Corporate social responsibility: an overview of principles and practices

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Jill Murray

Policy Integration Department
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Contents

Foreword

In February 2002, the ILO established an independent World Commission on the Social Dimension of Globalization, co-chaired by President Tarja Halonen of Finland and President Benjamin Mkapa of Tanzania and comprising 26 eminent commissioners from a wide range of walks of life and different parts of the world, each serving in their individual capacity. Its broad goals were: to identify policies for globalization that reduce poverty, foster growth and development in open economies, and widen opportunities for decent work; to explore ways to make globalization inclusive, so that the process can be seen to be fair for all, both between and within countries; to promote a more focused international dialogue on the social dimension of globalization; to build consensus among key actors and stakeholders on appropriate policy responses; and to assist the international community forge greater policy coherence in order to advance both economic and social goals in the global economy.

The report of the World Commission, *A fair globalization: Creating opportunities for all*, was released on 24 February 2004. It is available on the Commission's website www.ilo.org/public/english/wcsdg/index.htm.

A secretariat was established by the ILO to support the Commission. Among other tasks, it compiled information and commissioned papers on different aspects of the social dimension of globalization. The aim was to provide the Commission with documentation and data on a wide range of options and opinions concerning subjects within its mandate, without committing the Commission or individual Commissioners to any particular position on the issues or policies concerned.

Material from this background work is being made available as working papers, as national and regional reports on meetings and dialogues, and in other forms. Responsibility for the content of these papers and publications rests fully with their authors and their publication does not constitute an endorsement by the World Commission or the ILO of the opinions expressed in them.

Gerry Rodgers
Director
Policy Integration Department

Preface

The Technical Secretariat to support the World Commission on the Social Dimension of Globalization first prepared a synthesis of ILO activities on the Social Dimension of Globalization (published as Working Paper No. 1 in this series). Documentation on the work and outcomes of other major commissions, an ideas bank, a database and knowledge networks of experts and social actors were subsequently developed. These networks have dealt with several topics, including: inclusion at the national level for the benefits of globalization to reach more people; local markets and policies; cross-border networks of production to promote decent work, growth and development; international migration as part of the Global Policy Agenda; international governance (including trade and finance); the relationship between culture and globalization; and values and goals in globalization. Gender and employment aspects were addressed throughout this work. The Reports on the Secretariat's Knowledge Network Meetings are available on the Commission's web site or in a special publication from the ILO (ISBN 92-2-115711-1).

During the course of these activities, a number of substantive background papers were prepared, which are now made available for wider circulation in the Policy Integration Department's Working Paper series (Nos. 16 to 38), as well as on the Commission's website.

In this paper Dr. Murray, of the University of Melbourne, argues that the public discourse on Corporate Social Responsibility has evolved into a quite stylized debate which tends to focus on one particular facet of multinational economic behaviour. Namely the treatment of workers in manufacturing factories in the developing world producing goods for multinational enterprises with particular attention the manufacture of textiles, clothing and footwear. This has also brought with it renewed interest in the idea of the "sweatshop", the concept of extreme exploitation of vulnerable workers in terms of living wages and dangerous working conditions. As a consequence more is known about this sector than just about any other, and theoretical work tends to deal with the subject of corporate self-regulation through the lens of the production and consumption of these arguably idiosyncratic goods. She argues that it is important to identify the potential distorting power of this emerging discourse and to broaden the attention to labour markets conditions in general.

In that context the author concludes that private initiatives do not necessarily undermine traditional means of implementing international labour standards, *provided* that codes of conduct are not conceived of as the sole means through which standards are to be applied. However, as a parallel track alongside the traditional implementation of core labour standards, private initiatives can be a valuable tool. But this can only be the case if the codes adopted are designed to support core standards. One should also not expect a process to lead to a single "model code". Different methods of production, locations, community wishes, worker preferences and company cultures will generate a range of different instruments. A digest of useful codes could therefore be collated and made available throughout the world, in order for social partners to generate their own initiatives.

Rolph van der Hoeven
Manager, Technical Secretariat
World Commission on the Social Dimension of Globalization

May 2004

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1. Introduction

The codes of conduct discourse

In discussing the main trends in private voluntary initiatives over the past five years, it is useful to distinguish between the emerging *discourse about codes of conduct* and the *actual practical adoption and use of such codes*. In terms of the discourse about codes of conduct, the past five years have witnessed an explosion of interest in the issue. This can be seen in the great increase in academic articles on the topic since the mid-1990s,[1] the rise in social protest and public commentary (for example, in newspapers and television) and the general normalization of the view that corporations and large institutionalized events (such as the Olympic Games) should be able to account for their intended behaviour towards employees through an instrument such as a code of conduct.

The public discourse has evolved into a quite stylized debate which tends to focus on one particular facet of multinational economic behaviour.[2] Much attention is focused on the treatment of workers in manufacturing factories in the developing world producing goods for multinational enterprises which on-sell the products into markets in the developed world. Within this sector, particular attention is paid to the manufacture of textiles, clothing and footwear. And within this narrow group, high profile companies producing brand name goods, such as Nike, find themselves in the eye of the storm concerning globalization. This picture of the "labour problem" has brought with it renewed interest in the idea of the "sweatshop", the concept of extreme exploitation of vulnerable workers in terms of living wages and dangerous, even life-threatening working conditions.[3]

[1] A small sample of the hundreds of relevant academic works includes the following: Mark B. Baker (1993), "Private codes of corporate conduct: Should the fox guard the henhouse?" in *University of Miami Inter-American Law Review*, 24: 399; Douglass Cassel (1996), "Corporate initiatives: A second human rights revolution?", in *Fordham International Law Journal*, 19: 1963; Thomas Donaldson (1996), "Values in tension: Ethics away from home", in *Harvard Business Review*, September: 48; Su-Ping Lu (2000), "Corporate codes of conduct and the FTC: Advancing human rights through deceptive advertising law", in *Columbia Journal of Transnational Law*, 38: 603-629; Deborah Spar (1998), "The spotlight and the bottom line: How multinationals export human rights", in *Foreign Affairs*, March-April: 7.

[2] Jill Murray (2003), "The global context: Multinational enterprises, labour standards, and regulation", in Laura P. Hartman, Denis G. Arnold and Richard E. Wokutch, *Rising above sweatshops: Innovative approaches to global labour challenges*, Westport, Preager.

[3] See, for example, Miriam Ching Yoon Louie (2001), *Sweatshop warriors: Immigrant women workers take on the global factory,* Cambridge Mass., South End Press.

There are, of course, sound reasons for this particularization of concern. The manufacturing industries in textiles, clothing and footwear have shown themselves to be amenable to production in developing States.[4] These are industries in which comparative advantage relating to labour costs can be significant. Domestic production of clothing and footwear in countries such as the United States and Australia has therefore greatly diminished in recent years.[5] There is evidence that capital investment is very mobile in this sector, with firms which once manufactured in Indonesia now moving to Viet Nam and elsewhere. Furthermore, the high profile firms engaged in this transnational production have notoriously claimed to operate "factory-less" production systems[6] (that is, based on the claim that they do not directly employ any factory workers), thereby inviting the scrutiny of those concerned with labour rights.

The discourse on codes of conduct is also a powerful force shaping research efforts in academic institutions and within the agencies involved in studying the social effects of globalization. For example, the Management and Corporate Citizenship Programme of the ILO is conducting a major study into the operation of codes of conduct by famous multinational footwear companies, including Nike and Adidas (and at a later stage will examine international textile production). Textbooks on business ethics focus on well-known actors, such as Nike, even in the case of books devoted to the study of non-American firms.[7] At the same time, the formation of public interest groups and non-governmental organizations (NGOs) has also taken shape around the most well-known players.[8] Thus, for example, Community Aid Abroad's NikeWatch undertakes a semi-permanent monitoring of Nike and Adidas factories in Asia and many groups in the United States are lobbying around the issue of the modern "sweatshop".[9]

[4] Neil Kearney (2000), "Corporate codes of conduct: The privatised application of labour standards" in Sol Picciotto and Ruth Mayne (eds.), *Regulating international business: Beyond liberalization,* Basingstoke, Macmillan/Oxfam.

[5] For example, much manufacturing for Australian markets occurs in China, where labour costs are 4 per cent of those in Australia. Industry Commission (1996), *Implications for Australia of firms locating offshore,* Report No 53, Canberra, Australian Government Publishing Service: 54.

[6] UNCTAD (1994), "Working for manufacturers without factories", in *World investment report 1994*: *Transnational corporations, employment and the workplace*, New York: 193.

[7] See, for example, Damian Grace and Stephen Cohen (eds.) (1998), *Business ethics: Australian problems and cases,* Oxford University Press, which uses Nike as an example of transnational corporate responsibility for sweated labour: 191. A United Kingdom publication refers to Nike, Levi-Strauss, the Gap, Kathie Lee Gifford and the Disney Corporation: see, Jenkins, R., Pearson, R. and Seyfang, G. (eds.) (2002), *Corporate responsibility and ethical trade: Codes of conduct in the global economy*, Earthscan.

[8] Robert Collier (1999), "A movement at nation's schools to fight sweatshops: College logo apparel makes up big market", in *San Francisco Chronicle*, April 17 (newspaper article about 56 universities joining the University of California code of conduct initiative).

[9] For example, "Students Against Sweatshops".

The upshot is that more is known about this sector than just about any other, and that theoretical work tends to deal with the subject of corporate self-regulation through the lens of the production and consumption of these arguably idiosyncratic goods.[10]
It is important to identify the potential distorting power of this emerging discourse, which suggests that there is a defined field in which much is known, for the following reasons:

(a) The size and structure of multinational firms are more complex and variable than suggested by studies of the footwear and textiles sectors. For example, at the University of Melbourne, researchers have been studying an Australian firm which imports spectacle frames from China.[11] The firm employs fewer than 20 Australian staff. It deals with industry representatives in Hong Kong (China) and with about ten factories located in mainland China. The largest Chinese factory produces spectacles for many firms, including very large American multinationals, such as Timberland. The Australian firm buys less than 1 per cent of the annual production of this factory. Through the agency of the firm's Ethical Trading Initiative,[12] attempts to engage with the large American buyers to form a friendly coalition to help improve workers' conditions in the factories have to date been unsuccessful. Attempts by the Australian company to deal directly with the Chinese factory management are continuing, but the goal of building trust and understanding is a long-term aim that is slowly producing results. The economics, ethics and power dynamics of this firm's interactions with Chinese workers are very different from those experienced in factories such as those of the "Nike mode". There are therefore many other modes of transnational enterprise which present entirely different problems for analysis.

(b) Manufacturing sectors tend not to be typical of other domestic and international economic modes of production. Often, the manufacturing sector "covers only a minority of employees in most countries and its wages are often unrepresentative of the overall labour market".[13]

(c) The "factory vision of labour",[14] implicit in much of the public discourse on codes of conduct, has led to relative silence about the problems of regulating other modes of labour exploitation in a globalized world (including, for example, sex work, domestic labour and the services sector in general). It should be noted that an increasing proportion of the activities of multinational enterprises (MNEs) involves services rather than the production of goods.[15]

(d) The sense that we know a lot about codes of conduct is illusory. In practice, with some exceptions, very little is known about the employment practices of most domestic and multinational ventures. For example, the present author is working on

[10] For example, the *Ratcheting Labour Standards* thesis of Charles Sabel et al. focuses on a few such firms. For a description of the proposal and a number of commentaries on it, see Archon Fung, Dara O'Rourke and Charles Sabel (2001), "Realizing labor standards", in *Boston Review,* 26(1). (Available at http://bostonreview.net/BR26.1/fung.htm - visited on 12 March 2004)

[11] I am grateful to Professor Richard Mitchell and Sean Cooney, chief investigators on this project, for allowing me to use this material.

[12] I am grateful to Serena Lillywhite, Ethical Trading Officer of the Brotherhood of St. Lawrence, for providing me with this material.

[13] Gordon Betcherman (2002), *An overview of labor markets world-wide: Key trends and major policy issues*, Social Protection Discussion Paper No 0205, World Bank: 10.

[14] Richard Mitchell (1995), "A new scope and a new task for labour law?", in Mitchell, R. (ed.), *Redefining labour law: New perspectives on the future of teaching and research,* Melbourne, Centre for Employment and Labour Relations Law: xii.

[15] UNCTAD (2001), *World investment report 2001: Promoting linkages,* United Nations: 66.

an article about the role of Australian firms in the Asia-Pacific region. Research has revealed virtually no academic or other work on the kinds of employment practices adopted by Australian firms overseas, and even less is known about cases in which Australian firms source goods and services but do not employ foreign workers.

(e) The focus on branded goods and the aim of mobilizing developed world customers around labour standards in developing world factories obscure the much greater problem of ensuring decent work for the vast majority of workers who produce other kinds of goods and services (such as non-branded components, personal services and goods for sale in domestic markets).

2. Cognate discourses

The use of voluntary self-regulation in the labour field can be viewed as part of a larger picture in which self-regulation by business is encouraged as an alternative, in particular, to regulation by the State. In debates about the purpose and efficacy of regulation, it is now a commonplace that fixed rules created centrally by governments, backed by inflexible sanctions, are ineffective, expensive and counter-productive.[16] Others emphasize the "hollowing out" of the State by the very processes of globalization.[17] In this context, corporate self-regulation is seen as one answer to the problems of governance in the twenty-first century.[18] We are therefore witnessing increasing academic attention concerning the question of labour regulation in the context of regulation generally, particularly at the international level.[19]

This academic work has produced some interesting and practical programmes for harnessing "the firm" as an agent of regulation. One of the most significant proposals is that of Sabel, O'Rourke and Fung,[20] which suggests that firms can compete on the basis of their labour standards in such a way as to create a "race to the top". This thesis contains many challenges for the ILO, as it implicitly assumes that centrally-fixed rules, such as core labour standards, are a drag on corporate innovation (although the authors do recognize that freedom of association is a necessary precondition for the full implementation of their schema).

[16] A brief history of this field can be viewed through the following: Christopher D. Stone (1975), *Where the law ends: The social control of corporate behavior*, New York, Harper and Row; Eugene Bardach and Robert A. Kagan (1982), *Going by the book: The problem of regulatory unreasonableness,* Philadelphia, Temple University Press; Robert Baldwin (1990), "Why rules don't work", in *Modern Law Review,* 53(3): 321-337; Ayres, I. and Braithwaite J. (1992), *Responsive regulation: Transcending the deregulation debate,* New York, Oxford University Press; and Fiona Haines (1997), *Corporate regulation: Beyond 'punish or persuade',* Oxford, Clarendon Press.

[17] See, for example, Harry Arthurs (1996), "Labour law without the State", in *University of Toronto Law Journal,* 46.

[18] See, for example, David Hess (1999), "Social reporting: A reflexive law approach to corporate social responsiveness", in *Journal of Corporation Law,* 25(1): 41-84.

[19] See, for example, John Braithwaite and Peter Drahos (2000), *Global business regulation,* Cambridge University Press.

[20] See Fung, O'Rourke and Sabel, op. cit. For a discussion of the ramifications of this thesis for the ILO, see Jill Murray (2001), "The sound of one hand clapping? The 'Ratcheting Labour Standards' proposal and international labour law", in *Australian Journal of Labour Law,* 14(3): 306-332.

Another important area of academic work is the growing literature on corporate governance and ethics.[21] Once again, this literature is not (only) theoretical and academic, but engages with the world by making proposals for change. Of particular interest to the ILO should be the burgeoning literature on environmental self-regulation by firms,[22] which appears to have traversed a different regulatory arc to that of labour standards.[23] A fruitful field of research would be to consider what lessons can be learnt from environmental self-regulation, and from literature on regulation in general,[24] and particularly the factors that change firms' behaviour (including laws, the media, stakeholders, other interest groups and employees), and the processes through which such factors can be harnessed to achieve useful change.

Of course, the notion of the ideal "open corporation"[25] needs to be considered carefully in the labour field. There are problems with conceiving of the "labour problem" as being solely a matter of "business regulation". Perhaps, unlike environmental regulation, the notion of "high standards" is not entirely straightforward in the labour field. For example, even in a firm where workers are paid US$1 million per week, core labour rights may still be violated if the company does not respect the workers' wishes and listen to their collective views. The "stakeholder" lens, which has been naturalized in much of the literature on corporate governance and corporate citizenship, and which tends to see trade unions as merely one of a number of interested groups, may not sit comfortably with the core principles of the ILO. At the very least, a thorough investigation of the strength and weaknesses of this rich literature should be undertaken in the near future.

2.1 Developments at the firm, industry and transnational level

There appears to have been an increase in the number and range of individual firms adopting codes of conduct. More importantly, we are seeing a broadening of webs of regulation of firms through various means, including national, bipartite, tripartite, intergovernmental and international developments. These developments have supported one of the key trends of the mid- to late 1990s, namely the trend towards acceptance of the centrality of the ILO's core standards.

[21] See, for example, Sally Wheeler (2002), *Corporations and the third way,* Oxford and Portland, Hart Publishing.

[22] See, for example, Hoffman, A. (1997), *From heresy to dogma: An institutional history of corporate environmentalism,* San Francisco, Stanford University Press.

[23] See, for example, UNCTAD (1996), *Self-regulation of environmental monitoring,* New York.

[24] See, for example, Grabosky, P.N. (1995), "Regulation by reward: On the use of incentives by regulatory instruments", in *Law and Policy,* 17(3): 256-281.

[25] See, for example, Christine Parker (2002), *The open corporation: Effective self-regulation and democracy,* Cambridge University Press.

For example, in addition to business-initiated codes, a number of framework agreements have been concluded between MNEs and international trade union secretariats, some of which cover hundreds of thousands of workers.[26] The European Union is becoming a significant player in international labour regulation generally.[27] Its trade agreements with non-European Union States now require adherence to the ILO's core standards. It recently issued a Communication on the ILO's core standards[28] and is taking initiatives to bolster corporate social responsibility (CSR) and ensure that companies act consistently with ILO-defined rights and principles.[29] In addition, the European Union's own Charter of Fundamental Rights contains a number of labour and social rights.

The United Nations Global Compact seeks to ensure that MNEs adhere to labour, social and environmental standards,[30] including the ILO's core standards. Recent revisions to the OECD Guidelines for Multinational Enterprises bolster the ILO's core standards within the OECD's regime.[31] A number of State-based initiatives are also making progress. One of the most advanced is the United Kingdom's Ethical Trading Initiative, which has also adopted the ILO's core standards as part of its model code.[32]

3. What are codes doing today?

3.1 The purpose of codes

In the 1990s, the discourse on codes of conduct was coterminous with the campaign to establish a "social clause" in world trade rules and with the realignment of the ILO's role with respect to core labour rights. Understandably, at that time, there was a focus on codes of conduct as alternative mechanisms to "deliver" ILO rules. For some this gave rise to concerns relating to the "privatization" of international labour law,[33] and for others an

[26] See, *Trade unions and social dialogue: Current situation and outlook.* Labour Education 2000/3, No 120, Geneva, ILO; and, for example, the European code of conduct in the footwear sector and the recent banana industry agreement signed in Costa Rica. Both of these framework agreements seek to ensure that firms and their suppliers respect the ILO's core standards.

[27] The relationship between the regulatory efforts of the European Union and the ILO is considered in Jill Murray (2001), *Transnational labour regulation: The ILO and EC compared,* Deventer, Kluwer Law International.

[28] Commission of the European Communities, *Promoting core labour standards and improving social governance in the context of globalisation,* Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, Brussels, COM (2001) 416 final.

[29] Commission of the European Communities, *Green Paper on promoting a European framework for corporate social responsibility,* July 2001, COM (2001) 366 final.

[30] www.globalcompact.org (The Global Compact)

[31] For a discussion of this revision, see Jill Murray (2001), "A new phase in the regulation of multinational enterprises: The role of the OECD", in *Industrial Law Journal,* 30(3): 255-270.

[32] www.eti.org.uk (Ethical Trading Initiative)

[33] See Kearney, op. cit.

insistence that codes should reflect the core labour standards as a necessary but insufficient adjunct to the system of State governance supported by the ILO since 1919.[34]

It is arguable that, since the mid-1990s, corporate self-regulation has been put to a more diverse set of ends by various parties with differing agendas. Evidence of this can be drawn from a number of areas. First, there now appears to be a broadening of interest in the kind of matters addressed by corporate codes of conduct and greater sophistication in the expected use of codes in relation to the ILO's core standards (see the Global Reporting Initiative details below). Secondly, the earlier model of a deregulated economy in which rules are set by self-regulating firms has been largely supplanted, in part by the explosion of semi-governmental and non-governmental institutions devoted to publicizing corporate self-regulation. The international sphere is now filled with networks of lobbying and information-sharing groups with a vital interest in labour matters. *The use to which corporate self-regulation can be put is now conceived of as something other than a replacement for the incapacitated State.* There is nothing new in this. For example, we are now witnessing a resurgence of the old idea that good business practices can have a kind of demonstration effect in attaining general improvements. Robert Owen noted in 1816 that change could be achieved by "showing to the master manufacturers an example in practice, on a scale sufficiently extensive, of the mode by which the characters and situation of the working manufacturers whom they employ may be very materially improved, not only without injury to the masters, but so as to create to them also great and substantial advantages (…)".[35]

Academic work has also developed in sympathy with this broadening agenda for self-regulation. It has long been held by some that no regulation is possible without self-regulation. That is, law does not work by automatic fiat, but requires some kind of internalization to ensure its effectiveness.

If this view is accepted, even if the traditional ILO regime were fully operational and totally acceptable to all States (which ratified Conventions and translated them into national laws), there would still be a need for individual economic actors to devise policies that comply with these rules and give effect to the broad principles underlying ILO and national labour policies. In this sense, corporate codes of conduct (and other statements or informal policies which dictate or shape actual behaviour at the workplace) can serve as part of the legitimate implementation machinery to bolster the "rule of law".

As part of this redefinition of the place of corporate codes of conduct, there appears to be an emerging view that codes of conduct *per se* are no longer perceived to be at the cutting edge of international developments. Some practitioners regard codes as an old-fashioned, blunt response, and attempts are being made to develop more sophisticated forms of interaction, such as ongoing "modes of engagement" with foreign workplaces.[36] The

[34] See, for example, Jill Murray (1997), "Corporate codes of conduct and labour standards", in Robert Kyloh (ed.), *Mastering the challenge of globalisation: Towards a trade union agenda,* Geneva, ILO.

[35] Robert Owen, "Address to the inhabitants of New Lanark (New Year's Day 1816)", quoted in Sidney Pollard and John Salt (eds.) (1971), *Robert Owen: Prophet of the poor,* Basingstoke, Macmillan: 203.

[36] Serena Lillywhite, presentation to the OECD Forum on Guidelines for Multinational Enterprises Roundtable on Supply Chains, August 2002, Paris.

project referred to above concerning the Australian importing firm is now studying attempts to develop good relations with factory managers in China with the aim of providing health and safety training for workers there. This approach has been taken as *an alternative to adopting a code of conduct*. It therefore focuses on a specific achievable issue, given the firm's relative powerlessness in relation to many of the issues traditionally considered to be part of the realm of corporate codes of conduct. This model of engagement is also evident in the fact that concern is often expressed in firms which "abandon" factories where conditions fall below acceptable standards. For example, American religious and NGO groups are campaigning to pressure the Disney Corporation's contractor to continue to source from the Skah Makhdum factory in Bangladesh, despite evidence of labour violations: "Anti-sweatshop activists are targeting Walt Disney Co. in a campaign to discredit companies that 'cut and run' when confronted with evidence of labour abuses in foreign factories."[37]

Given the understandable lag between State action and real world developments, just as it appears that codes are being overtaken as the most topical tools in globalization debates, national governments are attempting to introduce formal regulation and institutionalization of codes. This development is consistent with the trend away from the 1990s deregulation model for codes, as discussed above, but also brings with it new paradoxes about the complex relationship between the national and transnational spheres. For example, the draft provisions of the Australian Corporate Code of Conduct Bill set higher standards for Australian firms operating outside Australia than those laid down in Australian law for domestic firms operating within the country.

3.2 Greater transparency?

It is difficult to say whether or not the codes of conduct issue has led to greater transparency in corporate activity. There is a lively interest in this field, not just in relation to labour matters, but also arising from other corporate failures (such as the crash of WorldCom) which have taken consumers, shareholders and regulators by surprise. Despite this renewed interested in the role of auditors and the nature of formal reporting requirements, there are huge gaps in our knowledge. For example, a survey of top Canadian firms in 1996 found that a significant proportion refused to confirm or deny whether or not they had a code of conduct.

3.3 Boundary issues

Corporate self-regulation raises issues about the identity, nature and boundaries of the firm and the border that exists between responsibility for labour outcomes and the absence of such responsibility. Global supply chains are significant employers of exploited labour and

[37] Warren Vieth (2002), "Disney first in line for worker-abuse shaming", in *Los Angeles Times,* 25 September.

are a defining characteristic of this period of globalization. The effectiveness of codes may in general be limited by processes such as subcontracting, home work and other forms of outsourcing. On the other hand, as a "soft" regulatory form, codes have the potential to be broader in scope than binding regimes, which usually require a fixed identity for the purposes of enforcement.

3.4 Commitment to compliance: The nature of corporate standards

In legal discourse, corporate self-regulation is usually held up as the polar opposite of regulation by the State. It is seen as lacking essential elements of binding force and State-backed sanctions. However, it is important to recognize that, *within* the field of voluntary self-regulation, there are important gradations between loosely specified obligations and those to which the firm undertakes to adhere in a "binding" fashion. The extent to which firms can be held accountable depends directly on the extent to which they seek to bind themselves (this is the paradox of corporate self-regulation, and explains why many have maintained a vigilant cynicism about the whole subject).

In relation to the level of commitment made by a firm to a self-imposed standard, we can imagine a continuum. At one end, a firm imposes a "mandatory" obligation on itself by making an absolute and unqualified commitment to abide by a certain standard (for example, "the company shall not employ any worker younger than 18 years of age"). At the other end of the continuum, the company may set itself a less strict goal for compliance and leave room for discretionary application or non-application (for example, "the company shall endeavour to ensure that no children are employed").

Similarly, where firms establish standards for their contractors in codes, levels of commitment vary: at one extreme, "we require business partners to adhere to the following standards (…)", at the other "we expect business partners to operate on these principles (…)". In the former case, it would be reasonable to expect the firm to back up its codes with contractual relations based on the obligations required of contracting firms. Any breaches by the contractor would then have legally binding consequences.

Commitment to a particular standard often has to be read in the light of the code's use of "framing" devices and "riders" which introduce or follow the code proper. These may extend or (more usually) qualify the actual terms of the code. For example, some codes studied by the author call upon local management to observe the code "so far as is reasonable in the context of local laws, regulations and acceptable established custom and practice". Where "reasonable" is undefined, a very wide degree of discretion is permitted at the local level. Two possible outcomes can be envisaged:

(a) The code requirement is higher than local laws and regulations. In this case, is it "reasonable" to conform to the higher standard, or is it reasonable to go below code standards to conform with the minimum required by local laws? Given that this matter is left to local determination, it is possible that the latter course of action will be adopted, particularly where there are cost implications for following the higher standards of the code.

(b) Code requirements are lower than local laws and regulations. In this case, is it "reasonable" to adhere to the code and not local laws? Of course, in this case the code permits consideration of illegal behaviour by stating that regard can be had to "acceptable established custom and practice". A firm operating in an area in which local labour norms are entrenched at levels lower than those required by local laws and regulations would apparently remain in compliance with the code if it applied such lower standards as part of "acceptable established custom and practice".

Some of the codes studied contain a "rider" that the code is "for the guidance of management and does not form part of any employee's contract of employment". It is clear from such provisions that the primary aim of the firm adopting the code is to avoid being held accountable for its commitment to the standards set out therein.

3.5 Subject matter of codes

It is possible to identify a number of sources for codes of conduct. These include:

(a) national legislative regimes (what does the law say in the country in which the firm operates?);

(b) custom and practice in a particular area (what norms actually exist?);

(c) the core labour standards of the ILO (note the *caveat* that these may not be suitable for unilateral implementation by the firm);

(d) the recommendations to MNEs of the ILO and the OECD;

(e) the general corpus of ILO rules (note the above *caveat*); and

(f) intra-firm conditions.

These various sources often create inconsistent requirements on firms and others. It is notorious that (a) and (b) often conflict, for example, in areas where laws are unknown, enforcement is weak and/or employers are uninterested in compliance. (c) and (a) may also conflict, for example in China, where the Chinese legal system does not permit freedom of association as defined by the ILO.

Many codes require compliance with national laws. However, because some codes contain requirements relating to "local custom and practice", they tend to endorse breaches of national labour standards in certain contexts. ILO research has demonstrated that hours of work provisions, in particular, are breached at times of high demand in certain MNEs. Some of the codes show conflict between (a) and (c) by permitting workers to join "lawful" associations, thus avoiding the fact that true freedom of association requires something more than joining the State-sanctioned union.

Many of the codes lack clarity and specificity, stating that firms will provide "reasonable" conditions or follow "best practice", but without defining them. For example, one of the author's studies into the code of conduct of a large Australian mining corporation with operations in several other countries found that "the terms of the code are so vague that it offers virtually no guidance as to the actual terms and conditions which are to apply to offshore operations".[38]

Even codes which deal with the subject matter of the core ILO labour standards often do so in ways that are inadequate. None of the codes examined by the author in the international footwear sector referred to the ILO as the source of their standards. This means that the standards, and their proper interpretation, are not grounded in the history and "jurisprudence" of the ILO and its supervisory bodies. A key example of the need to give proper recognition to the provenance of standards arises in the case of freedom of association. Decisions by the ILO Committee on Freedom of Association make clear that the right to free association and collective bargaining includes a right to strike. None of the codes refers to this right.

Most of the codes in this sector deal selectively with the *ILO's core Conventions*. For example, none of the codes examined made reference to equal pay for work of equal value, and none reflected the very broad definition of "remuneration" adopted by the ILO. Similarly, the breadth of the ILO's prohibition on discrimination in employment is not reflected in any of the codes, which do not specify all the prohibited grounds of discrimination identified by the ILO.

The biggest problems relate to the reference in codes to freedom of association. Most codes make a simple and brief statement that the right of workers to form and join associations will be respected. In fact, as argued elsewhere, much more is required of firms to give life to this key principle.[39] This is recognized in both the ILO and OECD instruments on MNEs, which elaborate upon the obligations of firms in some detail. It is especially notable that none of the codes gives a commitment to bargaining with trade unions in good faith for the purpose of reaching a collective agreement, as required by the OECD Guidelines. Tables 1 and 2 below provide examples of cases in which sample codes of multinational corporations (in footwear) deviate from the requirements of the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

[38] Jill Murray (2001), unpublished research paper on Australian codes of conduct.

[39] Jill Murray (2002), "Labour rights, corporate responsibilities: The role of ILO core standards", in Jenkins, Pearson and Seyfang (eds.), op. cit. See also Bob Hepple (2001), "Equality and empowerment for decent work", in *International Labour Review,* 140(1): 5-18.

Table 1

Sample codes	OECD Guidelines
The freedom of association of employees will be respected. Employees are entitled to form or join whatever lawful organizations they wish.	[Enterprises should] respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.
We will employ people and consider them for promotion purely on the basis of their ability to do the job. We will not permit discrimination against employees in any of the countries in which we operate.	[Enterprises should] not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies (…)
[No equivalent provisions]	[Enterprises should] in considering changes in their operations which would have major effects on the livelihood of their employees (…) provide reasonable notice of such changes (…)
[No equivalent provisions]	[Enterprises should] enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

Table 2

Sample codes	ILO Tripartite Declaration on MNEs
[No equivalent provision]	Multinational enterprises (…) should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security. In view of the flexibility which multinational enterprises may have, they should strive to assume a leading role in promoting security of employment (…)
[No equivalent provision]	In considering changes in operations (…) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers (…) in order to mitigate adverse effects to the greatest possible extent.
We will pay all workers reasonable levels of wages, consistent with the nature of the work and the prevailing practice in the territory concerned.	[in developing countries] where comparable employers may not exist, multinational enterprises should provide the best possible wages, benefits and conditions of work, within the framework of government policies.

Many codes deal with *non-core labour standards*, including hours of work, pay, overtime and holidays. In practice, this seems to be one of the most contentious areas (in terms of worker and NGO concern and business interest in the standards that should be adopted). The focus on codes of conduct as vehicles for achieving the full implementation of core labour standards has tended to distract attention from these other elements. There are differing views on what standards should be adopted by firms in these non-core areas. For example, the Base Code of the Ethical Trading Initiative states that "[w]ages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income."[40]

The ILO's role in contributing to discussions about what "model codes" should contain in relation to non-core elements is considered in the last section of this paper. Certainly, greater attention should be paid to the proper analysis of non-core standards in the light of the demands of the international instruments that seek to bind MNEs. Currently, the ILO does not provide detailed guidance to firms in this regard and its Tripartite Declaration on MNEs is rather vague in some important areas. The importance of this non-core aspect should not be overlooked. It is sometimes the seemingly inconsequential aspects of codes that have the greatest potential to achieve real change. For example, the very broad commitment to freedom of association for workers in China (where this is currently a legal impossibility) is practically useless, whereas the commitment to provide details of pay for each pay period in writing and not to deduct moneys for disciplinary purposes can constitute very powerful and positive steps towards decent work. Such elements, which are wholly and properly within the scope of action of firms, should be welcomed.

Finally, it is apparent that some firms are developing innovative schemes extending into areas that are not traditionally dealt with in the industrial relations sphere. For example, some footwear firms are involved in vocational education and small-scale credit facilities for workers.[41]

[40] See, for example, David Steele (2000), *The 'living wage' clause in the Ethical Trading Initiative Base Code: How to implement it?* (Available at http://www.eti.org.uk/Z/lib/2000/06-livwage/index.shtml - visited on 29 March 2004).

[41] See, for example, Hartman et al., op. cit.

4. Monitoring

The boom in interest in codes of conduct has generated much publicity concerning alleged breaches of corporate codes, with the most famous breaches now being internationally notorious.[42] There are now many NGOs devoted to tracking firms' behaviour (within the narrow "branded" sector). The public outcry when firms are found to be in breach of their codes is well known.[43] Some academic research has also confirmed that there are fundamental problems with the self-monitoring regimes of firms and, in view of the complexities of the issue outlined above, it is not surprising that these focus on the role of firms in relation to freedom of association.[44] Awareness is also growing that independent verification is necessary.[45] There has been increased academic and political interest in the prospects for the legal enforcement of codes of conduct and similar statements of principle. This has coincided with the rise in interest in the issue of corporate liability for human rights abuses. Typically, such work focuses on the key human rights instruments, but is less fluent in relation to labour rights issues.[46]

In some respects, the story of labour abuses by firms which proclaim a code of conduct is depressingly familiar, with seemingly little having changed over the past five years. However, the most important development is the greater network of associations with an interest in labour matters, which has led to higher levels of public knowledge, greater coverage in the popular media and at least the hope of increased transparency and accountability. Optimism is also justified when consideration is given to current attempts to improve the effectiveness and sophistication of the monitoring of corporate behaviour.[47]

[42] Christopher K. Kern (2000), "Child labor: The international law and corporate impact", in *Syracuse Journal of International Law and Commerce,* 27(1): 177-198.

[43] Warren Vieth, op. cit. Tim Connor (2002), *We are not machines: Despite some small steps forward, poverty and fear still dominate the lives of Nike and Adidas workers in Indonesia*, Community Aid Abroad.

[44] See, for example, Dara O'Rourke (2000), *Monitoring the monitors: A critique of PricewaterhouseCooper's labor monitoring* (available at http://web.mit.edu/dorourke/www/ - visited on 12 March 2004)

[45] This was accepted by Nike after audits of the performance of its factories revealed practices at odds with its code commitments. See Kern, op. cit.: 193.

[46] See, for example: Anita Ramasastry (2002), "Corporate complicity: From Nuremberg to Rangoon: An examination of forced labor cases and their impact on the liability of multinational corporations", in *Berkeley Journal of International Law,* 20(1): 91-147; Steven Ratner (2001), "Corporations and human rights: A theory of legal responsibility", in *Yale Law Journal*, 111: 443.

[47] See, for example, the Global Reporting Initiative (GRI), which has developed standard reporting forms for "triple bottom line" reporting. In addition, the GRI has developed a draft detailed protocol on reporting on child labour (available at www.globalreporting.org/guidelines/protocols/ChildLabour.pdf - visited on 12 March 2004)

5. Have private sector initiatives worked?

This is a reasonable question, given the prominence accorded to corporate self-regulation and codes of conduct in recent times. However, for a number of reasons there is currently no adequate definitive answer. To ascribe an outcome to the operation of a code requires knowledge of the existence of the code and the possibility to be able to point to a specific standard that the code is designed to achieve, to identify/measure the desired standard by some form of observation and to ascertain that the desired standard is complied with in practice. Each of these variables requires careful consideration. While there has been a marked increase in information about the existence of codes (for example, through the ILO database on private sector initiatives),[48] very little extensive research has yet been carried out. Given that the terms of many codes are vague or qualified (as indicated above), it is often difficult to identify the standards that they are intended to cover. And there is no easy way to show a linkage between workplace change and a code. For example, where codes specify that local laws and custom and practice are to be adhered to, changes in working arrangements may be the result of the code or of local efforts for the enforcement of national labour laws, or of some other random event. Indeed, any one of a myriad of factors may influence what actually happens at the workplace, and isolating the code as a major influence is difficult. These factors include human behavioural patterns,[49] the national industrial relations culture,[50] the economic conditions in which the firm operates,[51] staff hierarchies and relationships within the firm.[52]

In the general field of corporate compliance with State-mandated standards, it is recognized that only limited quantitative evidence is available about the ways in which corporations implement programmes to achieve standards.[53] I know of no studies that examine compliance with internally-adopted corporate codes dealing with labour matters in a way that would control for all the variables noted above. It is therefore the case that the knowledge drawn on in this section is:

[48] http://oracle02.ilo.org/dyn/basi/vpisearch.first (ILO Business and Social Initiatives Database).

[49] See, for example, John M. Darley (1996), "How organizations socialize individuals into evil-doing", in David M. Messick and Ann E. Tenbrunsel (eds.), *Codes of conduct: Behavioral research into business ethics,* New York, Russell Sage Foundation.

[50] For example, it is argued that firms locating to the United States "are attracted by and soak up the union-avoidance culture of their American hosts": William Brown (2000), *Protecting labour standards in a global economy*, Rapporteur's Report, Proceedings of the IIRA 12th World Conference, Tokyo, International Industrial Relations Association: 50.

[51] For example, Haines argues that "the smaller, weaker organizations and those who exist in the 'nether world' between wage labour and ownership (…) are characterized by lack of control" over their internal operations because of their precarious position in the market. Such firms have less room to develop virtuous practices in relation to their employees' health and safety, and are therefore more likely to fail to comply with local laws and norms. Haines, op. cit.: 22.

[52] See, for example, John C. Coffee (1981), "No soul to damn, no body to kick: An unscandalized inquiry into the problems of corporate punishment", in *Michigan Law Review,* 79: 386-459.

[53] For a full discussion, see Christine Parker, op. cit.: 21-26.

(a) *Fragmentary*. For the reasons outlined at the outset, the discourse on codes of conduct has focused attention on a particular sector of globalized manufacturing in which codes have become highly visible public instruments. Very little is known about the vast bulk of production by and for transnational corporations.

(b) *Incomplete*. Even where empirical studies are carried out, these tend to be time-specific and limited in focus. The monitoring of codes by factory visits, for example, may reveal very little about the actual labour dynamics at the workplace. Freedom of association is difficult to assess through such a process.

(c) *Engaged with the discourse*. Much of the material about the impact of codes is written by protagonists in the debates and may be designed to influence the future course of the debate as much as to reveal empirical findings.

(d) *Methodologically flawed*. Many of the complex issues raised by codes of conduct have yet to be addressed in the literature. These issues include whether firms can implement ILO core Conventions in non-complying States, the requirements upon them in such circumstances and the methodologies that are suitable for assessing the complex standards in the areas of freedom of association, the right to collective bargaining and the right to work free from discrimination. Given the complex nature of the texts of many codes (and the fact that they are often designed to avoid accountability in respect of specific standards), the idea of definitively ascribing an outcome to codes is problematic. This complexity is not reflected in much of the material generated around codes which, in the press and Web-based NGOs, tends to be anecdotal and at times not based on a realistic assessment of what the code was designed to achieve.

A good place to start unravelling the issue is to consider what is meant by the idea of the impact of a code. Corporations are complex institutions, and the flow of power and decision-making is usually hard to chart. The literature on corporate "behaviour" suggests that there are various factors that motivate individuals within firms. The "public relations" aspect of codes of conduct may therefore be important in indirectly shaping the responses of individual employees concerning issues arising in relation to labour standards, even if the code is imperfectly implemented throughout the worksites. Other environmental factors, including knowledge of the ILO's core standards, may also play a role in shaping the views of those in power as to what is reasonable and acceptable in all circumstances. It is therefore important to factor in the publicity of the discourse on codes of conduct as having a regulatory impact *per se.* Thus, statements such as this from Will Hutton may be missing something of the point: "Nearly every company pays lip-service to this new cultural business exigency (that is corporate ethics), but very few take it seriously (…)".[54]

If instead of seeing corporate codes as rules that are either obeyed or disobeyed by the "corporation", the process is viewed as being more fragmentary and fluid, then the fact that high levels of public concern have been articulated in some countries may influence individual decision-making within the multinational corporation in ways that are significant, even though difficult to detect. Kern's view that "recent public opinion has had a tremendous impact on the way that companies are currently conducting their businesses (…)" may be relevant.[55]

[54] Will Hutton (2000), *Society bites back: The good enterprise, the purposeful consumer and the just workplace* (available at www.theworkfoundation.com/pdf/1858359341.pdf - visited on 12 March 2004)

[55] Kern, op. cit.: 191.

However, unpublished University of Melbourne research into the Sydney Olympic Games code of conduct (which aimed to secure fair labour conditions for the workers involved in the production of goods for the Sydney Organising Committee for the Olympic Games - SOCOG) provides a good example of the "window dressing" character of at least one code. The code of conduct (negotiated between SOCOG and the Australian Council of Trade Unions) was agreed *after* the contracts were signed with Australian companies to provide goods to SOCOG. At a later date, the firms were asked to provide the code supervisory body with details of the locations and names of offshore manufacturers of goods. These lists were inadequate, and none of the factories in Taiwan (China) could be contacted using this material. It is likely that the code had no direct effect at all. The only product of the code's existence was the fact that Australian unions were able to negotiate a higher level of production in domestic factories when concerns were raised about factory conditions in Fiji. Without such an energizing public event, the code remained a dead letter.

6. What conclusions can be drawn?

In my opinion, there is a tendency for firms and events (such as the Sydney Olympic Games) to attempt to use corporate self-regulation and codes of conduct as public relations exercises. What stops this from happening is the existence of forces in the environment in which the firm/event operates, such as trade unions, a free press, NGOs and Internet information flows. These can alter the interest calculations of firms, in the ways discussed above, and give life to even the most superficial attempt at corporate self-regulation. Without appropriate internal and external pressures, there is a strong tendency for economic forces to "trump" code standards.

7. What would help?

Labour conditions are the product of many factors, some of which arise at the workplace, while others exist beyond it. Whether or not a firm has a code of conduct, it will evince a pattern of behaviour towards its workers through, for example: the attitudes and values of first-line supervisors to those working under them; the ways in which workplace changes are communicated to staff and implemented; the form of job design adopted and the degree of worker freedom in controlling the labour process; management's attitude to dispute negotiation and resolution at the workplace; the "space" left for individual actors to determine their own responses to the ethical and other problems that arise from time to time; and many other factors. Of course, this informal "code" may change over time, and may or may not be consistent with the firm's formal policy commitments, for example to employees, including the adoption of a written code of conduct.

This informal creation of workplace norms occurs in complex and comparatively unstudied ways in the supply chains of global production networks. The task of achieving labour regulation across such chains is complex. For example, it would be necessary to examine the ways in which prices for goods are set in contract negotiations, the role of intermediary

institutions, such as the industry groups that organize business from the Hong Kong Special Administrative Region for factories in mainland China, and the role of contract management as a potential tool for holding suppliers to labour standards agreed upon further up the production chain. To date, little if any independent publicly available empirical research has been conducted on these questions.

In addition to the attitudes consciously and unconsciously adopted by various levels of management, the actions of other actors and the environment in which the firm operates also contribute to the development of workplace norms. For example, workers may acquiesce to employer dispute settlement culture, or may collectivize their interests and organize formal disputes. Management may then alter its internal procedures in the light of these changed pressures. Community concerns may emerge in relation to, for example, conditions at a particular factory: these concerns may arise within communities far distant from the factory itself (indeed, such geographical dislocation is envisaged in some of the "ratcheting labour standards" processes discussed above). Management may be consciously influenced by such campaigns or, less tangibly, individuals may alter their own moral calculus when reaching decisions which shape working conditions and other outcomes.

The importance of individual perceptions of ethical behaviour was evident in the author's interviews with managers in the Australian mining company. The company's formal code was vague and what actually shaped labour conditions was a company directive that, when operating abroad, local laws were to be applied. This meant that the site manager at an offshore mine had little working knowledge of the company code and simply applied local laws as they were explained by locally-hired human resource experts. However, because the mine site was in a remote mountain location, and the workforce was drawn from local tribal people, issues arose which had to be dealt with by the site manager. He told me that his decisions were informed by his own moral principles, which happened to coincide with one of the core ILO standards ("I wouldn't want my children to work at a mine site, so I made sure no children from the village were employed"). Systems which raise general awareness of labour standards are likely to reach such personalized decision-making, even where codes fail to provide internal guidance.

As mentioned above, it is important for the ILO to be aware of the tendency to see labour problems as being within the field of corporate self-regulation, that is to see work as an issue which can be dealt with by *regulation at the level of the firm*. The ILO's system of labour standards is predicated on the pluralistic determination of conditions at work, through the process of free collective bargaining. For the ILO, the *co-regulation of work* is therefore a more natural starting point.

However, this does not mean that we cannot meaningfully consider the role which regulation at the level of the firm can play in achieving certain goals, including the objective of embedding the letter and spirit of the ILO's core Conventions in actual practice around the world and the achievement of decent work for more of the world's workers. In terms of these goals, the management of firms should do whatever is necessary to ensure that adequate standards (including the procedural standards of freedom of association and the right to collective bargaining) are respected. Within this generalized aim, codes of conduct, as institutionalized statements of intent, may play a role in achieving change, provided that sufficient weight is given to all the variables (as discussed above) which actually shape the related outcomes.

There is therefore a potential role for codes of conduct, although it should not be overstated or used to define the terms of the debate about work in the globalized world. The question is how best to capture the efforts of firms and apply environmental pressure to business so as to ensure that it does its best not to exploit labour in an inappropriate fashion.

(a) *Management*. The content of the code should reflect core international standards, and the more detailed standards of the OECD Guidelines. However, more is required of firms than simply parroting the ILO's core standards. As I have argued elsewhere, commitment by the firm to freedom of association (especially in States where this right is absent or precarious) involves active steps to achieve collectivization. For example, codes should make commitments relating to the right of entry of union officials. Where appropriate, shop stewards should be provided with the necessary resources to organize and inform the workforce. In the area of discrimination, active equal opportunities policies should be instituted to achieve a substantive, as opposed to a thin conception of formal equality.[56]

The obligations set out in codes should also extend beyond core standards. This is because the areas in which firms create relations with workers include significant matters that are not directly touched upon by core standards. Many codes now deal (albeit in vague and often unsatisfactory terms) with pay and hours of work. A range of other emerging concerns in industrial relations agendas in countries such as Australia and the United Kingdom rarely feature in the debate on codes of conduct. But why should transnational firms not also be required to consider issues such as the reconciliation of work and family life, training and retraining, community linkages and the integration of environmental and working process policies?

(b) *NGOs*. It is clear that NGOs represent a vital, if disparate force in globalized discourses about labour matters. They act as a source of publicity and information, often readily available through the Internet, and in some cases are actively involved in local campaigns involving trade unions and activists in the developing world (NikeWatch is an example of such integrated campaigning). The significance of NGOs for the codes of conduct issue is that they can act as agents shaping the environment in which firms operate (and in which they sell their finished products in developed countries). They are potentially important actors in changing the cost/benefit analysis of firms, individual managers and people in their downstream supply chains when they make their various calculations about how to fulfil their share of the co-production of labour regulation.

This publicity-generating role also has the potential to disrupt good faith efforts to improve labour standards. Consideration therefore needs to be given to the extent to which particular NGOs can be seen as representative bodies speaking on behalf of particular interested parties, especially workers. There is a risk that developed world groups may seek to "speak for" workers in other countries, without involving those workers and/or without adequate knowledge of the options available to such workers and their wishes.

Greater transparency in NGO decision-making structures, goals and projects might help alleviate some of these issues. Standardized reporting frameworks could perhaps be developed to assist with this aim.

[56] Bob Hepple, op. cit.

(c) *National governments*. Current research shows that, particularly in States with underdeveloped legal systems, there is often a mismatch between law and practice. China is an example frequently cited in this regard.[57] It is therefore counterproductive to insist that such States should increase their current regulatory role by calling for new laws.

(d) However, the major home States of MNEs could assist in bolstering local laws in host States by requiring MNEs to comply with these laws, to the extent that such obedience is consistent with other international requirements (specifically the OECD Guidelines and the ILO Tripartite Declaration on MNEs). Attempts in Australia and the United States to devise "corporate code of conduct" legislation have not so far been successful. However, such laws are potentially useful because they would serve to thicken the network of links between the various instruments of international governance, and therefore to influence decision-making in firms in the complex ways needed to achieve real change (as discussed above). Hence, for example, home State legislation requiring greater transparency in the annual reports of MNEs would be a positive step because it would enable other actors (including individual members of the firm, shareholders, unions, NGOs and other governments) to learn about the firm and hold it accountable for certain standards of conduct.

8. What role for the ILO?

It should be clear from the foregoing that private initiatives do not necessarily undermine traditional means of implementing international labour standards, *provided* that codes of conduct are not conceived of as the sole means through which standards such as the ILO's core Conventions are to be applied. For reasons elaborated upon elsewhere, the idea of firms alone guaranteeing these standards serves to undermine their fundamental character, which is in part to ensure that States do not invade the civil liberties of workers and their organizations. The core labour standards are part of a regulatory conversation between the ILO and its member States, and the Conventions tend to require State power to be harnessed or controlled in particular ways, or to require States to select from a menu of various regulatory options. To consign such functions solely to firms is contrary to the ILO's founding principles and traditional methods. Over-emphasis on codes of conduct could be seen as undermining the efficacy of States in the face of globalization, an unfortunate development which some commentators appear to have embraced.

However, as a parallel track alongside the traditional implementation of core labour standards, private initiatives can be a valuable tool in enriching the achievement of satisfactory outcomes. This can only be the case, of course, if the codes adopted are designed to support core standards (and elaborate upon the firm's commitments in relation to these standards in the ways discussed above).

The ILO's role should include facilitating tripartite and bipartite discussions of the content, scope, implementation, monitoring and auditing of codes. This dialogue should serve to ensure increased knowledge of advances in the field and to counteract the tendency to use codes of conduct as tools of "business self-regulation" (in which, to use Wedderburn's phrase, the "social dialogue becomes a monologue").

[57] Sean Cooney, Tim Lindsey, Richard Mitchell and Ying Zhu (eds.) (2002), *Law and labour market regulation in East Asia,* London, Routledge.

It is desirable for the ILO to play a role in helping to shape the content and implementation of codes of conduct. This role should be focused on ensuring that appropriate meaning is given to existing ILO standards and that international requirements (such as those set out in the ILO Tripartite Declaration on MNEs and the OECD Guidelines) are properly understood and reflected. I am less confident that the ILO should *itself* try to create the terms of codes of conduct in areas in which it has not itself developed international standards. For example, the question of the rate of pay that should be received by workers in a particular company is not one traditionally dealt with directly by the ILO. The ILO has established important Conventions setting out the obligations of States in relation to pay, including those on minimum wage-fixing machinery. While these standards imply that States should regulate the issue of minimum wages, the ILO does not seek to set actual wage rates at the minimum level or above it. Perhaps the ILO should focus on the terms of the 1977 Tripartite Declaration on MNEs and utilize its tripartite structure to convene meetings for the exchange of information about wages on a sectoral and regional basis, with a view to developing appropriate standards in this area.

In areas in which the ILO has not already created business-suitable standards (such as pay levels), it should focus on a facilitating role to ensure that the voices of labour, capital and the State from each relevant region are heard when firms consider the standards to be adopted in their voluntary initiatives.

Further, the ILO's technical expertise at the regional level should be marshalled to provide advice to firms, especially those seeking to abide by host State laws and customs. As indicated above, this is an area in which existing codes tend to be vague and/or contradictory, and authoritative advice should be available to ensure that firms which genuinely wish to do the right thing are not hampered by a lack of knowledge. Such a process may also have an indirect effect on the degree to which State law is implemented in countries with poorly developed legal systems, a positive outcome that should also be pursued by the ILO where possible.

In relation to a role for the ILO in monitoring codes, this paper has attempted to point out that the focus on corporate codes of conduct as a set of rules that are followed (or not) and then monitored through direct observation is too simplistic. Corporations are complex institutions. The standards that they are encouraged to adopt in codes need to be calibrated for their use and the nature of their outcomes (which might be intangible processes, such as worker empowerment and changes in culture) are difficult to observe. While it is obviously important for codes of conduct to be dealt with as self-imposed obligations and for firms to be vigorously held to account over their implementation, the "rules" aspect of codes may not be their most significant feature.

The ILO is well-placed to assist in this broader conceptualization of codes of conduct, that is of codes as instruments which shape both the broad external environment in which firms operate and the multifarious internal processes/people/structures which combine to develop labour norms. Indeed, such a role was foreseen for the ILO by the first Director-General, Albert Thomas, who envisaged the ILO as being at the centre of networks of the State and the national social partners in various important countries. Thomas wanted to ensure that national actors would be engaged and lobby national legislatures for rule changes in line with ILO findings.[58] The ILO's function in relation to corporate

[58] Alcock, A. (1971), *History of the International Labour Organisation,* London, Macmillan.

self-regulation should be facilitative and based around its core responsibility of ensuring that international labour standards are widely ratified and properly implemented by States. For example, where a firm adopts a new code which *demonstrates innovation in the area of core labour standards* (for example, by committing the firm to achieve targets for employees from minority backgrounds in senior managerial positions, or the creation of locally-useful training programmes), the ILO may wish to give some publicity to such useful advances (through its Web site or its tripartite networks) as an example of good practice that other firms may wish to follow, or which could be advocated by other unions. The ILO should not commit itself to guaranteeing the successful implementation of such programmes. This is obviously undesirable, as it cannot control the behaviour of firms and has to protect its reputation as an international rule-setting body.

ILO training functions can usefully be applied to help with the task of customizing ILO core standards for use by firms. As has been argued here and elsewhere, core labour standards need to be brought to life by *positive programmes of action, not just the passive acceptance of principles.* This is particularly the case in relation to internal codes of conduct. It would therefore be appropriate for the ILO to devise a series of tripartite seminars to encourage a deeper understanding of the core labour standards and the principles which underpin them, as well as the practical steps that could be taken by individual firms to comply with these principles.

It is probably unwise to expect this process to lead to a single "model code". However, this should not be regarded as a failure in any way. It is to be expected that different methods of production, locations, community wishes, worker preferences and company cultures will generate a range of different instruments. A digest of useful codes could therefore be collated by the ILO and made available throughout the world, without a single form being "mandated".

The ILO undoubtedly has the capacity to train monitors and other interested parties in certain elements of its standards. However, its expertise and authority must not be diminished in any way by ventures into territory outside its jurisdiction. For example, what would happen if a code of conduct specified that host State laws shall be abided by? Would it be appropriate for the ILO to train monitors to audit such a claim? Although the ILO acts as labour law adviser to States and conducts research into national labour laws, it does not seem to me that it should set itself up as an "accrediting body" in relation to labour inspection at the national level. Perhaps, in the first instance, the ILO should investigate the role currently played by private sector monitors and the ways in which they are currently trained, before assessing the best way that in which it could contribute to the effective implementation of corporate self-regulation and core labour standards.

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