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FACT AND FICTION CONCERNING MULTINATIONAL LABOR RELATIONS

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I. INTRODUCTION

Interest and speculation concerning multinational labor relations have increased rapidly over recent years, reflecting the tremendous growth in prominence of the multinational corporation (MNC). The MNC has become the central economic institution in the conduct not only of the transnational, but also of the domestic business of many nations. Although MNCs have many different home countries, those based in the United States dominate the scene and will be the focus of our concern here.

This article briefly reviews the magnitude, nature, and growth of the foreign investments of American-based MNCs, especially those in the nine member countries of the European Community (EC),[1] and summarizes the major union fears and aspirations that arise from the rapid growth in scope and power of MNCs. The article focuses on the realities and fantasies surrounding the prospects for multinational collective bargaining with MNCs, which is widely viewed as the most feasible means by which unions can protect their vital interests threatened by MNCs. Unfortunately, in discussions of this matter considerable fiction is often mixed with fact. Some observers see international unionism and multinational collective bargaining as natural concommitants of the internationalization of production and product markets through the spread of MNCs, and they view these developments as the transnational extension of the phenomenon that has characterized the evolution of domestic union structures in response to the national widening of production and of product markets. In their fascina-

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1. The member countries of the European Community are Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom. The designation "European Community" (EC) will be utilized to conform to recent usage which reflects the amalgamation of the European Economic Community (EEC), the European Coal and Steel Community, and the European Atomic Energy Community. The other designation, "EEC," also appears in some quotations and references.

tion with the bold notion of the internationalization of collective bargaining it is tempting for commentators to allow abstract ideas and aspirations to prevail over realities.

As background, the discussion includes a brief description of how American-based MNCs structure and manage their overseas labor relations policies and practices, the nature of the American industrial relations environment in which they operate, and the considerable differences in the industrial relations environments in the EC countries. The article concludes with a discussion of the union responses, both international and domestic, to the MNCs and, finally, with the effects of recent EC developments on the prospects for multinational collective bargaining there.

II. MAGNITUDE, NATURE, AND GROWTH OF FOREIGN INVESTMENTS OF AMERICAN-BASED MNCS

The immensity of investments abroad by United States firms is shown by data for the end of 1974, the latest available.[2] Investments in the nine member countries of the EC account for almost 30 per cent of the total; approximately 60 per cent of the investment in the EC is in manufacturing. Of these nine member countries the United Kingdom hosts 10.5 per cent and Germany 6.7 per cent of all American direct foreign investment. The growth of these investments has been impressive. Since 1958 total United States direct foreign investments have risen more than fourfold, and there has been a tenfold increase in Europe. The value of the investments by American MNCs in the United Kingdom is now more than six times, and in Germany almost fourteen times, the 1958 figure.[3]

The economic power of MNCs is widely regarded as awesome. Charles Levinson, Secretary-General of the International Federation of Chemical and General Workers' Unions, using 1969 data, points out that, based on countries' gross national products and on the annual sales of MNCs, among the top 100 countries and enterprises combined, 54 were MNCs and only 46 were countries. Of these largest MNCs, 35 were based in the United States.[4] Without doubt, the growth of the MNCs represents one of the most important phenomena in economic history. The transnational implica-

2. SURVEY CURRENT BUS., Oct. 1975, Table 13, at 53.

3. Pizer & Culter, *Capital Flow to Foreign Countries Slackens*, SURVEY CURRENT BUS., Aug. 1959, Table 2, at 30.

4. C. LEVINSON, CAPITAL, INFLATION, AND THE MULTINATIONALS 146-49 (1971).

tions of their power, without transnational responsibility, have evoked considerable concern and study by national and international organizations and have been especially worrisome to unions.

III. Validity of Union Fears

Union fears fall into two general categories: (1) fears by home-country unions of the loss of jobs through the establishment or expansion by MNCs of production abroad, especially in lower-wage countries; and (2) fears about the weakening of the economic power of unions through the increasingly wide dispersion throughout the world of investments by MNCs. The first of these fears is the transnational version of the "runaway shop" problem that has long been of intense concern to unions. In the international context the problem is viewed as much more menacing because of the complete absence of international counterparts of domestic controls, by law or by collective bargaining agreements, on corporate investment policies. The second fear, that of weakening economic power, has three major dimensions. First, the very fact of widespread international operations dilutes considerably the economic pressure that any union can bring to bear on a MNC because union jurisdiction, even if national, covers only a portion, and perhaps only a small portion, of the total operations of the firm. Secondly, there exists the threat, express or implied, of the transfer to another country of facilities from a country where a strike is under way or is imminent. Lastly, MNCs have the opportunity, by importing production from their overseas operations, to maintain domestic sales during a strike.

A. *Loss of Jobs*

The various union apprehensions concerning the increasing scope and power of MNCs have widely varying factual bases. The first of these fears, the loss of home-country union jobs through the expansion by MNCs of production abroad, has the most substantial basis, especially where United States unions are concerned. Among the noteworthy examples usually cited are the consumer electronics industry, the clothing industry and the automotive industry. Although reliable data are not available, it is clear that in these and in many other industries there has been substantially less employment in the United States as a result of the overseas operations of United States-based MNCs. These reductions in United States employment may result directly from the transfer abroad of production operations formerly performed in the United States, or indirectly through expansion of world-wide production

abroad rather than in the United States. In many major instances, United States industries, such as consumer electronics and automobiles, that formerly exported considerable quantities of their output have now become major importers, often importing from the overseas plants of United States-based MNCs.

The major union in the radio, television, and electronics components field, the International Union of Electrical, Radio and Machine Workers (IUE), claims that approximately 100,000 jobs—about 20 per cent of United States employment in those fields—have been transferred out of the country by United States-based MNCs. This transfer has been mainly to their newly established plants in Asia and Latin America.[5] Especially noteworthy are the "border plants" operated by United States firms in Mexico. These and other overseas operations are encouraged by Item 807 of the United States Tariff Schedules, which allows United States manufacturers to ship components abroad for assembly in low wage plants and then to import the finished products, paying duty only on the value added—the low-cost labor performed abroad.

According to the International Ladies Garment Workers Union, United States employment in the garment industry has been reduced by 250,000 jobs because of imports during the past fifteen years. Over the past decade the proportion of imported garments has risen from one in twenty to one in every four. Although most of these imports are from foreign firms, an increasing quantity is accounted for by United States-based MNCs. Efforts by the needle trades unions to have Item 807 repealed or modified has resulted in the recent threat by one garment manufacturer, Warnaco, Inc., to move all of its production activities abroad if this provision of the United States Tariff Schedules is repealed.[6]

The United States automotive industry offers a significant example of a metamorphosis in its international posture. Historically, the United States industry was a heavy net exporter, and its principle union, the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), was, consequently, a major proponent of liberalized trade policies. As the tide of imported automobiles increased and the United States became a heavy net importer, the position of the UAW shifted to reflect the

5. D. Benedict, Labour and the Multinationals (May 27, 1976) (paper presented at the International Conference on Trends in Industrial and Labour Relations, Montreal).

6. Yeager, *Garment Union Tries to Save the Industry (and Also Its Jobs)*, Wall St. J., Oct. 18, 1976, at 20, col. 1.

threat thus posed to United States employment in the industry. As the overseas operations of American automobile companies increased, as their overseas production became a significant proportion of these imports, and as "world-wide sourcing" of components for assembly in any country became widespread, the UAW, through the coordination of world-wide union efforts in the industry to mount an international response to the MNCs, became a leader in efforts to meet the challenges posed by MNCs.

B. *Weakening of Economic Power*

The three other major union fears pertain to the weakening of union power through the increasing world-wide dispersion of the operations of MNCs. Only the first of these, the dilution of the power of a national union through the proportionate reduction of total MNC operations under its jurisdiction, has any substantial basis in fact. Prior to World War II only a few United States-based firms, such as Singer and National Cash Register, conducted major portions of their business abroad. Today, the list has grown to encompass all but a very few of our major corporations. Consequently, the influence which even a strongly entrenched domestic union has on the totality of corporate activity is necessarily reduced.

The last two fears relate to the additional power MNCs have to combat strikes in any one country. The first involves the threat of the MNC transferring its operations to another country. The most cited example is the alleged threat by Henry Ford II in 1971 to meet continuing labor-management strife in the company's British operations by transferring investment and production to Germany. Despite continuation of a high level of strife, characterized by frequent and widespread wildcat stikes, the company has made no such move. Furthermore, this writer has been unable to find any documented instance of the actual employment of this tactic by any United States-based MNC. This is not surprising in light of the tremendous costs involved in closing down an operation in one country and opening a similar facility in another. Even if the unions and the government of the first country did not impede the transfer of the machinery and inventories, the capital costs involved would vastly exceed the costs of strikes, except under the most unusual circumstances. In short, economic realities make it most unlikely that MNCs would transfer investments to another country to undercut strikes.

The second strike-breaking technique, the use of imports from overseas operations to maintain domestic sales, should give unions

greater cause for concern. The direct costs of the international transfer of products are insignificant as compared to the tremendous costs of transferring productive facilities. Even if import duties and additional transportation costs were to reduce or eliminate profits on the resulting sales, firms might find in this technique a relatively easy and inexpensive way to undercut strikes. United States international trade legislation contains no escape provision or other relief for a union whose strike position or bargaining position is weakened by such imports.[7] Despite the economic feasibility of doing so, the writer has found no documented instance of a United States-based MNC using imports from its overseas operations to undercut a strike in its American operations. The reluctance of MNCs to use this readily available and potentially powerful weapon probably reflects their recognition of the considerable risks of such an action. The use of foreign products to undercut the position of American workers would probably cause a sensation in the United States and result in considerable public support for the strikers. Firms also may recognize the strong possibility that United States waterfront unions would refuse to handle strike-breaking imports. These unionists are even more likely to support a strike by fellow unionists than they were to support the American consumer by their illegal, but very effective, refusal in 1975 to load grain for sale to the Soviet Union.

Strike-breaking imports would surely stimulate unions to solidify their common defensive efforts against such moves. In the short run this could lead to refusals by overseas unions to permit the international shipments of strike-breaking products. Such refusals might develop into chain reaction strikes in overseas operations. In the long run, the rallying of unions' efforts for stronger cooperation and organization along international lines would create an unappealing prospect for MNCs. Although it is unlikely that MNCs would import production from abroad to undercut domestic strikes, United States unions could reduce the possibility still further if they could attain an appropriate prohibition in our international trade legislation. Such a protection would be consistent with the protection for union standards and interests which, over many years, have been successfully lobbied into much domestic legislation.

The major threat to unions posed by MNCs is their investment decisions, which often have profound effects on employment op-

7. Trade Act of 1974, P. L. 93-618, 88 Stat. 1978 (1975).

portunities. In the absence of any supra-national constraints, these investment decisions reflect only corporate interests, which may be inimical to the interests of the unions affected. Accordingly, unions have sought to organize to protect themselves against the increasing power which MNCs have over the employment opportunities of union members throughout the world. For American unions, collective bargaining has been the most effective means for protecting and expanding labor's interests with respect to domestic firms. Consequently, American unions have led efforts toward internationalization of collective bargaining to protect and expand labor's interests with respect to MNCs. However natural this move may be, it contains at least one serious conceptual flaw. Although collective bargaining has been very effective in improving wages, hours, and other terms and conditions of employment in the United States, it has had little direct influence on domestic investment and production decisions. It is interesting to speculate whether, even if international collective bargaining with MNCs were attained, unions could influence international investment decisions more effectively than they have influenced domestic investment decisions.

IV. Labor Relations Structure of MNCs

The evidence is clear that, among the many activities of MNCs, the area of industrial and labor relations constitutes one of the most decentralized, or nationally oriented, of management functions. This reflects the peculiar identity of MNCs and the strong preferences of their managements, in part the result of the multinational nature of the enterprises. MNCs have no legal status. They are groups of corporations, subsidiary to a parent corporation, all of which are established and have their legal identities under the laws of their individual countries. Therefore, each subsidiary must operate as a domestic corporation within the host country, subject to all the laws of that country but to no other regulation. In the labor relations field, since each subsidiary of a particular MNC is a national company, it must abide by all national labor laws, which are often quite distinct from the labor relations legislation governing sister subsidiaries of the same MNC in other countries. Consequently, even if top management of a MNC preferred to centralize its labor relations functions, it would be impossible to do so to any great extent.

Within the constraining legal limits, the propensity of parent organizations to intervene in the industrial relations activities of their subsidiaries varies according to technological and market fac-

tors. The tendency is generally greater where a particular subsidiary is a "key" plant in an integrated production system, as is often true in the automotive industry. The increasing use of "world-wide sourcing," whereby parts of components are produced in certain subsidiaries for use in other countries, necessarily increases the concern of home offices over the extensive disruption throughout the integrated production systems that would result from a strike in any one subsidiary. In contrast, in the many MNCs which have very decentralized production and marketing operations, such as those in the food industry, there is much less concern about the overall effects of labor relations and strikes in any one subsidiary.[8]

No firm can operate without accommodating the particular institutions, customs, and attitudes of its environment. The great differences among countries in these and other relevant respects, together with the legal variations that these differences reinforce, have persuaded MNCs to keep their labor relations structures and functions decentralized. The standard management view was expressed by Malcolm Denise, Vice-President for Industrial Relations of the Ford Motor Company:

> One fundamental factor has emerged most manifestly from the Ford experience in dealing with industrial relations in a multinational context: each country has its own unique institutions, legal framework, customs, historical background, attitudes, and expectations which provide the framework in which employee and union relations are conducted. One can try to alter these factors, but one cannot escape the fact that they are there and that they are relevant to what is undertaken and to what is achieved.[9]

Studies by international organizations have documented the considerable decentralization of policy-making and practice in labor relations,[10] as have academic studies of the matter.[11] A recent

8. INTERNATIONAL LABOUR OFFICE, MULTINATIONALS IN WESTERN EUROPE: THE INDUSTRIAL RELATIONS EXPERIENCE 26 (1976).

9. Denise, *Industrial Relations and the Multinational Corporation: The Ford Experience*, in BARGAINING WITHOUT BOUNDARIES: THE MULTINATIONAL CORPORATION AND INTERNATIONAL LABOR RELATIONS 137 (R. Flanagan & A. Weber, eds. 1974). *See also* the discussion by an Exxon official, J.M. Rosow, *Industrial Relations and the Multinational Corporation: The Management Approach*, in Flanagan & Weber, *supra* at 147-67.

10. K. WALKER, LABOUR PROBLEMS IN MULTINATIONAL FIRMS: REPORT ON A MEETING OF MANAGEMENT EXPERTS 5 (1972).

11. *See, e.g.*, D. KUJAWA, INTERNATIONAL LABOR RELATIONS MANAGEMENT IN THE AUTOMOTIVE INDUSTRY (1971).

study by the International Labour Office based on extensive interviews with company and union officials in six Western European countries confirms the considerable localization within MNCs of the determination of industrial and labor relations matters, "with the possible exception of one or two items such as pensions."[12]

Decentralized labor relations means that the MNCs' subsidiaries in each nation, rather than the parent organizations, have the major decision-making power in such key matters as whether to recognize and deal with unions, whether to join employers' organizations for collective bargaining purposes, what matters to discuss and bargain with unions, what wage systems and structures to employ, how to handle disputes and the terms of settlement, and what trade-offs to make between concessions and strikes. As discussed below, this decentralization provides the headquarters managements of MNCs with pragmatic justification for their consistent refusals to discuss with unions the top-level matters determined by their subsidiaries.

V. Comparison of United States and European Industrial Relations Environments

A. *The United States Environment*

Our concern here is limited to industrial unions, those which seek to organize and bargain for all occupations, whatever the nature and level of their skill, within a specified industry. Although a few unions, such as the United Mine Workers of America, had always been organized along these lines, the main development of industrial unionism took place in the 1930s. The strong opposition by most major craft unions led to the expulsion from the American Federation of Labor of the industrial unions, which then federated loosely into the Congress of Industrial Organizations until reunification of the two federations in 1955 as the American Federation of Labor-Congress of Industrial Organizations. Throughout the history of American unions, each national ("international") union, whether craft or industrial, has been autonomous and has sought exclusive jurisdiction over its craft or industry. Industrial unions have achieved a considerable measure of success through mergers or no-raiding agreements between rival unions, which have been encouraged by the federations. Major unions, however, have usually operated without federation affilia-

12. International Labour Office, *supra* note 8, at 53.

tion either by choice (*e.g.*, the United Automobile Workers) or by expulsion (*e.g.*, the Teamsters—the nation's largest union). The Teamsters and some other unions actively organize with little regard for the jurisdictions of rival unions.

The National Labor Relations Act of 1935 established the ground rules for collective bargaining. It set up procedures under which an employer would be obligated to recognize and bargain with unions in good faith on "wages, hours and other terms and conditions of employment." It also protects the rights of unions to organize and deal with employers through the specification of a series of unfair labor practices that are prohibited to employers. Subsequent modifications, especially by the Labor Management Relations Act of 1947, have sought to balance, but have not substantially diluted, the firm legal basis for union recognition—the obligation of employers to bargain in good faith and the principle of exclusive representation. Union recognition, whether voluntary by the employer or compelled by National Labor Relations Board (NLRB) procedures, confers upon the union exclusive rights to represent and to bargain for all workers in the appropriate bargaining unit; that is, all the occupations covered by the employer's recognition or by certification by the NLRB. This exclusive jurisdiction carries with it the obligation to represent, equally, members of the bargaining unit who are not union members.

The establishment of bargaining units (and consequently, the scope of bargaining) has generally been at the plant level even for multiplant enterprises. However, in some major industries, including the automotive, steel, electrical equipment, and rubber industries, bargaining on a company-wide basis has evolved. Only in a few major industries, such as flat glass, have there ever been industry-wide negotiations. Where there are company-wide or industry-wide collective bargaining agreements, they are usually supplemented by local agreements on appropriate matters.

Collective bargaining agreements typically cover a very wide range of subjects. Often some form of union security (compulsory union membership) is provided, a matter of utmost importance to industrial unions. Wages are specified, usually by flat rates for each of many occupations or groups of occupations. In those relatively few agreements that provide ranges of wage rates for particular occupations, the means of progression within the ranges (which may be on the basis of time, ability, or a combination of these factors) are carefully specified. Hours of work, overtime provisions, and shift premiums are specified. Seniority plays a very important role in most agreements, strongly influencing, or even governing,

the allocation of a variety of scarce employment opportunities such as promotions, transfers, demotions, layoffs, and recalls. A wide range of benefits are provided, including vacations, holidays, sickness and accident insurance, and pensions. The wording of the National Labor Relations Act and its administration by the NLRB provide a wide latitude for the obligation to bargain, wherein the initiative and imagination of the negotiators, rather than the law and its administration, set most of the practical limits to the coverage of collective bargaining.

Agreements typically incorporate detailed provisions for the adjustment of grievances, and the grievance procedures in the vast preponderance of agreements provide for binding arbitration as the final step. Agreements almost always have specific expiration dates and are legally binding upon both parties. They typically include provisions wherein the unions renounce the right to strike (except in a few agreements, over certain limited issues) for the term of the agreement, during which time the employer also renounces the right to lock out the workers. Except for such contractual restrictions, both parties have wide latitude in their use of economic weaponry to advance or to protect their interests.

B. *The European Environment*

Although superficially there may seem to be many similarities between the American and European industrial relations environments, the similarities may lead to a misunderstanding of the fundamental and pervasive differences.[13] No attempt will be made to summarize the major features of the industrial relations environments of each EC country. However, a few observations will serve to illustrate the vast differences among the various industrial relations environments in the United States and the EC.

13. For a detailed treatment of these differences, see Summers, *Labor Relations and the Role of Law in Western Europe*, in WESTERN EUROPEAN LABOR AND THE AMERICAN CORPORATION 145 (A. Kamin ed. 1970). Also in Kamin, *supra*, *see* Fairweather, *Western European Labor Movements and Collective Bargaining—An Institutional Framework*, at 59; Crijns, *Collective Bargaining in Nations of the European Economic Community*, at 93; Fano, *The Italian Labor Movement and Collective Bargaining*, at 99; Grunfeld, *Labor Relations and the Role of Law in Great Britain*, at 149; Blanpain, *Labor Relations in Belgium*, at 209; Gamillscheg, *Outlines of Collective Labor Law in the Federal Republic of Germany*, at 253; McCartney, *Ireland and Labour Relations Law*, at 269. *See also* Shearer, *Industrial Relations of American Corporations Abroad*, in INTERNATIONAL LABOR 109 (S. Barkin, *et al.*, eds. 1967); Curtin, *The Multinational Corporation and Transnational Collective Bargaining*, in AMERICAN LABOR AND THE MULTINATIONAL CORPORATION 192 (D. Kujawa ed. 1973).

Union structures vary greatly among the countries of the EC. In the United Kingdom there are almost 600 unions (compared to less than 200 in the United States), whereas in Belgium there are only three. Both in France, which has four federations of unions, and in Italy, which has three main federations, the largest such federations are communist controlled.[14]

No EC country has legislation similar to the American National Labor Relations Act. Although European employers have no legal obligation to recognize and to bargain with unions, their willingness to do so reflects the ability of the unions to press for such recognition by economic action against employers if needed. The principle of exclusive bargaining rights, fundamental to American labor relations, does not exist in Western Europe. A union represents only its members, and its collective bargaining agreements apply only to those members. In the absence of either legal or contractual provisions for union security, members are able to leave their unions at will. Every employee is free to select his own union or to bargain as an individual. The result, except in Germany where the labor movement is unified, is that an employer may, with respect to a single category of employees, be confronted by several competing unions with overlapping jurisdictions.[15] This multiplicity of competing and overlapping unions, each with its own interests and demands, presents the American MNC with a much more complex collective bargaining situation in Europe than it confronts in the United States.

These features of European labor relations have profound implications for the prospects of international collective bargaining. The absence of exclusive bargaining rights and the overlapping union jurisdictions over specific occupational categories within a plant complicates questions of who should represent European employees in any international collective bargaining, and who should be responsible for their compliance with any resulting international collective bargaining agreement. International collective bargaining carries with it the necessity for the subordination of some national union interest to the wider interests of an international amalgamation of unions. The multiplicity of European unions in specific jurisdictions, typically covered by only one United States union, would complicate the difficult task of trying to harmonize

14. Fairweather, *supra* note 13, at 71-86.

15. Summers, *supra* note 13, at 146. Ford Motor Company in the United Kingdom deals with 21 different unions. Copp, *Negotiating a New Wage Structure at Ford of Britain*, in Kamin, *supra* note 13, at 110.

diverse national interests among employees of MNCs. In Europe, the freedom of union members to leave their unions at will would limit the ability of any European union to assume an internationalist position at variance with the immediate interests of its members. This powerful and direct influence by members on union postures contrasts sharply with the more protected position enjoyed by United States unions through their exclusive bargaining rights and union security provisions assuring continuity of membership. This contrast might mean that only United States unions could take a long-run, statesman-like position regarding the formulation and execution of international collective bargaining policies. Such a disparity in the necessity of union response to the short-run interests of its members poses very serious barriers to international collective bargaining.

Collective bargaining in the EC countries generally takes place at regional or national levels between coalitions of unions and associations of employers in each industry. These umbrella agreements, under the legal rule of extension of the collective agreement, may be made applicable by government action to those parts of the entire industry that were not parties to the agreements. This apparent unification exists, however, only at the national (or regional) level and results in national collective bargaining agreements of limited importance. More significant collective bargaining takes place at provincial or at plant levels. At these levels, "where terms and conditions are actually fixed, the problems of multiple unionism remain real and the lack of an exclusive representative with which to deal alters the entire structure of labor relations."[16]

Differences in the geographic scope of bargaining in European countries and the United States represent major obstacles to the development of international collective bargaining. For example, the basic bargaining of the German metalworkers' union with the transnational automotive companies is done on a broad regional basis with relevant employers' associations. Accordingly, this union is not in a position to separate out subsidiary plants of a particular multinational automobile company in order to realign them for transnational bargaining with specific MNCs.[17]

Although collective bargaining agreements in the United States fix both the minimum and maximum wages and other terms of

16. Summers, *supra* note 13, at 18.

17. INTERNATIONAL LABOUR OFFICE, *supra* note 8, at 45.

employment, European agreements do not. Except in the Netherlands, collective agreements establish only minimum wages and conditions, which are then varied upward by a bewildering variety of local agreements and informal arrangements. The national agreements are geared to the circumstances of the marginal firms that are members of the employers association. The plant agreements then supplement the national agreements by improving their minimum wages and conditions. In Italy, plant agreements also set additional minimum wages and benefits for departmental or trade groups within the plant. These groups can improve their positions through their own bargaining. The individual worker may then bargain to improve further his own situation.[18]

According to Summers:

> The most deceptive difference between European and American collective bargaining is that in Europe collective bargaining is so much more centralized in form, but so much less centralized in substance. What first appears to be a highly integrated and nearly monolithic system proves, upon closer examination, to be an atomistic arrangement with little or no cohesion.[19]

A major consequence of this atomistic bargaining structure is typified in the United Kingdom, where most matters of greatest practical significance to union members are negotiated at the plant or lower levels. This results in considerable independence and, not infrequently, hostility between the shop stewards and the remote union hierarchies.[20] Such decentralization of power within unions, which is not limited to the United Kingdom, further impedes prospects for international collective bargaining because it seriously limits the ability of union officials to act independently of the immediate short-run interests of their members.

The substance of collective bargaining is considerably narrower in the EC countries than in the United States because in Europe many of the matters appropriate to American negotiations are covered by law. Typically, legislation in the EC countries provides comprehensive health insurance, maternity benefits, disability insurance, old age benefits, survivors' benefits and family allowances. In many countries legislation extends to vacations, hours of work, and generous termination allowances.[21]

18. Summers, *supra* note 13, at 149.
19. *Id.* at 150.
20. Fairweather, *supra* note 13, at 72.
21. INDUSTRIAL RELATIONS COUNSELORS, FACTS ON EUROPE 6-8 (1966).

Each Western European country has developed unique plant level structures for handling local disputes. Although these structures resemble American grievance committees, there are major general differences. The local bodies (work councils) are, essentially, independent of the union hierarchies. Their members are elected directly by all employees rather than by the unions. Each member, therefore, is a direct representative of all employees rather than a union functionary. The independence of work councils and of shop stewards from the official union structures contrasts sharply with the American situation. The base of American union pyramids, the local unions, which typically negotiate and administer comprehensive and definitive collective bargaining agreements, simply does not exist in Europe.

The work councils, whose functions (as discussed below) are not limited to administering the collective agreements, lack the orderly sequences of appeals which typify American grievance procedures. Disputes that cannot be settled seldom go to arbitration. Instead, they go to specialized labor courts, as in Belgium, France, and Germany, or to ordinary courts, as in Italy, the Netherlands, and the United Kingdom. The alternative, which is the main recourse used by shop stewards in the last of these countries, is economic force. No-strike, no-lockout clauses are not widely used; however, to varying degrees, the law in the EC countries other than the United Kingdom recognizes implied "peace obligations" of various types in collective bargaining agreements.[22]

Worker participation in management is an increasingly significant phenomenon in Europe, but is a concept that is rejected by American union officialdom. In his address to the International Conference on Trends in Industrial and Labour Relations in Montreal in May 1976, Thomas R. Donahue, Executive Assistant to AFL-CIO President George Meany, stated that the concept of worker participation in management "offers little to American unions in the performance of their job unionism role."[23]

Worker participation in management, often designated as "industrial democracy," can be divided into two broad categories—advisory participation and codetermination. The former is typified by joint consultation, which consists of a dialogue between management and elected employee representatives (work councils) concerning a broad range of management practices and plans. It

22. Summers, *supra* note 13, at 164-65.
23. AFL-CIO News, June 12, 1976, at 8, col. 1.

is required by law in Belgium, France, Germany, and Italy. In the United Kingdom it is required in the nationalized industries, but has been common in the private sector since the Whitley Committee Report to Parliament in 1914. In the United States, although work councils were encouraged under the National Industrial Recovery Act of 1933, they were declared illegal in the first ruling of the NLRB[24] as interferences with the representation rights of unions. Codetermination, on the other hand, is the participation of employee representatives in the highest levels of managerial policy making through membership on boards of directors. Codetermination was first established in Europe in the coal and steel industries of Germany. It was introduced there shortly after World War II by the British, in whose occupation zone these industries were located, as a means to prevent a resurgence of Nazism. The system was made permanent in 1951 by legislation. In the following year legislation applied a modified version of codetermination to all German industry.[25] In the coal and steel companies, labor holds half the seats on the supervisory boards (parity), whereas in the other industries labor representatives hold one-third of the places.

The concept of codetermination is gaining increasing support in other countries of the EC[26] and, as discussed below, is a major feature of the EC move toward the establishment of "European companies." American labor's lack of interest in participation in management and the increasing pressure of Western European labor toward codetermination present an interesting paradox. The United States is the only nation in which a strong system of organized labor has accepted capitalism, almost without question, as the appropriate form of economic organization. In varying degrees, unions elsewhere espouse real (or doctrinaire) opposition to the capitalist system. Nevertheless, the European unions have pushed for partnership in decision making with the capitalist "enemies."

The European movement toward codetermination offers a more viable means for European labor to influence Europe-based MNCs than does the prospect of international collective bargaining. Even

24. Fairweather, *Trends in International Collective Bargaining with Multinationals and the Respective Strategies*, in PROCEEDINGS OF THE TWENTY-SIXTH ANNUAL WINTER MEETINGS 152 (Industrial Relations Research Association 1974).

25. *See* Windmuller, *German Codetermination Law*, 6 IND. & LAB. REL. REV. 404 (1953); W. BLUMENTHAL, CODETERMINATION IN THE GERMAN STEEL INDUSTRY (1956).

26. *See, e.g.*, PARTICIPATION IN MANAGEMENT: INDUSTRIAL DEMOCRACY IN THREE WESTERN EUROPEAN COUNTRIES (W. Albeda ed. 1973).

if international collective bargaining became a reality, it might be difficult to use it to affect the investment and production policies of MNCs, which encompass unions' greatest concerns for employment opportunities. In contrast, investment and production policies are fundamental concerns of corporate boards of directors. Labor representation on these boards gives unions direct participation in decision making by parent corporations in these vital areas.

VI. Union Responses to the MNCs

The increasing importance of MNCs has evoked various union responses, which can be divided into two general categories—international efforts and home-country efforts. In the former, existing international union structures have provided the initiative and the means by which unions of the various countries in which a MNC operates have sought to deal with that enterprise on an international basis. Home-country efforts, which have, as yet, been of lesser significance, involve attempts by home-country unions to restrict MNCs through domestic legislation or through bargaining with their parent organizations.

A. *International Efforts*

Since World War II, international trade union structures have experienced a "proliferation bordering on chaos" of "organizations of varied purposes, levels, and ideological orientation."[27] The three global internationals are as follows: the International Confederation of Free Trade Unions (ICFTU), the World Federation of Trade Unions (WFTU), and the much smaller International Federation of Christian Trade Unions. The ICFTU was formed in 1949 by a group of unions that had been unable to neutralize the domination of the WFTU by Communist unions under Russian leadership. Because the vast majority of WFTU members are now from Communist bloc countries, only the ICFTU will concern us here.

The ICFTU has both regional and industrial affiliates. Its regional subdivisions, which enjoy varying degrees of independence, are concerned with Africa, the Americas, Asia, and Europe. The ICFTU encompasses eighteen industrial internationals known as International Trade Secretariats (ITSs). Whereas the membership in the global and regional internationals is mainly national trade

27. Windmuller, *International Trade Union Organizations: Structure, Functions, Limitations*, in Barkin, *supra* note 13, at 81.

union federations, membership in the ITSs consists of individual national unions identified with a particular industry or trade. While the ITSs accept the right of the ICFTU to "formulate the guiding principles on major political and economic issues," the autonomy and integrity of the eighteen ITSs is explicitly acknowledged by the ICFTU.[28]

The ineffectiveness of international union structures was characterized in 1967 by Windmuller as follows:

> By comparison with most national organizations, international organizations are as a rule poorly provided with those instruments that are essential to effective action, in particular a well-functioning apparatus under authoritative leadership, adequate human and material resources, and certain devices for inducing or compelling adherence to their policies. In general, their secretariats are weak, their resources scanty, and their coercive and persuasive powers exceedingly small.[29]

Since that time a few of the ITSs have made serious efforts to deal with MNCs in their jurisdictions. Most prominent among them are the International Metalworkers' Federation (IMF), the largest and one of the oldest ITSs, the International Federation of Chemical and General Workers' Unions (ICF), the International Union of Feed, Drink and Allied Workers' Associations (IUF), and the Postal, Telephone and Telegraph International (PTTI), all of which are based in Geneva, Switzerland, where they operate with tiny staffs and budgets. These ITSs sponsor world councils or departments for particular industries under their respective jurisdictions, such as the automotive, electrical equipment manufacturing, oil, chemical and rubber industries. World councils are often subdivided further into world company councils, each of which is concerned with the world-wide operations of a particular MNC. In dealing with MNCs the IMF is the most developed of the ITSs. Its automotive department incorporates separate world company councils for General Motors, Ford, Chrysler-Fiat-Simca-Rootes, and Volkswagen-Daimler-Benz. The initiative and major support for the founding of these particular world company councils in 1966 came from the United Automobile Workers of America (UAW) and its president, Walter P. Reuther.

The UAW's interest was the same as that of other American unions which have pressed for world-wide action against MNCs.

28. *Id.* at 86.
29. *Id.* at 97.

Unions, especially in the United States, are increasingly concerned over the loss of jobs in their countries through the shifting of production by the MNCs to other lower-wage countries and the related phenomenon of "world-wide sourcing," the specialization of the production of components in those countries where they can be produced for lowest cost. Thus, General Motors might assemble in several countries (including the United States) an automobile with an engine from Germany, a transmission from the United Kingdom, axles from France, a carburetor from the Netherlands, a frame from Italy, and a body from Belgium. At least partial world-wide sourcing is a reality for many MNCs. Economic realities and the technological and organizational flexibilities enjoyed by MNCs suggest that world-wide sourcing will continue to increase in importance.

A related fear of unions is that their economic power in dealing with a MNC in any one country is becoming seriously diluted through the international dispersion of production. This not only reduces the impact of any particular strike, but also, as discussed above, makes it possible for the MNC to import its overseas production to maintain its sales in a country in which its production has been interrupted by a strike.

In 1966, in Detroit, delegates representing unions in fourteen countries issued the Founding Declaration of the world company councils for the American Big Three automobile companies. The Declaration reviews the dangers to workers arising from the increasing multinational power of these corporations and their policies of world-wide sourcing and, then, sets forth the goals of the councils as follows:

> Without neglecting the specially urgent problems that exist in specific countries and companies, we agree upon the need for coordinated worldwide concentration by the IMF affiliated organizations upon these problems that are of high priority:
> —Full recognition of the right to organize, bargain collectively on wages, working conditions and social benefits and negotiate grievances.
> —Upward harmonization of wages and social benefits to the maximum extent permitted by the technological development of the industry in each country.
> —Humanize the industrial process by the immediate establishment of adequate and paid relief time and rest periods.
> —An end to excessive overtime work and the guarantee of adequate premium pay for such overtime as can be justified.
> —Adequate implementation throughout the world of the vacation bonus principle already conceded by the Big Three in certain countries.

> —Pensions sufficient to assure the security and dignity of workers who are too old to work and too young to die.
> —Guaranteed income for workers affected by production fluctuations or technological change.
> —Reduction of working time through a compensated shorter work week, more paid holidays, longer vacations, and early retirement, in the light of technological progress and the increased dehumanization of industrial employment.
> With our growing power through the IMF that can equal even the giant strength of the corporations we shall intensify our efforts to coordinate and to apply our combined resources in support of our common goals.[30]

Subsequent declarations and actions of the IMF and other ITSs have sought more explicitly to achieve such ends through multinational collective bargaining. Thus far, however, their actual accomplishments have been much more modest, limited mainly to information activities, resolutions for boycotts, refusals to work overtime in support of strikes in other countries, and declarations of solidarity. An example involving such cooperation is the long strike, beginning on April 21, 1976, by the United Rubber Workers against four American rubber companies. The *AFL-CIO News* reported as follows:

> International support of the boycott came at a two-day strategy meeting held by URW President Peter Bommarito and representatives of foreign trade unions in Geneva, under the auspices of the ICF, the trade secretariat to which the Rubber Workers belong.
>
> After a first-hand report on the bargaining situation from Bommarito, the delegates agreed on a "solidarity action" plan by their unions at the Big Four's overseas facilities.
>
> The agreement calls for a ban on overtime work at plants of all four struck companies to offset the production loss caused by the American strike. The ICF-affiliated unions also pledged to monitor their inventories to block any diversion of their output to offset the loss of production at the U.S. plants.[31]

A few ITSs have accomplished a great deal in gathering and disseminating information for national unions to use in dealing with MNCs in their jurisdictions. Using the computer facilities of the UAW, the IMF operates a comprehensive and detailed data system on multinational automobile companies and the provisions

30. INTERNATIONAL METALWORKERS' FEDERATION, WORLD COMPANY COUNCILS 46 (1967).

31. AFL-CIO News, May 1, 1976, at 2, col. 5.

of their collective bargaining agreements throughout the world. Efforts by the ITSs to go beyond information services have met with little success. Among the stepping stones toward multinational bargaining with a MNC are the attainment of common expiration dates for the collective bargaining agreements in the various countries in which the MNC operates, the development of the ability to conduct international sympathy strikes and boycotts, and the institution of consultation by international unions with headquarters management. Little has been accomplished in any of these respects.

Despite claims by ITS leaders of progress toward multinational bargaining,[32] the scholarly evidence on the subject includes little basis for such claims. Duane Kujawa's detailed study of the automotive Big Three states:

> There is little or no appreciable influence on labor relations at the European subsidiaries visited which could be assigned to activities originated by either the UAW or the IMF . . . . Moreover, an effective international labor movement is not to be expected in the near future. Diverse national labor union interests, legally determined collective bargaining structures on a national or regional basis, cultural variations, dissimilar product markets, local labor markets, and so on are all impediments to the evolution and meaningful operation of an international labor movement directly concerned with collective bargaining on a multinational scale.[33]

In a series of recent studies, Herbert Northrup and Richard Rowan investigate thoroughly the major specific instances in which each of the four ITSs listed above have claimed that their efforts have significantly influenced the conduct of MNCs. Their investigations were based on published information, documents, correspondence, and interviews with key persons. Most of the major instances they studied involved European-based firms such as Saint-Gobain, Dunlop-Pirelli, AKZO, Michelin, and Solvay with the ICF,[34] Nestle and Unilever with the IUF,[35] and Cable and

32. *See, e.g.*, Janssen, *How One Man Helps Unions Match Wits with Multinationals*, Wall St. J., June 17, 1974, at 1, col. 1; C. LEVINSON, INTERNATIONAL TRADE UNIONISM (1972).

33. D. KUJAWA, *supra* note 11, at 211.

34. Northrup & Rowan, *Multinational Collective Bargaining Activity: The Factual Record in Chemicals, Glass, and Rubber Tires*, (pts. 1-2), 1974 COLUM. J. WORLD BUS. 112.

35. Northrup & Rowan, *Multinational Bargaining in Food and Allied Industries: Approaches and Prospects*, 1974 WHARTON Q. 33.

Wireless, Ltd. with the PTTI.[36] Only under IMF jurisdiction did their major instances include American-based MNCs—Ford, General Electric, and Honeywell. The metalworkers' jurisdiction also included major instances involving European-based MNCs—Brown Boveri, Philips, and Fokker-VFW. The last two of these firms involved the European Metalworkers' Federation (described below), rather than the IMF.[37]

The IMF's efforts with Ford exemplify the almost universal frustration of union attempts to influence MNCs on the international level. In 1966, at the request of the IMF, Ford held a transnational meeting with union representatives from seven countries. Even the IMF noted, however, that this was not a collective bargaining session, but rather an opportunity for delegates to make serious problems known to top management.[38] In 1972 an IMF European Regional Meeting of Ford workers pressed unsuccessfully for a Europe-wide conference with the company. In turning down the requested meeting the company indicated that it felt that no useful purpose would be served because of the national differences in labor laws and bargaining procedures, and in the local decision-making power in labor relations. Under pressure from the UAW, the company met in Detroit in 1973 with a delegation of UAW and IMF representatives. At this meeting the company reiterated its position that national differences made inter-country meetings inadvisable.

> The company agreed to consider all points raised and indicated that if any reply were made it would be through the UAW. It seems clear that although the company had agreed to meet with a joint UAW-IMF delegation, it was being quite cautious about extending recognition to IMF. It is likely that both in the 1966 and 1973 meetings the company was responding especially to pressures from the UAW.[39]

In view of the pervasiveness of MNCs, their large numbers, and the impact their activities have on the world and, especially, on their workers, there have been relatively few instances in which it has been alleged that international union efforts have influenced

36. Rowan & Northrup, *Multinational Bargaining in the Telecommunications Industry*, 13 BRIT. J. INDUS. REL. 257 (1975).

37. Rowan & Northrup, *Multinational Bargaining in Metals and Electrical Industries: Approaches and Prospects*, 1975 J. INDUS. REL. 1.

38. INTERNATIONAL LABOUR OFFICE, *supra* note 8, at 58.

39. *Id.* at 59.

MNC activities. Even in the instances identified, the intensive investigations by Northrup and Rowan found very little factual basis for most of the claims. Their summarization of the situation in the automotive industry characterizes their findings in the other industries:

> As of this writing, the I.M.F. and its constituent bodies in the automotive industry have moved toward multinational co-ordination of bargaining only by exchanging information and increasing somewhat the commonality of some demands put forward in separate local or national bargaining negotiations. Even here, demands maintain an overwhelming national flavour. Attempts to develop common contract termination dates, to influence national wage policy, or to engage in meaningful discussions with companies on a multinational basis, have been largely unsuccessful.[40]

The situation is complicated further by the appearance of other international trade union organizations related to the EC. Soon after the EC Treaty was signed in 1957, unions in the member countries established liaison offices in Brussels, the seat of the EC. In 1973, the unions in the newly expanded EC formed the European Trade Union Confederation (ETUC), which has no formal relationship with either the ICFTU or its ITSs. The ETUC has been the unifying force for EC unions and, according to Rowan and Northrup, "represents a strong movement toward regional unity but international separatism."[41] Affiliated with the ETUC are several industry groupings of unions of EC countries. Foremost among them is the European Metalworkers' Federation (EMF). The EMF is not affiliated with the IMF. Rowan and Northrup state that the "E.M.F. has been quite persistent in its avowed aim of pushing key European multinational concerns toward multibargaining arrangements."[42] They describe a series of meetings, beginning in 1967, with Philips headquarters management and a series of meetings, beginning in 1970, with the top management of Fokker-VFW. Although the EMF might regard these as significant steps toward multinational bargaining, the companies regarded both discontinued series of meetings as informational only and insisted that bargaining relationships be at national levels.[43]

40. Rowan & Northrup, *supra* note 37, at 10.

41. *Id.* at 23.

42. *Id.*

43. *Id.* at 26-27. For the EMF version of these discussions and related matters, see the chapter by its Secretary, Gunter Kopke, *Multinational Corporations and International Unions: The Viewpoints and Responses of Continental European*

For both conceptual and practical reasons, international unions have accomplished very little in their efforts to bring about multinational bargaining. Their efforts confront (1) the fundamental differences in the legal and institutional environments of the various national systems of industrial relations, (2) the almost universal refusal of the managements of MNCs to bargain multinationally with unions, and (3) the basic differences in the interests of the array of disparate unions that deal with the same MNCs. How could these national unions, even in coalition, agree on a common multinational bargaining position on the investment policies of a MNC when the decision to build or expand facilities in one of their countries would clearly benefit workers there, but might seriously disadvantage workers in other countries? It is hard to imagine Italian workers supporting UAW opposition to a major investment in Italy as part of world-wide sourcing for assembly operations in the United States. The absence of union security arrangements in the EC countries means that members there can easily leave their unions over unpopular policies. Accordingly, it is difficult to believe that European unions could, even if they wanted, rally the necessary support for such multinational causes that are remote from, and perhaps inimical to, the workplace concerns of their members. The importance of the individual interests of union members and, especially, the national interests of their unions argues strongly against the ability of unions to formulate a common international stance on the matter of greatest importance regarding a MNC—its investment policies. Although some students of the subject are cautiously sanguine about the prospects of multinational bargaining,[44] others, including this writer, are considerably less so.[45]

B. *Domestic Efforts*

The second main category of union response consists of efforts of unions in the home country of the MNC, which in most cases is the United States. Because American unions are not members of the EC-related international union bodies, such as the EMF, the

Union, in Flanagan & Weber, *supra* note 9, at 203.

44. *See, e.g.*, Ulman, *The Rise of the International Union?*, in Flanagan & Weber, *supra* note 9, at 37.

45. *See, e.g.*, Ruttenberg, *The Union View of Multinationals: An Interpretation*, in Flanagan & Weber, *supra* note 9, at 179; Denise, *supra* note 9, at 135; Curtin, *supra* note 13, at 192.

potential of European union groups for broadly based multinational dealings with American-based MNCs is necessarily severely limited. If they succeed in dealing with such firms in Europe, it will likely be as antagonists to, rather than as partners with, their American union counterparts.

In spite of American union support for the ITS, union spokesmen are showing considerable disenchantment with international collective bargaining and domestic legislation as the key to controlling MNCs.[46] This is exemplified by the massive labor support for the Burke-Hartke bill (The Foreign Trade and Investment Act of 1973), which would extend and intensify import quota restrictions, substantially increase the tax liability of MNCs, and prohibit investments abroad that would decrease employment in the United States. The bill would impose quotas, on a country-by-country basis, on all imports not now subject to quantitative import restrictions. These quotas could be raised or lowered to maintain a base-period ratio of imports to domestic production or to meet special situations. For example, quotas would be reduced in response to a finding that imports are "inhibiting the production of any manufactured product." The bill would concentrate power over trade matters in the hands of a new three-member Foreign Trade and Investment Commission, consisting of spokesmen for industry, labor, and the public, who would have six-year staggered terms.

The bill would make substantial changes in the treatment of United States direct foreign investments. It would tax the profits of United States corporate foreign subsidiaries in the year in which they were earned. This would remove the present substantial incentive to reinvest foreign earnings abroad that results from the current tax liability only on repatriated earnings. The bill would repeal the federal tax credit now allowed United States companies for payment of foreign income taxes. It would also delete sections 806:30 and 807 of the United States Tariff Schedules, which permit United States firms shipping goods abroad for further processing to pay duties only on the value added abroad for products reentering the United States. The bill also contains important direct controls of foreign investment. It would authorize the President to prohibit any transfer of United States capital abroad whenever, in his judgment, the transfer would result in a net decrease in United States employment. The President could also prohibit any holder

46. *See, e.g.*, Ruttenberg, *supra* note 45.

of a United States patent from manufacturing the patented item abroad, or licensing its use outside the United States, when he judged that such a prohibition would increase United States employment.

Passage of the Burke-Hartke bill would remove the major advantages that overseas investments now offer to United States-based MNCs. In combination with the power of direct prohibitions over the export of capital and technology, it would effectively answer the fears of United States labor concerning the export of jobs. Not surprisingly, the bill has evoked spirited and effective opposition from the business community. Although there seems to be little likelihood for passage of this bill, it has been the focus of recent American union efforts to regulate MNCs.

Strong United States union support of domestic legislation which would restrict MNCs poses some interesting paradoxes. American unions are unique among the world's unions in their very strong preference for attaining their goals through collective bargaining rather than through political action. Nevertheless, despite the leadership of some of them in union activities on an international scale, American unions have increasingly elected the domestic political route in limiting MNCs. That election undoubtedly reduces the effectiveness of United States union leadership in the international councils of unions. The efforts by American unions to stifle, through Burke-Hartke, the overseas investments of United States MNCs conflicts directly with the interests of foreign unions by reducing employment opportunities in their jurisdictions.

It seems to this writer that the focus of United States labor on legislation as restrictive as Burke-Hartke is not only misplaced, but also inimical to a much more promising course by which American unions might influence MNCs. In many of the industries in which foreign operations are of greatest concern to United States labor, such as the automotive and consumer electronics industries, collective bargaining in the United States takes place at the corporate level—that is, with the parent organizations of the MNCs. American unions have amply proved their ability and inventiveness in bargaining over a wide range of issues. The existing forum of collective bargaining with the parent organizations might offer a more viable means for influencing MNCs than any other means in reasonable prospect. One conceptual barrier is that the matters of greatest interest to United States unions, international investment and production policies, are areas whose domestic counterparts have been largely unaffected by collective bargaining. Al-

though there appears to be a very limited legal basis for any employer obligation to bargain on overseas investments,[47] powerful and ingenious unions might be able to press their international interests effectively in domestic collective bargaining with parent organizations.

VII. Developments in the European Community

The present diverse legal and institutional structures of the EC countries limit the prospects for multinational bargaining. These impediments could, however, be removed through contemplated major changes in those structures. Such fundamental changes are, indeed, the objective of the EC work toward "harmonization" of social (including industrial relations) policies among the member nations. The Treaty of Rome states these goals in articles 117 and 118 as follows:

Article 117

Member States hereby agree upon the necessity to promote improvement of the living and working conditions of labour so as to permit the equalization of such conditions in an upward direction.

They consider that such a development will result not only from the functioning of the Common Market which will favour the harmonisation of social systems, but also from the procedures provided for under this Treaty and from the approximation of legislative and adminstrative provisions.

Article 118

Without prejudice to the other provisions of this Treaty and in conformity with its general objectives, it shall be the aim of the Commission to promote close collaboration between Member States in the the social field, particularly in matters relating to:

—employment,
—occupational and continuation training,
—social security,
—protection against occupational accidents and diseases,
—industrial hygiene,
—the law as to trade union, and collective bargaining between employers and workers.

47. *See* Kujawa, *Foreign Sourcing Decisions and the Duty to Bargain Under the NLRA*, in Kujawa, *supra* note 13, at 223.

> For this purpose, the Commission shall act in close contact with Member States by means of studies, the issuing of opinions, and the organising of consultations both on problems arising at the national level and on those of concern to international oranizations.
>
> Before issuing the opinions provided for under this Article, the Commission shall consult the Economic and Social Committee.[48]

The aspirations of the EC with respect to unionism and collective bargaining on an EC-wide basis were well stated by its former (1963-1968) Director-General of Social Affairs, J.D. Neirinck:

> The time has come, in my view, for the labor and employers' organizations to advance beyond mere service as liaison bodies and secretariats and with courage and resolution to tackle the problem of setting up a European center and transferring to this organization some of the powers of the national organizations, thus making a start on effective trade union integration. The labor movement's powers and its role in the Community will then become very different.[49]
>
> . . . .
>
> The Commission hopes that the provision of well-presented comparative statistics and technical assistance will stimulate developments that might eventually result in various forms of collective bargaining at Community level.[50]

Despite such high hopes it proved impossible to secure agreement, even among the organizations of member countries, on setting up a central EC records office for the registration of the major provisions of collective bargaining agreements in those countries.[51]

The annual reports of the EC reflect the high hopes and bleak prospects for the stimulation of EC-wide collective bargaining. For example, point 236 of the 1974 Report states:

> In spite of the Commission's efforts to set up new joint committees whose work would facilitate the conclusions of European collective agreements, it is proving difficult to achieve rapid results. Respect for the autonomy of the two sides of industry and the confused situations arising when sectoral regroupings take place at European level, both on the workers' side and on the employers' side, are liable

48. Treaty Establishing the European Economic Community, Mar. 27, 1957, [1973] Gr. Brit. T.S. No. 1 (CMD. No. 5179-II0), 298 U.N.T.S. 3.

49. Neirinck, *Social Policy of the EEC*, in Kamin, *supra* note 13, at 48.

50. *Id.* at 43.

51. *Id.* at 42.

to delay the setting up of a broader system of sectoral relations . . . .[52]

Harmonization in this area has remained a dream, as it has in most other areas of EC concern:

> The 1980 deadline for "European union," set by the Paris summit of 1972, had become a joke by the end of 1973. The Copenhagen summit agreement on immediate formation of energy and regional policies disintegrated within three days. Deadlines set at Paris for integration in social, scientific, industrial and other areas came and went with no action.[53]

The dim prospects for a united Europe were underscored by the 1975 report by former EC Commission Vice-President Robert Marjolin, whose verdict is reported as follows:

> . . . all attempts so far to achieve economic and monetary union had failed and . . . the Community was less united now than it had been two years ago. Marjolin . . . concluded that the old Monnet strategy of unity through stealth—the theory that many acts of cooperation, piled on top of each other, would suddenly produce a united Europe one fine day—had simply not worked and would not work. Marjolin said that only an exercise of political will would achieve unity. This will, he said, does not exist now. Until it does, it is useless to plot grand designs for future unity. He advised the Nine to forget about such designs for the moment and to work instead at recapturing the habit of cooperation. There would be time later, he said, to set grandiose goals.[54]

Despite the remote prospects for Europe-wide collective bargaining through economic unity or through the harmonization of industrial relations policies, a separate but related development—the proposed European company statutes (ECS)—has important implications for MNCs operating there. In April 1975, after almost five years of discussion and modification, the EC Commission presented to the Council of Ministers for consideration the final draft of the ECS, which consists of 284 articles and approximately 800 pages.[55] If approved, the ECS would allow companies (including American subsidiaries) doing business in at least

52. THE COMMISSION, EIGHTH GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN COMMUNITIES (1974) at 128.

53. Longworth, *Europe on the Move*, EUROPEAN COMMUNITY, Sept. 1975, at 3.

54. *Id.* at 5-6.

55. Fawcett, *European Companies*, EUROPEAN COMMUNITY, July-Aug. 1975, at 3.

two EC countries the option of registering as "European companies" under the statute rather than registering under existing national laws. The statute would allow firms to elect to operate throughout the EC as one economic entity, thereby escaping the many restrictions which different national incorporation laws impose on their ability to conduct transnational business.

The requirements to be met before a company could register as "European" include its acceptance of codetermination. The strengthening of the codetermination requirement in the original 1970 proposal was the subject of most of the intervening discussions, which included among those groups consulted all major union and employer organizations.[56] Union pressure changed the original proposal of two-thirds shareholder representation on supervisory boards to the present provision allowing them to elect, by a two-thirds majority, the remaining one-third from "independents," who can be neither shareholders nor employees.

Although this provision falls short of the general union preference for parity, it would, nevertheless, incorporate considerable labor power into management decision making. This has been evident in Germany, the only EC country in which codetermination is now a reality. The power over the investment decisions of MNCs that can be exercised by worker participation in management is illustrated by Volkswagen's May 1976 decision to establish an assembly plant in the United States, after a long history of efforts to do so over the opposition of its home-country union:

> Mr. Loderer's union has just consented to Volkswagen setting up an assembly plant in the United States, but only after the company had modified its original plans and had given far-reaching guarantees for future employment in Germany—guarantees which critics say go far beyond what industry should reasonably concede. In what Mr. Loderer termed a "decision of true multinational character," the union members on Volkswagen's supervisory board (he is one) had made sure that the company could not expand the proposed assembly plant in America into a fully integrated factor without coming back for further discussion. Volkswagen will not be allowed to re-export American-assembled Rabbits (*i.e.*, Golfs) to Europe, and the production of other models across the Atlantic will need new approval by the supervisory board.[57]

56. *Id.*

57. ECONOMIST, May 22, 1976, at 94.

VIII. Conclusions

The available evidence contains little support for the widely held view that multinational collective bargaining is inevitable. The evidence presented, largely by union spokesmen, to prove that a trend toward multinational bargaining is under way does not stand up under scrutiny. Although a few MNCs have agreed to informal and carefully circumscribed discussions with international groupings of unions, these discussions have not yet been meaningful opening wedges for international collective bargaining. In the absence of any supra-national legal compulsion to deal internationally with unions, managements have been free to refuse to enter into even such informal discussions. The exercise of this management prerogative has effectively stifled union efforts. In the relatively few instances in which MNCs have agreed to informal discussions, they have terminated them at will. Only real power by unions on an international scale could, given present institutions, propel MNCs toward multinational collective bargaining. Such power is not in prospect primarily because of irreconcilable conflicts of national interests concerning the investment and production policies of MNCs.

Under some unlikely future circumstances, MNCs might conceivably reverse their policies of stalwart opposition to multinational collective bargaining. Even with the major imminent barrier thus removed, it seems very unlikely that meaningful multinational collective bargaining would take place even if the MNCs were to encourage it. It would be almost impossible for unions to achieve the international cooperation essential to multinational bargaining because of the profound and irreconcilable differences in their interests as representatives of the highly differential needs of their members in their own countries. Regarding fundamental questions of the investment policies of MNCs and efforts to equalize wages and benefits among the constituent unions, the interests of the members, on a national basis, would often be so seriously opposed that enduring cooperation among the national unions would be rendered almost impossible.

Although national differences among the EC countries could be significantly reduced by progress toward harmonization of social policies, very little such progress has taken place or is in prospect. If "European companies" become a reality, it is probable that most American MNCs will not elect to constitute themselves in that fashion because of the high price: the acceptance of codetermination—an alien and frightening prospect for most American managements. If harmonization were to take place, or if American-

based MNCs did elect to become "European companies," it seems much more likely that European union interests and efforts would compete with, rather than cooperate with, those of their American counterparts. Accordingly, even if such remote possibilities were to develop, multinational collective bargaining without the active involvement of American unions would be quite different from that envisaged by its proponents.

Unless and until there is a harmonization of social policies in the EC that allows multinational bargaining (probably without the participation of United States unions), European and United States unions can deal with MNCs most effectively through activities within their own countries. These activities would be most effective if patterned after those which unions in Europe and the United States have used most effectively over the years. For European unions the best method is political action, rather than collective bargaining, which has predominated for United States unions. European unions would probably be most successful by continuing their promising efforts to achieve codetermination, such as that which now exists in Germany. They could, thereby, share with managements of Europe-based MNCs decision-making power on investment, production, and all other policies of importance to them.

American unions have no such role in prospect. Furthermore, their political efforts to secure stringent restrictions on MNCs through legislation have not been, and are not likely to be, effective. Their most effective potential leverage on United States-based MNCs is their established collective bargaining relationships with the parent corporations, with whom they already deal on a wide range of domestic industrial relations matters. The extension of domestic collective bargaining with the parent corporations into matters of international investment and production policies that effect American employment opportunities seems well within the power of many of the American unions most concerned about the threat posed by MNCs.