of the business community.

In today's world, there are fewer places left where companies that are not efficient or profitable can expect to survive for very long. At the same time, global telecommunications and new information technologies have placed (especially) multinational corporations in the equivalent of a global goldfish bowl. Misdemeanours and mismanagement are more quickly exposed and rapidly communicated around the world.

For much of the twentieth century, things looked very different and the functions and responsibilities of a number of governments and companies frequently overlapped. Many companies in what are now known as the countries of Central and Eastern Europe and the Commonwealth of Independent States took on a quasi-governmental role and provided a range of benefits and services normally considered the responsibility of government in other parts of the world. Following the radical political and economic changes in these countries, it quickly became apparent that many of their companies were largely bankrupt; they had never been expected to behave according to the rigours of the market, and were singularly ill-equipped to do so. There may be important lessons to be drawn from this as far as CSR is concerned; companies are not the best vehicles for discharging government responsibilities and obligations.

This is the crux of the CSR debate. On the one hand, companies need to leave governing to governments and to concentrate on becoming and remaining efficient and profitable – which they need to be in

order to survive, to pay taxes and to employ people (who also pay taxes and consume the goods and services provided by such companies). On the other hand, those calling for greater CSR perhaps do not always appreciate the extent to which they may be promoting greater de facto company involvement in areas traditionally considered within the purview of government. It is clear that, for CSR to be credible, companies need to know what is expected of them and to what extent; and then they need to do it. Otherwise they will feel themselves “damned if they do and damned if they don't” – with considerable justification.

There will always be leaders and followers among companies. However, when the leaders feel themselves to be at a serious financial disadvantage compared with their followers, the leaders will usually be reluctant to go far beyond what is legally required of them (notwithstanding the fact that, in far too many countries, the basic legal duties are by no means adequate to protect people). At the same time, both workers and companies argue that they must be allowed to operate on a level playing field. This is yet another reason why CSR is an important issue for discussion at the international level.

Finally, it needs to be borne in mind that companies are neither the sole nor necessarily the major cause of social inequity and human rights abuses. So if companies are not the whole of the problem, don't expect them to provide the whole of the solution.

Making CSR credible and effective

The ILO has an impressive array of instruments at its disposal for the promotion of corporate social responsibility, ranging from Conventions and Recommendations to Codes of Practice. It also has a global network of offices and specialists upon whom governments, employers and workers can call for help and assistance. Just as importantly, it has long experience of bringing together governments', employers'

and workers' representatives to develop agreed solutions on social matters of international importance.

The ILO is not, of course, alone in the world in promoting the social justice upon which CSR has to be based. For instance, in an address to the World Economic Forum in Davos (Switzerland) on 31 January 1999, UN Secretary-General Kofi Annan proposed the development of a Global Compact. This was subsequently launched at UN headquarters in New York on 26 July 2000, as a challenge to companies to commit themselves to do the right thing. Importantly, the UN Global Compact directly promotes the labour standards contained in a number of ILO Conventions and also references the ILO Declaration on Fundamental Principles and Rights at Work. ICEM General Secretary Fred Higgs was one of three international trade union leaders to attend the Global Compact launch, and he is now a member of the Global Compact Advisory Committee.

This cross-fertilization of ideas and mutually supporting approaches can help to ensure that the CSR debate is coherent and focused.

Corporate social responsibility: An idea whose time has come

Without wishing to be cynical, one of the best ways of establishing whether CSR is likely to be taken seriously within the business community is to determine the extent to which it affects the company bottom line. In this regard, there are some extremely interesting new developments, which we can expect to become important drivers of company behaviour in the future. Included in these are the ethical and fair trade movements, together with the development of a growing community of investors and fund managers whose decision to invest in a company will be determined by the extent to which that company can meet social responsibility criteria.

The collapse of Enron and other high-profile multinational corporations has led to widespread demands for companies to

be brought to account. Huge numbers of ordinary people have seen their investments and their pensions decimated – not because of normal market fluctuations, but as a direct result of extensive malfeasance and gross company mismanagement. Governments increasingly recognize that they cannot ignore this public concern about corporate behaviour. They are keen to see measures taken that will ensure that company responsibility and, thereby, public confidence are restored and maintained. Thus, governments and the people they represent will want to be very sure that CSR – if it is to be one of the major responses to current shortcomings – is both effective and credible.

There will continue to be differences of opinion between policy-makers as to the precise nature and extent of any regulation and controls necessary to restore and maintain public confidence, but it is a safe bet that very few chief executive officers (CEOs) of major corporations are any longer unaware of the potential consequences of failing to act responsibly. Most of the recent attention has focused on issues of company financial propriety, but it is clear that the public concern for corporate responsibility also extends to a company's social obligations.

The role of the ILO in CSR

We live in a world where laws are for the most part made at the national level. However, many of the companies that such laws are designed to cover are increasingly operating as if national borders did not exist. The ILO, through its Conventions, attempts to bring some international coherence to this state of affairs, but the fact remains that ILO standards have to be ratified at the national level before they come into effect. At the same time, it has to be recognized that laws may not always be the most effective response in every circumstance. Laws are usually – and sensibly – long in the drafting and they typically have a long “shelf-life”, regardless of the often rapidly changing circumstances that

they are putatively designed to address. They can therefore sometimes be rather blunt instruments. They are clearly the best means of establishing coherent, enforceable “ground rules” on which to build civil society, but they need to be supplemented by a range of other measures that allow timely and effective responses to particular conditions and changing circumstances.

As the oldest-established UN agency, and the only one to be founded on the principle of tripartite cooperation between governments, employers and workers, the ILO is well placed to act as a catalyst and facilitator in the development of CSR thinking and activities. The ILO standards, its supportive structures and its specialists can add real value to the process.

How might this be done? One way would be for the ILO to encourage and facilitate a wide-ranging debate on CSR. As mentioned, there are many interpretations of the term and it would be helpful to bring some clarity to the debate. Such a debate would also need to be accompanied by some in-depth analysis and assessment of the ILO structures and functions to see how CSR thinking might be better integrated into ILO activities.

It is also important to recognize that CSR is not, or should not be, something of interest only to multinational corporations and their workers. If CSR is not understood and developed within small- and medium-sized enterprises (SMEs), its benefits will be felt by only a tiny minority of the world’s people. Whilst it is relatively easy for multinational corporations and Global Union Federations to come to Geneva for high-level discussions, this is not an option for the vast majority of SMEs. This means that

CSR has to be addressed by the ILO and its constituents not only at the international level, but also at the regional and local levels. At the same time, simple logistics dictates that CSR is not something that the ILO can “do” for governments, companies and their workers. The role of the ILO should be to motivate, facilitate and assist in the spread of the CSR message.

In doing so, it will be very important for the ILO to work closely with other bodies and organizations that have a stake in the promotion and realization of CSR.

In conclusion, CSR could become an important linking idea between the negotiated – and therefore highly credible – core standards of the ILO, the wish of companies to avoid overburdening command and control measures, government responsibilities to ensure the highest levels of social and ethical behaviour, and broader public concern to ensure that globalization benefits everyone. Expect CSR to be supported in the future by an increasing number of negotiated global agreements between GUFs and multinational corporations and by the UN Global Compact.

Whatever definition of CSR one might choose, the expectation is likely to grow that companies should meet widely accepted social and ethical standards in their operations. How CSR develops and at what pace are both things that the ILO is in a position to influence. This will probably require “thinking out of the box” and initiating new and novel approaches. Now is the time to start.

Note

¹ Milton Friedman: *Capitalism and Freedom*, Chicago, University of Chicago Press, 1962.

