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Multinational Corporations and Multinational Unions: Myths, Reality and the Law

This article divides itself into three parts. The first relates to the allegations that have been made about multinational corporation industrial relations practices by trade unions and other commentators. The second portion deals with the response to such conduct by both trade unions and government and proposals with regard to action that should be taken in the future. The third portion contains my views concerning the propriety of various forms of national legislation as well as international codes of conduct for multinational corporations.

I. The Case Against the Multinationals

A. *Decentralization and Decision-making Authority*

One of the most oft-repeated charges against multinational corporations by trade unions is that the locus of decision-making authority has been taken away from the country in which the union is organized where it is located in the host country, i.e., the site of a partially or wholly-owned subsidiary.[1] In one sense, the charge is irrefutable. Investment decisions by multinationals who have home offices in Detroit, New York, or London are made in those locations. Quite often, a measure of authority is provided a subsidiary to raise money for projects from lending authorities in the host country. But the basic framework is established at headquarters.

Ironically, the American unions which have sounded the alarm about multinationals, and the unions like the French and Italian, have had little interest in investment decisions—but each for different ideological reasons. The Japanese unions have more involvement and knowledge about such matters although

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[1]*See,* for instance, LEA, MULTINATIONAL COMPANIES AND TRADE UNION INTERESTS IN THE MULTINATIONAL ENTERPRISE, 147 (Dunning, ed. 1971).

their ability and willingness to play an active role, based upon such knowledge, is questionable. In Europe, union concerns are stirring legislative proposals both on national and European Economic Community levels. This is a subject to which we return below.

While investment matters are clearly beyond the reach of national unions in the host countries, the picture is much less clear with regard to traditional industrial relations matters, i.e., negotiation of wages, hours and working conditions, many of which flow from the investment decisions which have been made. In this regard unions in industrialized countries have traditionally played an active role inasmuch as the job security of their members is directly at stake. In the main, multinationals in industries such as auto, farm machinery, rubber, and oil, delegate a substantial amount of authority to local officials in negotiations. Contrary to trade union allegations, decision-making is not generally remote, although the amount of the economic package is quite obviously circumscribed by the budget which is formulated for subsidiaries at central headquarters. In those countries having highly developed industrial relations systems where employer associations play a key role in collective bargaining, discretion and authority is most likely to be delegated to local officials. Two prominent examples of this kind of country are Germany and Sweden where local industrial relations officials not only possess a substantial amount of autonomy but are likely to be nationals of the host country. The other extreme is the Flanders section of Belgium where the economy was depressed until the advent of multinationals and where such corporations, particularly the Americans, have dominated the developing economy.[2] Here, one notes the complaints of Belgian trade unionists about frequent reliance on American personnel for industrial relations matters and their constant rotation—the additional complaint being that by the time industrial relations managers acclimatize themselves to the Belgian situation and can act independently, they are moved to another assignment.

While most multinational subsidiaries act with a measure of independence on industrial relations matters, there is another factor which may be important, i.e., their economic performance. In corporations like Chrysler and British Leyland, parent headquarters are deeply involved in many aspects of negotiations. This activist role is necessitated by the declining economic fortunes of those companies.[3] It may be that a continuation of the economic

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[2]For a discussion of this general subject, *see* MULTINATIONALS IN WESTERN EUROPE: THE INDUSTRIAL RELATIONS EXPERIENCE, pp. 26-34 (ILO 1975). *See* also, Blanpain, *American Involvement in Belgium* in WESTERN EUROPEAN LABOR AND THE AMERICAN CORPORATION, 455 (Kamin, ed. 1970). An example of more substantial foreign interference in provided by Thailand, an underdeveloped country, with a militant labor movement in embryonic form.

[3]*See* Kilborn, *Britain's Chrysler Deal: Faith in Investment and Bending of Policy,* The New York Times, Dec. 26, 1975, p. 53, col. 2; Kessler, *Zero-Hour Rescue,* The Wall Street Journal, Feb. 10, 1976, p. 27.

crisis could alter the behavior of other multinationals—after all, the possibility of centralizing labor relations usually exists. What is especially troublesome about the multinational phenomenon is the *potential* for abuse in this arena. If more of the multinationals begin to experience difficulties, the pattern previously described can change.

It is also apparent that parent headquarters require monitoring and at least limited consultation about some of the issues under discussion. Americans seem to be the most heavy-handed in this regard, a feature which seems attributable to two factors: (1) the fact that Americans seem to have the greatest number of subsidiaries and thus a more pressing need to keep track of the behavior of a substantial number of enterprises; (2) a view that the American system is somehow more rational—a national characteristic which probably spreads beyond the industrial relations field. Where a strike or a threat of one occurs, the interest of all parent companies becomes more substantial. Illustrative is the case of Massey-Ferguson Corporation whose Canadian headquarter officials actually came to Britain so as to be advised on a regular basis as to the progress of negotiations. But this is an unusual occurrence in the industries referred to above. Generally speaking, the policy is to keep clear of a detailed involvement in the host country's labor-management relationships.

A corollary to this problem is the charge that multinationals import the industrial relations systems of the country in which they are headquartered even though it may be alien and disruptive to the scene in the host country. This also seems to be exaggerated, and generally untrue. Even where it is accurate, it is not at all clear that the practices which make multinationals different are not of benefit rather than of harm to trade unions and their members.[4] Once again, in countries such as Sweden and Germany, the potential for such problems is minimal because multinationals, like nationals, are part of the employer association bargaining arrangement. In Japan, foreign investment is generally in the form of joint ventures with foreign minority holdings and although there are some celebrated examples of multinational misbehavior in Japan,[5] in the main, the practices of multinationals and nationals are indistinguishable in that country. In Belgium, on the other hand, the situation appears quite different. One prominent example of conflict relates to the inability of foreigners, particularly Americans, to accept the Belgian resistance to working overtime.[6]

In Britain there have been some celebrated examples of the refusal of Ameri-

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[4]In the industrially advanced countries, the position of multinationals vis-à-vis nationals on wages, hours and working conditions seems to reflect reasonably well the multinationals. *See, Wages and Working Conditions in Multinational Enterprises* (ILO 1975).

[5]KOSHIRO, LABOR RESPONSES TO THE MULTINATIONALS: A VIEW FROM JAPAN, pp. 27-29 (1975); *See also* HANAMI, THE MULTINATIONAL CORPORATION AND JAPANESE INDUSTRIAL RELATIONS IN INTERNATIONAL LABOR AND MULTINATIONAL ENTERPRISE (Kujawa, ed. 1976).

[6]*Supra* note 2.

can multinationals to recognize British trade unions while apparently adhering to the view that (1) secret ballot elections similar to those employed in America ought to take place; (2) white collar unionization is inappropriate—a view far more acceptable in America than in Britain.[7] But this pattern seems to be the exception internationally and not the rule. And to the extent that multinational behavior is different, it often takes the form of innovation. For instance, it was Esso that pioneered the productivity agreement which became well accepted in Britain nearly a decade ago.[8] Chrysler Corporation has paved the way in switching to day work from piece rates in the automobile industry and it was the first major company in Britain to propose a workers' participation arrangement.[9]

In Australia, multinationals such as large enterprises in the auto and oil industries have tried to break away from the system of over-award payments which provide for bargaining rates in excess of the arbitration award which is rendered by or submitted to that country's Conciliation and Arbitration Commission.[10] The objective here has been to move away from costly and frequent stoppages through the negotiation of comprehensive collective bargaining agreements which are intended to take into account what would have been obtained through an over-award payment. The two pioneers in this regard are General Motors in the automobile industry and Royal Dutch Shell in the oil industry. As in the above cited British examples, trade union complaints are not heard inasmuch as the economic package negotiated sets the pattern for the industry.

To be sure, there have been other instances of multinationals refusing to adapt themselves to a host country's labor relations, customs and mores. IBM in Sweden refused to become part of the employer association which was the equivalent of being non-union in that country—something not heard of there! But, like other multinationals, IBM, which is non-union in the United States where the practice is more acceptable, soon settled in. One of the best illustrations of this problem is dramatized by the Japanese multinationals who have considered exporting that country's system of permanent employment or *nenko* to other countries. This has not been done in Southeast Asia and tentative experiments in the United States seem to have been rejected. For instance, Hitachi Metals initially pursued a policy of no layoff at their

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[7] TRADES UNION CONGRESS, REPORT OF A CONFERENCE ON INTERNATIONAL COMPANIES (1970); *cf.* NLRB v. Bell Aerospace Co., Division of Textron, Inc. 94 S. Ct. 1757 (1974).

[8] *See* J. GENNARD, MULTINATIONAL CORPORATIONS AND BRITISH LABOUR: A REVIEW OF ATTITUDES AND RESPONSES (1972); *cf.* Roberts and May *The Response of Multinational Enterprises to International Trade Union Pressure,* 12 BRITISH JOURNAL OF INDUSTRIAL RELATIONS 403 (1974).

[9] *See* Fryer, *What Chrysler Is Really After*, Sunday Times (London) May 11, 1975.

[10] *See generally,* AUSTRALIAN LABOUR RELATIONS (Isaac and Ford eds. 1966). For an attack upon such paid rates agreements, *see Paid Rates Awards, Occasional Papers*; Series No. 1 (Central Industrial Secretariat, March 1976).

Edgemore, Michigan plant and rotated workers so that each worked three out of four weeks, something unheard of in American industry—certainly a practice that had not been engaged in by its predecessor employer, General Electric. But the practice was soon discontinued. The reason did not relate to any different loyalty or productivity on the part of Americans as opposed to Japanese workers. On the contrary, according to the Japanese management in Tokyo, the reason was simple: "When in Rome, do as the Romans do."

B. *Production Switching Across National Borders*

Professors Barnett and Muller[11] write that where there is a strike or a threat of a strike against a member of a multinational enterprise, the balance of power has swung against labor towards management. This shift has taken place by virtue of management's ability to stockpile a product in one country in anticipation of a strike in another, with a view towards supplying the relevant market or simply to shift the production of product to another country during the strike. In a purely national situation, unions would engage either in sympathy strikes, to the extent they are lawful in the particular country, or negotiate contracts with common expiration dates so that upon expiry they could strike the sundry plant locations together.[12] While this poses a problem in economically integrated companies like Ford Motor Company and in industries where the product may be internationally uniform, thus providing the company an ability to engage in "multiple sourcing"—and this will grow as the automobile industry becomes more economically integrated, particularly in the European Economic Community—the fact of the matter is that employers are circumscribed in their ability to respond effectively across national boundaries to a strike or threatened strike.

In the first place, excess capacity is necessary either to stockpile or to switch production. In the latter instance, only a strike of substantial duration will induce an employer to switch component parts for an automobile from one country to another unless the plant is operating considerably below capacity at the time of the stoppage. Secondly, the cost of transporting a product from one country to another will often induce an employer to do nothing or to turn to so-called competitors for assistance. This is the case in the oil industry where, for example, Royal Dutch Shell could be supplied by British Petroleum in the event of a refinery strike. The cost of alternate sources of supply induces employers to band together against unions under such circumstances.

Another problem in this area relates to a lack of product uniformity in many industries. Food products are subject to different national regulations relating

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[11]BARNETT AND MULLER, GLOBAL REACH: THE POWER OF THE MULTINATIONAL CORPORATIONS (1975). *See also* C. TUGENDHAT, THE MULTINATIONALS (1972).

[12]The cases are contained in Goldberg, *Coordinated Bargaining Tactics of Unions*, 54 CORN. L. REV., 897 (1969).

to packaging even inside the European Economic Community. In certain cases this alone can operate as a barrier against production switching. But there will be instances where employers are in a position to switch production and these situations should increase as companies find it more economical to operate across national boundaries within the European Economic Community. The automobile industry seems to be moving in a direction of more economic integration on an international basis,[13] and that the potential should be especially realizable inside the European Economic Community where industries with internationally uniform products, like rubber and farm machinery should reap some of the same advantages as auto.

The law has a role to play here. The "peace obligations" which are enforced by law in Germany and Sweden[14] and the widespread adoption of contractual no-strike and arbitration procedures in America[15] can thwart international union sympathy stoppages and picket lines. While the Swedish Act on Co-Determination At Work § 41 prohibits strikes where "an agreement has been concluded" and where the purpose is to "support another party who must not himself take offensive action," this doctrine's multinational ramifications are yet to be determined. Specifically, the Labor Court has concluded that other types of sympathy strikes are not in violation of the peace obligation[16] but the status of multinational sympathy strikes under Swedish law is not entirely clear.[17] The problem is that such law will not be of much practical value to the

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[13]*See* D. KUJAWA, INTERNATIONAL LABOR RELATIONS MANAGEMENT IN THE AUTOMOTIVE INDUSTRY (1971). In *Declaration by the Governments of OECD Member Countries on Guidelines for the Multinational Enterprises* (OECD, 1976) the following was stated on page 17, ". . . in the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising the right to organise, not threaten to utilise a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of a right to organise."

[14]Although the Law of Collective Agreements and Works Constitution Act of 1952 provide the basic framework for labor-management relationship in Germany, the peace obligation has a constitutional base. *See generally,* Ramm, *Collective Agreements in Germany* in LABOUR LAW IN EUROPE: WITH SPECIAL REFERENCE TO THE COMMON MARKET 9 (1962); F. SCHMIDT, THE LAW OF LABOR RELATIONS IN SWEDEN (1962); B. AARON ED., LABOR COURTS AND GRIEVANCE SETTLEMENT IN WESTERN EUROPE (1971); B. AARON AND K.W. WEDDERBURN, INDUSTRIAL CONFLICT: A COMPARATIVE LEGAL SURVEY (1972).

[15]Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970); Gould, *On Labor Injunctions, Unions and the Judges: The Boys Market Case,* 1970 SUPREME COURT REVIEW, 215 *But see* Buffalo Forge Co. v. United Steelworkers, 92 L.R.R.M. 3032 (U.S. Supreme Court July 6, 1976) which exempts some sympathy strikes from the labor injunction. Space does not permit a discussion of the attitudes of arbitrators and the NLRB. Query, however, does *Buffalo Forge* apply where there is a unity of interest between workers in different units? Prior to *Buffalo Forge* the Court of Appeals for the Fifth Circuit held in United States Steel Corporation v. United Mine Workers of America, 519 F.2d 1236, 1247-1248 (5th Cir. 1975), that an injunction could not issue against an American strike ". . . motivated by opposition to South Africa's racial policies." *Id.* at 1247.

[16]*See* F. SCHMIDT, *supra* note 14 at 185-188 (1962).

[17]The Swedish unions took the view that the law was ambiguous. *See* COUNCIL OF NORDIC TRADE UNIONS NFS, CONFRONTING THE MULTINATIONAL COMPANIES: ACTION PROGRAMME, p. 14 (Stockholm, January 1975): ". . . the problem of the lawfulness of a foreign dispute should be

unions for reasons outlined below.[18] Additionally, national labor laws should allow for unions to insist upon common expiration dates and conditions of employment in their bargaining with multinationals.[19] But this also has limited value for unions insofar as Europe and America are concerned.[20]

In America, unions are confronted with an additional obstacle in mounting economic pressure against the multinationals, i.e., the secondary boycott provisions of Taft-Hartley.[21] In determining whether a subsidiary is an "innocent" third party deserving protection under the Act, the Board has focused upon the question of whether the two companies are under common labor relations control. This test seems remarkably unsuited to the age of conglomerates and multinationals because (1) it is extremely difficult to ascertain the exact extent of control; (2) investment decisions are usually centralized—and this is a central problem that multinationals pose for labor unions. It is unrealistic for the Board to separate investment from labor relations under the circumstances. Where there is substantial financial interest, two corporations should be treated as one for secondary boycott purposes.

Another variation of the same theme is that multinationals relocate when labor relations in one country prove unsatisfactory. While this is undoubtedly the case in the electronics industry which is particularly labor-intensive and

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considered from the viewpoint of the law of the country where the sympathy action is taken." The obvious concern here is that countries like South Africa would regard primary strikes as unlawful thus raising questions under the Co-Determination Act—despite the fact that the same strike would be lawful when occurring in Sweden. However, the Co-Determination Act did not alter the previous statutory language and thus retained any existing ambiguities. In Norway, the sympathy strike is unlawful if workers engage in it to promote their own self-interest. Compare the discussion of American law in note 15. Although the British Trade Union and Labour Relatons Act of 1974 § 29(3) stated that a "trade dispute relating to matters occurring outside Great Britain" was immunized from suits in tort only where British persons' working conditions were "likely to be affected," this limiting language has been repealed by the Trade Union and Labour Relations (Amendment) Act of 1976. For a discussion of the legislation preceding the 1974 and 1976 statutes, *See,* Gould, *Taft-Hartley Comes to Great Britain: Observations on the Industrial Relations Act of 1971* 81 YALE L.J. 1421 (1972).

[18]*Supra* note 12.

[19]*See* pages 11-18, *infra.*

[20]*See generally* E. Kassalow, *The International Metalworkers Federation and the Multinational Automobile Companies: A Study in Transnational Unionism* (mimeo March 1974).

[21]The Board has held with court approval that separate corporate subsidiaries are separate persons, each entitled to the protection of Section 8(b)(4)(B) from the labor disputes of the other, if neither the subsidiaries nor the parent exercises actual or active, as opposed to merely potential, control over the day-to-day operations or labor relations of the other." Los Angeles Newspaper Guild, Local 69 (San Francisco Examiner, Div. of Hearst Corp.), 185 NLRB 303, 304 (1970), *enf'd per curiam,* 443 F.2d 1173 (9th Cir. 1971), *cert. denied,* 404 U.S. 1018 (1972). *See also* 412 F.2d 541 (9th Cir. 1969) (affirming grant of § 10(1) injunction); *Accord,* AFTRA Washington-Baltimore Local (Baltimore News-American Div. of Hearst Corp.), 185 NLRB 593 (1970), *enf'd,* 462 F.2d 887 (D.C. Cir. 1972); Miami Newspaper Printing Pressmen Local 46 (Knight Newspaper, Inc.), 138 NLRB 1346 (1962), *enf'd,* 322 F.2d 405 (D.C. Cir. 1963); Local 391 Teamsters (Vulcan Materials Co.), 208 NLRB 540 (1974). This "day-to-day control" test is not limited to the context of separate subsidiaries but is also applied in other circumstances of substantial joint ownership. *See,* e.g., Teamsters Local 749 (Transport, Inc.), 218 NLRB No. 203 (1975); Teamsters Local 616 (Southwest

where wages are a substantial part of a cost calculation,[22] even automobiles are sufficiently capital-intensive to make unlikely relocation based primarily upon considerations relating to labor relations. Ford Motor Company is not likely to move its substantial investment in Dagenham, England, even though its American leadership may be unhappy with the strike record of British unions in that industry.[23] But quite obviously, future capital expansions is influenced by, amongst other considerations, labor relations.[24]

II. The Trade Union Response To the Multinationals

At this juncture, multinational collective bargaining hardly seems to be around the corner. The obstacles to such a process or indeed other more modest forms of international trade union cooperation are considerable. To be sure, there are vehicles for the first multinational collective bargaining agreement on the European Economic Community level. The European Company Statute of 1976,[25] which could still become operative this year, provides the European collective bargaining agreements are enforceable for companies that choose to register under the statute and for companies and unions that choose to make such agreements. Moreover, through its provision for European Work Councils, this statute sets into motion a transnational union apparatus which cuts across national frontiers. There are a few German-Dutch companies, such as Fokker-VW and Hoesch-Hoogovans, which already have in existence German-Dutch works councils cooperating with one another. But even where there are similarities between trade union movements, customs and law (and this is especially true of the German-Dutch situation), the likelihood of a large number of formal agreements seems remote.

Even at the European level all current attempts to achieve this have failed despite efforts by the European Metalworkers Federation (EMF) and Phillips to discuss issues of common import to the trade unions inside the EEC. Efforts have also been undertaken by the International Metalworkers Federation with

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Forest Industries), 203 NLRB 645 (1973); Teamsters Local 126 (Courtney & Plummer), 175 NLRB 630 (1969), *enf'd*, 435 F.2d 288 (7th Cir. 1970); Teamsters Local 639 (Poole's Warehousing, Inc.), 158 NLRB 1281 (1966). *See also* J.G. Roy and Sons Co. v. NLRB, 251 F.2d 771 (1st Cir. 1958); Bachman Machine Co. v. NLRB, 266 F.2d 599 (8th Cir. 1959).

[22]For instance, Fairchild Electronics pays wages in Singapore which are 1/5 the amount paid in California. Ironically, the former are unionized and the latter are non-union.

[23]Denise, *Industrial Relations and the Multinational Corporation: The Ford Experience in Bargaining Without Boundaries* (Flanagan and Weber, eds., 1974).

[24]*Id.* Indeed, labor costs as well as markets are considerations in the shift of foreign investment into the United States. *See*, e.g., Chilton, *The Wage Gap is Closing*, The New York Times, May 23, 1976 p.F9, cols. 1-4.

[25]Statute for European Companies, Bulletin of the European Communities, Supp. April 1975.

Ford Motor Company, but Ford, like most of the multinationals, refuses to enter into discussions of an international nature.

Even the attempt to establish common contract expiration dates across national boundaries, an idea put forth by the late Walter Reuther of the UAW has floundered. The Germans have been most vociferous in their opposition because it would mean making special negotiating arrangements with employers who are now part of a large association and, at a minimum, dealing with automobile companies on a different basis than other portions of the so-called metal industry. The same difficulty is posed for the Swedes who pursue a policy of "wage solidarity" which is undermined by any effort to deal with multinationals on a separate or special basis. Ironically, the American and British auto workers do have a common expiration date for the contract with Ford Motor Company in the fall of 1976—but made little difference in their respective calculations as they approach the collective bargaining table with Ford.

Thus far, the effectiveness of international trade secretariats in Geneva, such as the International Metalworkers Federation and the International Chemical Workers Federation, have been limited to the exchange of information. The reasons are manifold.

1. LANGUAGE

While their employer counterparts can usually communicate with one another, speaking at least one language in addition to their own native tongue, this is not so with the unions. Examples of German works council representatives communicating with their British shop stewards in English have been noted, but this is an exception.

2. FINANCE

The problems of language to some extent may be overcome by employing interpreters. But interpreters are expensive. One advantage that the European Metalworkers Federation (which is part of the European Trade Union Congress) has over the international trade secretariats is that they can call upon the European Economic Community for expenses incurred in connection with both interpreters and travel. The latter consideration is no small factor. The British, for instance, find it extremely difficult to send more than a few delegates to conferences on the Continent. The reason for this is in part due to the trade union structure.

3. TRADE UNION STRUCTURE

A large proliferation of small craft unions coupled with large general unions competing with one another across industry and job classification lines in Britain has two consequences: (1) a low dues structure because of the

competitive nature of union organizational problems; (2) an inability of national leaders to speak with authority on behalf of shop stewards on the shop floor in certain industries where multinationals are prominent.[26] Actually, these problems exist to a very considerable extent in France and Italy. In Japan, the central locus of authority is the company union and not the national federations which have sprung into existence so recently. Accordingly, both Europe and Japan have a much more decentralized trade union structure than the industrial unions (which are those organizations primarily interested in international coordination) in America. Even in countries like Germany and the Netherlands, works councils, theoretically independent of the trade union itself, often play a considerable role in local bargaining. Thus the structure of trade union organization poses a problem in reaching across national lines.

4. THE STRUCTURE OF BARGAINING AND INTERINDUSTRY COMPARISONS

As noted above, metal industry negotiations in Germany and Sweden combine a melange of industries including automobile, steel and electrical equipment. In the United States, such bargaining takes place separately in each industry, and the structural difference can act as an obstacle to any kind of specialized treatment of multinationals. The Germans prefer to maintain such structure because in their judgment they are able to strike a better bargain for all workers in the industry. The Swedes pursue a policy of wage solidarity which is inconsistent with any harmonization of bargaining on a wide variety of economic matters.[27] Moreover, in all countries negotiations tend to take the form of interindustry comparisons which make it extremely difficult for parties to consider benefits outside their own nation.[28] Auto workers tend to think in terms of the latest agreement negotiated by steelworkers. The problem becomes particularly troublesome where one looks across industry lines. This is the principal difficulty in Australia where over-award payments on a company or plant basis are often a reflection of the inability of either the metal trades award or the industry award sufficiently to take interindustry differentials[29] into account.

While employees within a country are continuously emulating the demands of and seeking to obtain gains similar to their counterparts in other domestic industries, the fact of the matter is that the most substantial disparity in

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[26]Gould, *Workers of the World May Unite,* Los Angeles Times, September 1, 1975; Gould, *Taft-Hartley Comes to Great Britain, supra* note 18.

[27]H. MYRDAL, THE MULTINATIONALS AND THE SWEDISH LABOUR MARKET (1973); *See generally,* T. JOHNSTON, COLLECTIVE BARGAINING IN SWEDEN (1962).

[28]Ulman, *Multinational Unionism: Incentives, Barriers, and Alternatives,* 14 INDUSTRIAL RELATIONS 1 (1975); *See generally,* Gould, Speech for Labor Law Section, Boston Bar Association, Daily Labor Report, March 29, 1976, p. D 1-3 (Issue No. 61).

[29]Note 10, *supra.*

benefits across national lines does not thus far seem to have agitated workers towards international solidarity. British workers are obsessed by trends set in the automobile industry agreements in Coventry and seem hardly to care that the Germans have holiday benefits and social security payments superior to theirs. This lack of an issue, more than anything else, is what hobbles international trade union coordination.

Ideological divisions among the AFL-CIO, the French CGT and the Italian CSIL (the latter two of which are dominated or influenced by the Communists) further complicate international cooperation between the unions. These French and Italian unions are strongest in the auto industry. The EMF, like the IMF, has thus far refused them admittance—although the former has accorded the CGT an affiliate-type status at a 1975 meeting of Caterpillar unionists in Brussels.

It is not likely, therefore, that cooperation will extend beyond the exchange of information relating to wages and related economic benefits. For one thing, intra-European differences with respect to social security benefits as well as other legislation in this area operates as a barrier; and unlike America, the Europeans provide for much by way of legislation rather than by collective bargaining. But on the other issues, there may be potential for cooperation. For instance, the agenda for discussion with Phillips prepared by the EMF related to layoffs, a matter of common concern to trade unionists in all industrial-advanced countries.[30] At the same time, this issue tends to immobilize international cooperation since each union thinks in terms of its own members' problems and cannot afford to be concerned with those in distant countries.

Another issue of common concern in the automobile industry would be production standards, relief periods and even job satisfaction experiments such as those undertaken at both Volvo and Saab-Sarnia in Sweden. In Australia, it is quite clear that the Vehicle Builders Union has incorporated relief period provisions into its "consent awards" in the automobile industry which are similar to those contained in American collective bargaining agreements.[31] But on the issue of job satisfaction, neither unions nor employers in any country save Sweden evince much interest in the problem.

The fundamental problem confronted by trade unions vis-à-vis multinationals is, as above noted, the drift of work away from highly unionized countries through future expansion. The principal vehicle for trade union

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[30]*See,* EMF Press Release, *Phillips Closes the Door to Trade Union Delegation* (mimeo Eindhoven, May 30, 1975). *The Multinational Union Challenges the Multinational Company* (Conference Board 1975). One of the best discussions of this subject is contained in Roberts, *Multinational Collective Bargaining: A European Prospect,* 11 BRITISH JOURNAL OF INDUSTRIAL RELATIONS 1 (1973).

[31]*See,* e.g., General Motors *Holden's General Award 1974,* p. 43 § 22.

involvement in such investment decisions in Europe appears to be workers' participation legislation which originated in Germany and which is now being discussed on a European Economic Community basis.[32] The European Company Statute of 1976 provides for worker directors on the Supervisory Board (the rough equivalent of an American board of directors) on a European basis. The difficulty with this statute, however, is that it would be applicable only to those who voluntarily register. The incentive to register consists in the opportunity for avoidance of double taxation in connection with mergers. However, it seems doubtful that a substantial number of existing European multinationals, many of whom have already merged or effected cooperative agreements across national lines will avail themselves of the statute. It is quite possible that smaller, fledgling multinationals will make use of the opportunity.

Summary and Conclusions

While many of the charges hurled at multinationals appear to be inaccurate, the potential threat to domestic job security posed by the outward drift of investment makes both national and international regulation appropriate. National governments should obligate multinationals to disclose information about their international profitability as well as future planning.

The United States has moved in this direction already in connection with disclosure of information in connection with the duty to bargain under the National Labor Relations Act.[33] Representation on the Board of Directors and involvement in a wide variety of personnel decisions by works councils under legislation such as has been enacted in Germany, the Netherlands, Sweden and Norway seems to be a sensible method for involving trade unionists and workers in decisions relating to multinational expansion in Europe.[34] But the critical question is whether such legislation will balkanize the trade union movement, providing a complete barrier to investment, and thus make international cooperation, especially between unions in the developing countries and the industrialized world all the more difficult.

This threat is best answered by a comprehensive legislative scheme in the industrialized countries providing for job security. The United States stands far

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[32]*Employee Participation and Company Structure in the European Community* (Commission of the European Communities, Nov. 12, 1975). After much debate, the Germans themselves have enacted new legislation on this subject. *See* German Act Concerning the Co-Determination of Employees (Mitbestimmungsgesetz) of May 4, 1976. See generally, Gould, "Northern Europe's Labor Laboratory," *The Nation,* September 11, 1976, p. 210.

[33]*See* Bartosic and Hartley, *Employer's Duty to Supply Information to the Union—A Study of the Interplay of Administrative and Judicial Rationalization,* 58 CORN. L. REV. 23 (1972). The employee's duty to bargain in good faith, which gives rise to the duty to supply information is prescribed by NLRA §§ 8(a)(5), 8(d), 29 U.S.C. §§ 158(a)(5), 158(d).

[34]*See generally, Worker's Participation in Western Europe,* Institute of Personnel Management, Report 10 (September 1971).

behind both Europe and Japan in this respect. National legislation which provides for substantial notice and compensation for laid-off industrial workers similar to that adopted in Britain, Sweden and Germany,[35] is a prerequisite. This would make it less likely that trade unions would resort to ad hoc xenophobia such as that displayed recently by some delegates at the United Auto Workers when confronted with foreign part imports from both Europe and South America, notwithstanding the needs of trade unions in such countries which likewise have members who are in need of work. An integral part of such an approach is a more generous administration of the Trade Act of 1974 so that workers harmed by imports are adequately compensated.[36]

An international code of conduct provided by organizations such as the International Labor Organization, United Nations, and the OECD is necessary. ILO must continue to attempt to strengthen freedom of association rights in the developing economies so that a strong trade union movement—to which the industrialized world can relate—is established.[37]

In order to protect the developing economies, international organizations should promulgate and enforce more stringent requirements regarding inspection and maintenance of health and safety standards. For it is not simply the trade unions in the industrialized portion of the world which are threatened. Indeed, one of the major problems to be confronted in the future is the protection of both developing nations and their trade unions in their dealings with sophisticated corporations whose economic orientation is global.

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[35]An interesting survey is contained in The Times (London), December 2, 1975, pp. 14-15.

[36]*Paper for Panel Discussion on Adjustment Assistance for Import-Impacted Workers,* December 30, 1975 by Elizabeth Jager, Economist AFL-CIO. *See also* Salpukas, *Job Loss From Imports Called Key in Auto Talks,* The New York Times, July 21, 1976, p. 10, col. 1-4.

[37]*See* R. Cox, *Labor and the Multinationals,* 54 FOREIGN AFFAIRS 344 (1976); *Multinational Corporations in World Development* (Department of Social and Economic Affairs, United Nations (1973). See *Declaration by the Governments of OECD Member Countries on Guidelines for Multinational Enterprises* (OECD, 1976), pp. 16-17.