

# Global Labor

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## **1. Introduction**

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Global labor regulation continues to be a topic for extensive discourse among scholars and political and economic actors alike. While the nation state has served as the classic point of reference for a long time, in the course of globalization the locus of labor regulation has increasingly shifted towards the supranational level.

Attempts to regulate labor globally date back to World War I, when the ILO was brought to life by the League of Nations in the Treaty of Versailles. This institutionalization of transnational labor regulation constituted a corner stone, eventually leading to the Declaration of Philadelphia which incorporated the ILO into the UN-system in 1944.

Yet, the scholarly debate on global labor is much younger and originated in the 1960s and 1970s as a result of the liberalization of trade and increase in cross-border investments. Rooted in the debate about the discrepancy of power resources of capital and labor, this early literature is foremost based on Marxist theory (Levinson 1972). Evolving from the rise of the multinational company (MNC), it mainly deals with the forms and potential of transnationalizing labor and industrial relations. The main focus of this discussion is on trade union organization and their strategy when facing these emerging, new challenges at the workplace. Strategies of union involvement, again derived from the Marxist theory of a class struggle, are particularly analyzed. Examples include forms of global unionism such as the International Trade Secretariats (Windmuller 1967 and 1979) or the International Confederation of Free Trade Unions (ICFTU). A key term which dates back to this early global labor discourse and has since been employed by the increasingly more multi-faceted global labor movement is that of transnational solidarity. Other authors (e.g. Carew 2000) have provided problem-oriented surveys of global unionism and means of labor regulation.

At the end of the 1980s and in the early 1990s, the discourse was broadened as new forms of management emerged marking the end of Fordist production methods. This new debate on lean management was situated in ongoing changes on a global scale: the end of the Cold War and the changing role of nation states, along with increasing exit options for multinational companies in the global market and the emergence of new actors, particularly international non-governmental organizations (NGOs). They altered both the discourse on and the praxis of global labor significantly. New state actors – most importantly the booming markets of India and China, new social movements, a broad number of emerging transnational actors and institutions such as the World Trade Organization (WTO) and non-governmental organizations (NGOs) changed the options for and the environment of global labor regulation. Large scale outsourcing, as well as increasing reports about hazardous working conditions in developing countries, led to the formation of the sweatshop movement. New instruments and modes of action heralded a new era of labor regulation. Labeling campaigns were initiated in the sports industry and rug manufacturing to combat child labor,

lobbying and naming and shaming practices targeted at large branded companies hallmark this development, the case of Nike probably being the most prominent example.

This was accompanied by a lively debate about the future role of traditional forms of global labor regulation. New ways of regulation were called for to meet the new challenges. Codes of Conduct (CoC), International Framework Agreements (IFA), the introduction of a social clause to WTO trade agreements and new forms of global unionism (e.g. through European or World Works Councils) are the most prevalent among them. Criticism, in turn, was targeted primarily at the ILO, which was deemed a toothless tiger providing insufficient means to address global problems. The ILO reacted by adopting the Declaration on *Fundamental Principles and Rights at Work* and the definition of core labor standards (CLS).

However, the focus on the emergence of a new (private) global labor governance regime continues and shapes the current discourse on global labor and its regulation (Hassel 2008). While some claim that the traditional labor regime with the state as its classical locus has long been outdated, others call for a strengthened role of established means of regulation within the ILO.

In this paper we seek to give an overview of the global labor debate. In the first part we will summarize the debate on globalization and labor, followed by a discussion on two contested issues of global labor regulation. In the third part we will take a closer look at actors and instruments in the global regulation of labor. The article concludes with the attempt to identify prospects and future developments.

## **2. Labor Standards and Globalization**

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The debate on global labor standards continues to be riddled by the question of the relationship between economic globalization and labor standards. The debate can be outlined along two main arguments: the liberal perspective which sees a positive impact of globalization on working conditions worldwide (Bhagwati 2004; Flanagan 2006) is opposed by those who claim a negative impact leading to a race to the bottom (Scherrer and Greven 2001; Sengenberger 2005). The race to the bottom hypothesis is based on the assumption that the liberalization of the international economic order intensifies competition, sharpens the fight for competitive advantages and subsequently contributes to a downward spiral in wages and labor standards. Stated briefly, the argument is that the effect of increased global competition leads to a growing world-wide inequality between high-skilled and low-skilled workers. While industrialized countries suffer from the relocation of global production to the South and the retrenchment of the welfare state, developing countries are pressured to exploit labor in order to maintain their competitive advantage. Governments of developing countries aim to facilitate low-wage employment for the production of labor-intensive goods, thus exerting pressure on wages in industrialized states. In order to prevent firms from transferring their production to low-wage countries, governments in industrialized countries are tempted to cut down on welfare benefits. Low-wage countries, on the other hand, often see their only comparative advantage in maintaining low levels of social standards, arguing that cheap labor abundance is their only asset.

As evidence for this development, some authors point to the establishment of special “Export Processing Zones”, designed to attract foreign investors with low worker’s rights and limited freedom of association (Oman 1999). On the other hand, the overall strategy of transnational companies to relocate production to cheaper locations in the South is said to keep living conditions at a low level, creating a “sweatshop global economy” (Kennedy, Welch, and Monshipouri 2003: 966). The threat of relocation undermines the bargaining power of trade unions and the ability of governments to provide welfare for its people.

Those opposing the race to the bottom hypothesis have argued that the impact of globalization has been positive, leading to standard-setting competition upwards and thus to an improvement in monitoring compliance. Competition would subsequently lead to a new professionalism in the global regulation of labor and thus even create a “race to the top” (Elliott and Freeman 2003). Others outline that the impact of globalization on welfare has resulted in an improvement of labor standards, as globalization increases the inflow of FDI and thus speeds up the development of poorer countries (Bhagwati 2004).

Parallel to the theoretical debate on globalization, various authors have tried to test the race-to-the-bottom hypothesis in labor standards. Two aspects have received attention in particular: the influence of trade openness and foreign direct investments on labor standards and the impact of labor standards on competitive advantages.

Proponents of an increase of trade openness argue that a high degree of international trade integration can lead to long-term welfare benefits: first, foreign direct investors, mainly from industrialized countries, can import some of the basic labor standards from their home countries (Mosley 2006: 1). A similar argument contends that both exporting firms and foreign-owned plants have comparatively better working conditions than domestic employers (Harrison and Scorse 2004; Moran 2002). Second, globalization may even increase politics’ room to maneuver due to better access to capital: governments “wishing to expand the public economy for political reasons may do so (including increasing taxes on capital to pay for new spending)” (Garrett 1998: 823). FDIs are said to improve local living situations, thus also labor standards (Flanagan 2006: 188). However, as Sengenberger (2002: 66) emphasizes, these findings are hardly surprising, given that “both the source and the destination of recent FDI flows were the most developed countries with comparatively high labour standards.”

This critical approach is backed up by others who claim that globalization will decrease the stability of employment relations (Rodrik 1997) or, at worst, lead to competition along the lowest common denominator (Deacon 2000). In contrast to the compensation thesis, which predicts an increase of welfare due to global trade, the competition thesis argues global trade leads to a decrease of social spending (for an overview see Genschel 2003). It has, however, proven difficult to make robust empirical claims. While several authors have found a positive correlation between the relationship of foreign economic penetration and government respect for civil liberties in developing countries (Meyer 1998; Richards and Gelleny 2003), other authors report mixed influences (Mosley and Uno 2007) or evidence for a negative correlation (Cingranelli and Tsai 2003). Then again, several studies find little or no evidence that variations in collective labor rights are due to discrepancies in FDI (Busse 2002; Neumayer and de Soysa 2007; 2006; 2005). However, economic explanations often cannot grasp normative or cultural aspects of decision-making. Recent literature has thus started to focus on processes of policy diffusion, to show how government’s policy decisions are shaped.

Simmons and Elkins (2004) show how government's policy decisions are shaped by processes of policy diffusion.

Many of these discussions are closely related to one of the main puzzles framing the "global labor" discussion: Does the introduction of labor standards impede comparative advantage (Busse 2002) or do labor standards promote economic development (Bazillier 2008)? According to the first view, economic development and social standards are regarded as trade-offs. Basically, this argument tells us that states whose economic development is still in its "infancy" need protection from any kind of rule that might reduce comparative advantages vis à vis more developed states, which aim to protect their domestic markets from cheap labor. Once development has been attained, social standards and individual rights will follow. On the other hand, a vast variety of studies contend that concerns of labor standards reducing comparative advantages are misplaced (Kucera and Sarna 2004; Rodrik 1996). The lacking provision of labor standards would even diminish economic performance, as comparative advantages are composed of much more than labor costs: productivity, infrastructure, education or political stability all influence a country's economy (Basu et al. 2003).

### ***New Demand for Regulation: Labor Migration and Trafficking***

One of the most significant new features of the internationalizing economy is labor migration. Migration constitutes the most extreme reaction to the growing insecurity and poverty in the course of globalization. The causes for labor migration are varied and always have to be considered within a set of certain push (insecurity, poverty, repression) and pull factors (economic opportunities, labor demand) (Castles and Miller 1998: 20). Particularly the demand for low-paid less skilled workers migrating into the so-called three D (dirty, dangerous, degrading) jobs is increasing (ILO 2006). Historical-structuralist approaches perceive migration mainly as a way of mobilizing cheap labor (Castles and Miller 1998). Generally, international migration theory on labor reflects and supports this approach; the frequent description of migrants as a "reserve army of labor" derives from this context. Others however emphasize both the positive and negative impact of migration on the world economy and economies in sending and host countries. The International Organization for Migration (IOM) estimated a total of almost 200 million migrants worldwide in 2008, about 90 million of them economically active, particularly in industrialized countries in manufacturing, agriculture, construction work and the service sector. This does not include internal migration such as for example rural to urban labor migration. In China alone this would add about another 150 million to the overall figure. Migrant remittances affect the economies of both sending and receiving countries significantly, in many countries they amount to an important share of income and contribute to (rural) development. Among the top remittance recipients in 2007 were India (\$27 billion) and China (\$25.7 billion), exceeding in India by far the FDI inflow (Worldbank 2008). The main remittance senders as of 2006 were the US (\$42.2 billion) and Saudi Arabia (\$15.6 billion).

Especially low-qualified workers however often migrate into hazardous conditions, as they are not adequately integrated and protected in their host countries. This affects female laborers which account for almost half of all labor migrants in particular. Irregular migrants are also exposed to the risk of trafficking and forced labor (ILO 2004). Attempts to manage and regulate labor migration have been made and instruments been introduced by a number of actors such as the ILO, the UN and the WTO. Additionally regional agreements such as the EU set of standards have been launched. The Implementation and monitoring of these non-binding principles however proves difficult (ILO 2004).

### 3. Contested Issues in Global Labor Governance

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Labor governance at the global level lacks the regulatory capacity of the nation state. The emerging governance regime is based on numerous initiatives by private and public actors which are only partially coordinated. There are currently two major contested issues in the global labor governance debate: the debate around soft versus hard law and relationship of labor rights and human rights. We will discuss them in the order of prominence, which is also the order in which they have evolved in the academic debate.

#### 3.1 Hard and Soft Law

As in the Global Governance debate in general, the distinction between hard and soft law has been a disputed topic in the context of global labor. Three issues dominate the discussion: *first*, the question whether hard law is superior to soft law when regulating labor issues at a supranational level and *second*, whether we see a trend towards soft law replacing hard law or rather soft law complementing hard law. A *third* issue concerns new modes of labor regulation and their respective benefits and disadvantages.

Hard law has been defined by legally binding obligations that are precise and that delegate authority for interpreting and implementing the law. Soft law, in contrast, is any deviation from hard law and comes in many forms. Abbott and Snyder conceptualize the deviation from hard law particularly with regard to the dimensions of obligation, precision and delegation (1998: 421-422). In the field of global labor, soft law is also associated with a growing body of public-private regulatory instruments.

The international labor regime illustrates the shift from hard to soft law in an exemplary way. During the golden years of “embedded liberalism” (Ruggie 1983) international labor was formed primarily from ILO conventions. While the ILO’s approach never involved hard sanctions, the idea was to adopt conventions and recommendations which would eventually become and influence national hard law. With increased globalization and increased pressures by global social movements, the discussion began to focus on finding rules for labor regulation that would reflect the global movement of goods (O’Brien 2007; Smith, Chatfield, and Pagnucco 1997). The search for a solution to level the playing field gained momentum with the call for a social clause in world trade agreements in the early 1990s. The idea of linking trade and labor issues had apparently surfaced first during the depression years, when it became apparent that ILO conventions would not be ratified by persuasion alone (Maupain 2007: 705).

After World War II, the discussion came up only briefly and was more or less laid to rest until increased market pressures and the end of the Cold War put social standards back on the global table. The emerging discussion centered on a social clause within the framework of the WTO. The strength of the WTO’s dispute settlement mechanism was seen as its opportunity to implement hard (economic) sanctions. However, apart from questioning the benefits of labor standards as such, critics of the WTO social clause argued that sanctions would most hurt those workers that were supposed to benefit from the clause, and that trade sanctions could not be a remedy for human rights violations (Brown and Stern 2008). In addition, concerns of protectionism were voiced by developing countries which feared losing their most abundant resource – cheap labor. This deadlock of arguments eventually led to labor issues vanishing from the agenda of trade negotiations, after

attempts to implement a social clause had failed during the 1990s negotiation rounds in Uruguay (1994), Singapore (1996) and, accompanied by strong protests, in Seattle in 1999. Today, the discussion has started to shift from trying to implement labor standards in global trade agreements to inclusion in regional trade agreements (see Witte 2008 for an overview).

In Singapore, the social issue of global trade had been sent back to the ILO as the appropriate body to deal with labor topics. Therefore, the 1994 report by the Director-General of the ILO, Michel Hansenne, which had proposed a differentiation between a set of core labor rights on the one hand and the need for soft law on the other hand, presented a missing link between the efforts to include labor clauses in the WTO negotiations and the wish of the ILO to move back to center stage (Hassel 2008).

Thus, by the end of the old millennium, the discussion on international soft law changed with the emergence of three related issues. The *first* issue reflected a growing awareness that the ILO's traditional hard law approach was not able to keep up with global production processes and the failure of the WTO social clause. A *second* issue was the ILO's response to this development and the establishment of a set of universally accepted rights in 1998, with the Core Labor Standards as laid down in the Declaration on Fundamental Principles and Rights at Work. The change of approach by the ILO was preceded and accompanied by numerous activities by trade unions, NGOs, and by initiatives of the firms themselves (Hassel 2008; Papadakis 2008). A *third* and related issue which changed the perspective on soft law concerned the growing (academic) debate on new forms of global governance, including non-state actors and new modes of soft regulation (Held et al. 1999).

The advantages of soft law are brought to the fore by two sides: on the one hand are those that argue that centrally created government rules are inefficient and expensive (Stone 1975; Baldwin 1990; Ayres and Braithwaite 1992; Haines 1997); on the other hand are trade unions, social movements and some governments who view soft law instruments as a complementary option to implement ILO rules and to keep labor issues on the global agenda (Scherrer and Greven 2001; Murray 2004).

While hard law is said to provide credible commitments, reduce transaction costs and handle problems of incomplete contracting, arguments in favor of soft law arrangements include lower contracting costs, lower sovereignty costs, better dealing with situations of uncertainty and better at enabling compromises. Moreover, soft law is seen as offering timely action, and as providing additional legitimacy by including bottom up approaches (Kirton and Trebilcock 2005: 5).

On the other hand, the advantages of soft law can also be seen as disadvantages: compromises may lower standards, window-dressing is facilitated, uncertainty might be increased, compliance costs might be disguised and compliance more difficult (Simmons 1998). Others have raised concerns that private soft law approaches might eventually lead to a privatization of international labor regulation (Kearney 2000).

With the Maritime Labor Convention, adopted in 2006, and the 2006 Framework for Occupational Safety and Health Convention, the ILO has signaled a shift towards more fluid forms of labor law, including both hard and soft measures (Lillie 2008; Sabel 2006). The new conventions set minimum standards but provide for faster amendment procedures while attributing an important role to regular responsibilities for both the state and private actors. Recent discussions on the labor regime seem to suggest a move towards a two-tier system: hard contractual law is supplemented by new

forms of cooperation which “require continuing governance of deep uncertainty rather than periodic adjustment of and enduring body of rules, in global supply chains and developing countries no less than in the advanced economies.” (Sabel 2006: 270).

### *3.2 Labor Rights as Universal Human Rights*

The 1948 UN Universal Declaration on Human Rights has focused global attention on human rights. However, it has been contested in the international debate whether labor rights are indeed universally applicable human rights.

Cultural relativists have claimed that “cultural differences” are a legitimate argument against universal norms and universal human rights. The argument is that non-western and non-industrialized societies have different concepts of human rights that differ substantially from western ideas (Myers 2007; Pollis and Schwab 1980). In an analysis of speeches delivered by delegates appearing before the UN Committee on the Rights of the Child, Harris-Short (2003) finds that references to such cultural differences remain a common justification. Opposed to this are universalist approaches as represented by the ILO, which argue for universal human rights norms and thus universal labor standards (Donnelly 1989; 2006).

Even though some conventions take into account the different stages of development of member countries “the aim of substantive standards [...] is to reach universality through equivalence, not uniformity” (Sengenberger 2005: 50).

Underlining this, the founding declaration of the ILO in 1919 is considered to have provided inspiration for the UN Declaration and can thus be regarded as a predecessor to establishing universal workers` rights (Morsink 1999: 1ff; Leary 1996; Swepston 1998). Today it is widely held that in particular, the majority of core standards formulated by the ILO in 1998 have gained the status of universally accepted human rights: “At the international level those expert in labor and human rights issues have reached a strong consensus that core labor rights are fundamental human rights on which all of the world’s people should be able to rely. In addition the human rights character of core labor rights has a strong foundation in philosophy and religious theory. Not only states but also individuals and corporations and other units of society have a moral and political responsibility to honour those rights” (Adams 2006: 15). This understanding of labor rights as human rights has also been adopted and is enforced by the Global Union Federations (GUFs) and the International Trade Union Confederation (ITUC).

The strong normative reasoning in the debate about labor rights as human rights is partly contradicted by empirical evidence revealing that some labor standards do in fact constitute an exception from this overall classification. This concerns in particular the right to organize and collective bargaining. Evidence from a wide range of countries (both developed and developing countries; including the US and Canada) shows that trade union rights are still rather considered as statutory rights that can be expanded or contracted depending on the political regime (Compa 2000; Atleson 2006; Adams 2006). While other labor related human rights have been incorporated by the international system (the World Bank (WB) and the International Monetary Fund (IMF) have included child labor and abolition of forced labor in their statutes), trade union rights have so far been widely neglected.

Peach (2003: 2) furthermore argues that contrary to the theoretical debate, which widely regards labor rights as human rights, “there is no effective universalization of human rights equivalent to globalization at the economic level.” Therefore “the fact that political and social human rights are equally binding in nature needs to be emphasized as the legal point of departure.” Following his line of argumentation the debate can also be characterized as being closely linked to the discussion about the recognition of workers` rights as human rights through their introduction into the global trade and financial system (Russel 1998).

#### **4. Global Labor Governance – Actors and Instruments**

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A growing body of regulatory organizations and instruments has developed parallel to the growing academic debate on international labor. Global labor is structured along three main fields: *first*, international (governmental) organizations and international standard-setting; *second*, transnational labor movements and tripartite mechanisms; and *third*, private regulatory instruments such as Codes of Conducts (CoC) and multi-stakeholder initiatives.

##### **4.1 Governmental Organizations**

At the level of governmental organizations, the ILO is the traditional body which aims to protect labor rights. Its role has not only been modified over the last decade but is also accomplished by the OECD guidelines for multinational companies and the UN Global Compact.

Founded in 1919, the **ILO** is the only international organization that is not purely intergovernmental but is instead structured as a tripartite entity of unions, employers and states. Over time, the ILO’s agenda expanded from wage issues and working hours to gender issues, health conditions or workplace safety (Elliot and Freeman 2003; Moran 2002; Block et al. 2001). Since its inception, the ILO has devised and disseminated close to 200 labor conventions and an equal amount of recommendations. Conventions are treaties which become binding when ratified; recommendations are designed to guide national legislation. With the end of the Cold War and intensifying economic integration, the ILO was forced to refocus its role (Witte 2008: 16ff). But the need for more legitimacy and normative coherence in an increasingly hostile environment was only one factor that led to the change of position. The other was that the definition of a set of Core Labor Standards (CLS) also fit into a wider debate of linking trade with labor standards. Thus, when the members of the ILO adopted the Declaration on Fundamental Principles and Rights at Work in 1998, the event was another step in the ILO’s struggle to promote a universal canon of labor standards worldwide. Since then, the 185 ILO member states are obliged to adhere to a set of four non-negotiable fundamental labor rights:

- The freedom of association and the effective recognition of the right to collective bargaining (Conventions 87 and 98);
- The elimination of all forms of forced or compulsory labor (Conventions 29 and 105);
- The elimination of discrimination in respect of employment and occupation (Conventions 100 and 111)
- The effective abolition of child labor (Convention 138 and 181).

The introduction of a set of CLS was widely welcomed as an important step towards identifying labor's human rights, setting the basis for numerous voluntary CoCs (Maupain 2007). Proponents of the CLS see these "as conceptually coherent (and not politically arbitrary), morally salient (and not merely part of an empty neo-liberal conspiracy) and pragmatically vital to the achievement of our true goals, including the 'enforceability' of the 'non-core' (and not an undermining of the whole regime from within)" (Langille 2005: 409).

However, the Declaration's approach also received its share of criticism. By adopting the CLS, the ILO theoretically expanded the spread of labor standards to all its member states. Yet, ratifications of conventions vary significantly across subjects and countries and a number of countries have not even ratified all core conventions. Similarly, the ILO faces critics attacking its lack of "teeth", pointing out the many labor rights violations and the minor effectiveness of the core labor standards (Hagen 2003). International labor lawyers such as Alston call the 1998 Declaration the "harbinger of a revolutionary transformation, the extent to which continues to be downplayed by its proponents, while many traditional supporters of labor rights appear to be oblivious to the consequences of the changes that have been wrought" (2004: 458). Alston focuses his criticism in particular on the fact that with the focus on core rights, a normative hierarchy between different labor rights has been established; that the notion of rights was replaced by principles, that soft promotional techniques replaced traditional enforcement mechanisms, and that the monitoring of these standards was decentralized so that the ILO only nominally remained at center stage.

On the other hand, proponents emphasize the importance of discourse, and the combination of dialogue and normative accountability, in the ILO monitoring regime (Chayes and Chayes 1995: 299; Weisband 2000: 644).

Monitoring mechanisms consist of a) an annual review of the situation in non-ratifying countries, and b) an annual global report which will cover each of the four core labor standards rotationally. In the mid-nineties, the ILO's Governing Body had intended to extend the complaints procedure. However, due to the strong resistance of several governments, mostly of developing countries, this proposal had to be withdrawn after two years of negotiation. The opposing governments argued "that judging the appropriate time for ratification and application of international labor standards was the privilege of the political wisdom of a sovereign member State for which the ILO's supervisory machinery, let alone potentially frivolous complaints, were no substitute" (De Meyer 2000: 7). Thus, the ILO's main role remains that of a standard-setter with a strong normative background.

While ILO standard-setting is primarily concerned with addressing state law, two international initiatives have laid the groundwork for norms directed at global business: **UN Global Compact** the specified by the UN Norms on Transnational Corporations, and the **OECD Guidelines for Multinational Enterprises**. Created in 2000 by then-UN secretary general Kofi Annan and his advisor John Ruggie, the Global Compact has by now been signed by more than 4000 companies from over 120 countries. It is a basic code of ten principles addressing human and labor rights, environmental standards and corruption, deriving its principles from four major international treaties. Companies signing the Compact submit themselves to these principles and to regularly reporting on the implementation in their business reports. In 2003, facing mounting criticisms on the role of human rights in the Compact, the UN Human Rights Commission adopted the Norms on the Responsibilities of Transnational Corporations. Much more specific with their exclusive focus on human rights in firms, the norms are an important step forward, due to their intention to evolve into a binding

instrument in the long run (Osorio 2004). The UN norms have thus set the stage for international law which goes beyond states as the locus of human rights protection. “In so doing, however, the Norms overturn two paradigms that have to date dominated the discourse on corporate social responsibility: namely that all initiatives should be voluntary and that there is no ‘one size fits all’ model to cope with the different situations facing businesses, for example, in the extractive sector and the apparel industry” (Hillemanns 2003, 1068).

The **OECD Guidelines**, on the other hand, are unique in that they constitute an agreement including *all* companies operating within and beyond one of the 40 member states of the agreement. The Guidelines address a plethora of issues, including most importantly, a respect for internationally recognized human rights and CLS both within the MNC and among its local subcontractors. They cover firms from OECD countries and ten non-member countries and account for more than 85% of world investment flows (Evans 2003: 25). All governments adhering to the guidelines have to provide a National Contact Point (NCP) with the task to promote the guidelines and oversee compliance, including an annual report. As watchdogs of the guidelines, labor (and employer) organizations have an important monitoring and control function: they can request consultations with the NCPs and provide input on implementation procedures. If a conflict cannot be resolved, the NCP can make recommendations or issue a public statement.

Both the OECD guidelines and the UN initiatives have faced inspired, intense debates on the pro and cons of such codes (Hemphill 2005). Criticism derives from a number of issues: 1) a lack of transparent monitoring procedures and public accountability; 2) strong dependence on the mobilization and monitoring capacities of trade unions and NGOs; 3) the lack in ability to sanction non-compliers; and 4) a concern that states might be relieved of their responsibility to set legal standards (EarthRights International 2004). Moreover, the Global Compact has been criticized as a door-opener for business interests in the UN. Sceptics assert that states could use the Compact as a shield to protect themselves from having to implement legal sanctions (Clapp 2005). Firms, on the other hand, may use the codes as a PR tool, leaving the UN as the weaker partner. What is more, consumers would be led to believe the Global Compact is a regularly monitored certificate for international law-abiding behavior instead of a “greenwashing” instrument for MNCs (Bruno and Karliner 2002). Proponents argue that both initiatives are a means to assert pressure on companies and address labor rights violations. Companies adhering to the codes would set a moral tone, create best-practice and set into motion a normative spill-over effect (Ruggie 2008; Kell 2004). In the long run, no company would be able to afford not to comply. Stronger sanction mechanisms would only prevent the Compact from gaining momentum, as it would hinder a large number of companies (and states) from joining the initiative.

#### *4.2 Trade Unions, International Framework Agreements and Works Councils*

International trade unionism faces a decline of lobbying power and, in some cases, support by their affiliates (Scherrer and Greven 2001). The main international body of trade unions, the Global Unions Council, embraces the ITUC as well as the ten GUFs (formerly International Trade Secretariats, ITS) and the Trade Union Advisory Committee to the OECD (TUAC) as associations that are politically independent of one another. The Unions Group has no formal constitution, the relations among the members of the group are governed by the “Milan Agreement” (Bendt 2004). Originally created in 1951 and revised in 1969 and 1992, “the Milan Agreement represents a pledge by the ICFTU and ITS

that they are in fact part of the same international trade union movement and that they intend to cooperate in all questions of common interest.” (Gordon 2001: 90). Each revision of the agreement has increased engagement between the confederation and the ITSs (GUFs), and provided for improved consultation and mutual representation in the respective governance structures.

The ITUC (formerly ICFTU), representing 311 national union affiliates, is the main provider of union structures at a transnational level and the major advocate of global labor standards, representing 168 million workers in 155 countries and territories worldwide. The ITUC is also closely linked to the ILO as well as to a number of other UN Specialized Agencies. The paradigms of the ITUC are outlined in the organization’s prospects for the 21<sup>st</sup> century and show a strong human rights focus. It has initiated and supported numerous labor standard campaigns and has lobbied – among others - for the trade labor linkage, and International Financial Institution (IFI) observance of labor rights (ICFTU 2006).

In comparison to the ITUC, a GUF can be defined as a “federation of national trade union organizations which operate worldwide and whose members work in specific, clearly-defined occupations, branches, industries or other specific areas of employment” (Bendt 2004: 9). Even though they act completely autonomous of the ITUC and are organizationally independent, GUFs are important in complementing ITUC activities, as they are directly faced with the challenges of the sector they represent, giving them the chance of more effective and immediate influence. Historically, GUFs “have been small and relatively remote international union secretariats with limited capacity to mobilize and speak on behalf of local members” (Fairbrother and Hammer 2005: 405). It was not until January 2002 that the ITS General Conference transformed the ITSs into GUFs, which aimed at a more flexible means to influence the global regulation of labor.

Company-level organization through **European or World Works Councils** (EWC; WWC) has gained momentum over the last fifteen years. As new supranational institutions with regulatory power, EWCs have become a cornerstone of European industrial relations and are also considered as a likely option to bridge the widening gap between workplace democracy and the level of strategic decision-making. They are thus referred to as one of the “key pillars” of the Europeanization of industrial relations. Established by the 1994 European Works Council Directive, the Directive applies to all companies with 1,000 or more workers and at least 150 employees in two or more EU member countries. EWCs usually meet once a year and consist of either employee representatives only or both employee and management representatives.

So far of an estimated 2,264 companies that are covered by the legislation, about 34% have established EWCs, among them more big multinational firms than smaller companies. The latter have been more reluctant in setting up a EWC. In 2004, EU enlargement brought another 300 companies within the scope of the directive, of which 42% have so far established EWCs. The debate on EWCs has been significantly shaped by ongoing changes of European industrial relations, such as the 2004 EU enlargement and the 2000 Lisbon Agenda, which is claimed to have altered the framework for industrial relations significantly. In 2004, the European Commission reacted to this and launched the first phase of consultation for a review of the original Directive, followed in 2008 by the second phase (see Eurofound Website for a detailed overview and analysis). Negotiations have, however, made only slow progress, with the employer representatives (BusinessEurope) in particular being hesitant to approve of a review.

EWCs have been the focus of scholarly interest. Research has been done on legal and implementation issues. Quantitative analyses as well as a number of qualitative analyses and empirical studies on the functioning of EWCs have also been undertaken. Two issues shape the debate in particular: first, the restructuring of EWC agreements and second, the operational effectiveness of EWCs (Weiler 2004). However, the overall academic as well as trade union assessment of EWC and collective action within the EU in general is rather pessimistic. Hancké has for instance argued for the auto industry that EWCs are rather unimportant for strengthening international unions and that national trade unionists even “seem to use the EWCs to do the opposite: to obtain information that can be used in the competition for a production capacity with other plants in the same company” (2000: 55). This view is contradicted by other case studies that analyze success stories of EU-wide collective action in which EWCs played a crucial role.

Following the tradition of EWCs, WWCs can be defined as “a global forum for the exchange of information and dialogue between employee representatives and group management” (Müller and Rüb 2004: 6). WWCs are established through bilateral agreements between employee representatives and management in order to provide “an institutionalized forum which enables the employee-side to have its interests considered in the transnational strategic decision-making process of group management” (Müller and Rüb 2004: 7). However, other than on the European level there is no specific legal basis which provides or guarantees for the establishment of a WWC.

Müller and Rüb (2004) identify three ways of establishing a WWC: *First*, by formalizing already existing practices by signing an agreement. *Second*, by concluding an IFA including basic union rights but also provisions for an improvement (or set-up) of dialogue structures which then leads to a WWC. *Third*, and empirically most frequently, WWCs are established by extending the scope of the existing EWC. Companies such as DaimlerChrysler and Volkswagen have opted for a similar approach by setting up global forums, modeling the function and form of the respective EWC (Steiert 2001). As of 2006, ten WWCs had officially been established with SKF being the first company to establish a WWC in 1995. These figures might, however, be misleading, as further WWC structures might exist in practice but have not been formalized yet.

**International Framework Agreements (IFAs)** were originally initiated due to a number of reasons, such as the failure to introduce a social clause into WTO trade agreements, the competition with NGOs and one-sided trade-initiated approaches such as CoCs or the Global Compact. Fairbrother and Hammer (2005: 412) argue “that the advent of multi-stakeholder codes is an important stage in the development of what have come to be known as International Framework Agreements (IFAs). [...] a further (historical and logical) precondition that shaped the Codes of Conduct into more comprehensive International Framework Agreements was a sharpening of issues around core labor rights, which was achieved in the 1990s via the “social clause” campaign.”

IFAs are rooted in continental European industrial relations and are based on ILO core standards as a benchmark. An IFA often starts from a CoC and is signed between the MNC, the respective GUF and/or national unions, and also often by the EWC and the WWC. The first IFA was signed by the French company Danone at the end of the 1980s but it was not until the Millennium that IFAs saw a substantial increase with 50 agreements signed as of 2007. The coverage of an IFA is global according to the scope of MNC but constricted for subcontractors. An IFA has a limited time-frame, after which it has to be renegotiated.

The main aim of an IFA is the establishment of a form of global social dialogue at the company level. Its content subsequently refers mainly to the international labor norms (and the CLS in particular). In addition, it often makes reference to further ILO Conventions, concerning for example minimum wages, working hours, the Declaration of Rio or the Global Compact. Monitoring is introduced as a means to supervise the implementation of an IFA, mostly through internal complaint mechanisms and annual (internal and/or external) reviews.

The main advantages and opportunities provided by an IFA are that it can connect workers and TUs worldwide. It is furthermore recognized by the MNC management and thus signals and constitutes an appreciation of the GUFs. An IFA has high visibility and is open for cooperation with other actors such as NGOs or churches. It secures the impact of TUs and can, as one of the most important instruments at hand for GUFs (Müller and Rüb 2004), create a possible link between ILO norms and CSR.

#### *4.3 Codes of Conduct, Civil Society and Multi-Stakeholder Initiatives*

The change of approach by the ILO was preceded and accompanied by numerous activities by civil society organizations, and by the initiatives of firms themselves. These initiatives developed independently from public policies but were eventually picked up by governments and international organizations and integrated into a broader framework. They focus on the development of **codes of conduct** (CoC) that include environmental and social regulation regarding corporate investment. A forerunner in this area was the Sullivan Principles in South Africa. The Sullivan Principles obliged firms to offer desegregated workplaces, fair employment practices, and equal opportunity, as well as improving the lives of workers outside the work place (Block et al. 2001: 280). They were used as a way of deflecting criticism of companies that in South Africa during the Apartheid regime. Other CoCs developed during the 1980s within the course of corporate scandals.

The big wave of adopting CoC, however, emerged as a response to consumer campaigns. Fearing that consumers might reject products made under poor conditions, major corporations such as Levi Strauss, Reebok, Liz Claiborne, and later Nike were pressured to address the labor standards problem. Levi Strauss was the first company to develop a comprehensive CoC in 1991. It was also the first CoC which included regulations for labor standards for suppliers, which were independent business partners that supply a brand name with products or services. More and more firms committed themselves to ensure consistent application of labor norms to workers, regardless of where they do business and whether they directly own the operation. However, the initial wave of codes was only introduced after severe and long-term pressure through campaigning and lobbying by NGOs. Even then, codes were not automatically worker's tools but often criticized as toothless. Campaigns by international trade unions, the Clean Clothes Campaign (CCC), the Fair Labor Association (FLA) or the Global March against Child Labor are examples of organizations that have played an important role in upholding global pressure.

A 1998 ILO survey evaluating 215 codes found that 80% of the codes were set up unilaterally (Riisgaard 2005: 1). A similar study by the OECD in 1999 counted 182 codes, of which 98 were unilateral, 59 from business associations, 22 from stakeholder partnerships and 3 based on NGO model codes. These codes varied widely with regard to content and procedure. Only 122 of the 182 codes covered fair employment practices and labor standards (Gordon 1999: 11).

As these accounts demonstrate, it was primarily business itself that reacted by introducing CoCs for the following reasons: *firstly*, in order to protect the reputation of the brand and the company, which is a valuable asset and increasingly judged by consumers on the basis of social issues. *Secondly*, as a tool of improving supplier relations, since the compliance with codes also enhances quality and delivery times and thereby increases trust to the supplier. *Thirdly*, because higher labor standards may reduce the risk of future liability, in the case that workers seek legal compensation or governments launch campaigns against particular industries. And, *fourthly*, CoCs may increase the capacity of firms to react to unexpected crisis and negative publicity. Codes are thereby seen as a strategy to reduce reputational risks in the market place (O'Rourke 2003; Conroy 2001).

A view that has gained some prominence in this context is that a self-regulation of firms might lead to a "race to the top" (Sabel, O'Rourke, and Fung 2000; Murray 2001) through continuous labor standard monitoring and exchange of best practice. A similar argument is that private governance regimes could lead to positive externalities of international coordination for firms, and that high-standard firms in particular would have an interest to pressure for compliance with standards (Hassel 2008).

The proliferation of CoCs within big multinational firms was moreover embedded in an increasing drive of firms towards Corporate Social Responsibility (CSR), a management tool that spread tremendously during the 1990s. Even though CSR means many different things in different contexts, the emphasis on responsibility and on the vital relationship between business and the community has changed the language of business behavior. CSR has not only become an industry in itself with big consultancy firms offering CSR advice to their clients. NGO initiatives put more emphasis on monitoring and certification. SA 8000 is modeled after the environmental auditing processes that were developed through the International Organization for Standardization. The Global Reporting Initiative (GRI) was founded by CERES, a coalition of NGOs, companies, consultancies and academics. It aims to give benchmarks for good reporting practices on social and environmental activities of firms.

The emergence of these private strategies to regulate labor has come as a response to perceived limitations of nation, state-based enforcement practices of labor standards. Nongovernmental consumer or brand-oriented certification initiatives, involving a variety of actors, have gained importance in the proliferation of voluntary CoCs aiming at industry self-regulation and the distribution of a set of CLS converging around the ILO requirements. Among the most well-known initiatives are the US-based *FLA* and the Dutch Clean Clothes Campaign *CCC* that specifically target branded international companies and their suppliers in developing countries (Marx 2008).

Started in the Netherlands in 1990, the CCC is one of the most prominent examples of consumer-oriented certification campaigns aiming at an increase of CSR (Marx 2008). The CCC consists of coalitions of consumer organizations, trade unions, human rights and women rights organizations, researchers and solidarity groups. It has developed a *Code of Labor Practices* which directly refers to ILO core standards (Ascoly, Musiolek and Zeldenrust 2001). By raising brand-related consumer awareness and through exchange programs, the CCC campaigns for the implementation and monitoring of its code by MNCs which are considered likely to join certification initiatives in order to reduce reputational risks. Suppliers, in turn, might then find compliance with international standards an important prerequisite to participate in global supply chains (O'Rourke 2003).

Grown out of the Apparel Industry Partnership (AIP) initiated by the Clinton administration, the FLA was founded in 1997 as a coalition of apparel and footwear companies, human and labor rights activists, trade unions, consumer advocates and universities. It is funded by companies, universities and the US Department of State. The FLA aims at industry self-regulation, focusing on the implementation of a CoC based on both ILO CLS and national law as benchmarks. It has also implemented a program of sustainable labor compliance (FLA 3.0) and has introduced a *Third Party Complaint* mechanism. The code covers approximately 3,000 suppliers in 80 countries worldwide (Marx 2008). The FLA policy is to bring all stakeholders to the table which includes an equal share of company, NGO and university representatives as well as an independent chair. The FLA has established a precedent concerning the responsibility of companies for labor conditions of workers they do not employ directly (Hemphill 2004).

However, smaller firms or no-brand names largely escaped public scrutiny. The naming and shaming mechanisms of many international codes are thus much more difficult to apply. Academics and NGOs particularly criticized practices of window-dressing, using codes as a PR tool and the lack of public accountability (Williams 2004).

## **5. Prospects**

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Compared to the beginnings of the global labor debate in the 1960s, there has been a tremendous amount of activity and discussion on global labor issues, particularly over the last two decades. The debate on global labor has moved from regulation by ILO conventions to multi-stakeholder initiatives, from governments to multinational firms, unions and NGOs, from centralized approaches to decentralized settings. The emerging pattern is a regime of global labor governance which is based on decentralized activities and private actors. Soft law as the focal point of regulation has been strengthened. It still, however, suffers from proper implementation mechanisms and monitoring procedures. The development of a cognitive frame of (un)acceptable corporate behavior is an essential step towards a 'harder' institutional setting.

As global trade and financial integration are expected to intensify further in decades to come, the debate is likely to move beyond the race to the bottom discussion between regulatory standards towards a debate of social inequality within societies. Globalization has lifted many regions of the world out of poverty while enhancing competitive pressure which has lowered wages, particularly for the low-skilled around the world (Hassel 2009). The global race to the bottom debate remains a contested issue, but counteracting wage and income dispersion and income inequalities *within* regions will move up on the agenda.

Moreover, the following open issues remain: First, there is a multitude of different regulatory tools, private and public initiatives affecting labor standards in various ways. Firms are expected to report, respond and engage with too many different actors. Global labor governance is still in its infancy and further transformation and transition to new forms of regulating, awareness raising and monitoring is likely. Therefore, a mainstreaming and concentration process of global labor instruments should be expected over the next couple of years. Cooperation between different initiatives - civil-society-based initiatives; collective bargaining, governmental institutions and regulation - is likely to intensify. We should expect mergers between civil society organizations and streamlining activities

between public and private regulatory tools. So far, it is not clear what the endpoint of this process will be and whether private and public regulatory arenas will compete or cooperate in the process.

Second, whether soft law will lead to more formal regulation or will remain the basis of the global labor governance is to be determined. Even where firms monitor each other, protest against unacceptable labor conditions might not lead to enforcement if the firms concerned are not vulnerable to public pressure. Stronger instruments for punishing non-complying firms, however, rely on hard laws that can effectively intervene. Cross-class coalitions of firms and labor groups are needed to pressure national and supranational public policy making into passing hard laws, in order to back up the shared normative understanding on CLS in weakly regulated areas. Under which conditions these coalitions emerge and how they operate at the national level in countries with weak regulatory frameworks is still an open question.

Finally, the focus on monitoring and implementation will increase. Apart from unions and NGOs, important stakeholders within these regulatory settings are those firms which have already accepted and implemented high labor standard regimes along their own value chain. Usually, these are firms that are particularly vulnerable to public pressure and/or consumer campaigns. As in national collective bargaining systems, firms seek protection from collective standards in order to fend off industrial action or other forms of protest by either NGOs or trade unions. Yet, while some firms might enhance their efforts to find reliable forms of monitoring for fear of public criticism, others will continue to push for low standards. Exactly how different firms, unions and NGOs interact in this setting and how this affects international bargaining processes remains up for investigation. As NGOs reach the limits of their monitoring powers, the focus has shifted (back) to international treaties. States, however, often fear delegating administrative capacity to international organizations. With extremely diverse interests across states, we might witness a stronger focus on regional means of monitoring and implementation. Recent developments seem to point towards regional trade agreements as new fora of CLS implementation. How effective these regional social clauses are will be a question for further research.

Trade unions are expected to increase international activities. Unions and NGOs are likely to cooperate more closely, but we might also witness a stronger divergence of functions, where international unions serve as workplace representatives and bargaining partners for firms while NGOs focus on broader lobbying functions. IFAs and WWCs are examples for a shift of collective bargaining levels. However, unions are also likely to face conflicts of interest between their national constituents and the international level, for example when it comes to relocation competitions. How unions (will) deal with these challenges and in which direction global trade unionism is likely to develop is still an emerging issue for research. None of these developments are guaranteed. Civil society organizations and trade unions might lose their resources in the current financial crises, while governments might turn to more protectionist measures in order to protect jobs at home. In this case, the global labor governance regime will be temporarily halted until a new wave of globalization will prompt the further development and intensification of global labor issues.

## ***Links***

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Date last accessed: March 4, 2009

<http://www.ilo.org>

The International Labour Organization's website contains information on labor law (ILOLEX/NATLEX) and news on working conditions worldwide. The ILO's International Institute for Labour Studies provides research on labor and social policies.

<http://www.unrisd.org/>

The United Nations Research Institute for Social Development (UNRISD) is a UN agency engaging in research on global development issues and social policy.

<http://www.ituc-csi.org/>

The website of the International Trade Union Confederation (ITUC) contains information on trade union rights and ITUC campaigns. The ITUC's annual country reports provide important overviews of trade union violations across the world.

<http://www.global-unions.org>

The Global Union Federation's website provides links to the sectoral Global Unions. The website also provides information on Global Union campaigns and lists all International Framework Agreements.

<http://www.gurn.info/en/>

The Global Union Research Network (GURN) is a platform for trade unionists and researchers dealing with the challenges of globalization from a labor perspective. GURN provides information packages on different priority areas with documents, research and links to further information.

<http://www.eurofound.europa.eu/index.htm>

Eurofound, the European Foundation for the Improvement of Living and Working Conditions, provides expertise on living and working conditions and industrial relations in Europe. Check out the European Industrial Relations Observatory (EIRO) and the European industrial relations dictionary for up-to-date information on key developments in industrial relations in the EU.

<http://www.unglobalcompact.org/>

The UN Global Compact' website provides background information on the Compact and its main issues. Browse the website for links to key stakeholders, to read best practice examples, and to find local networks.

<http://www.oecd.org/daf/investment/guidelines>

Browse the OECD website for detailed information on the OECD Guidelines and news on OECD-related corporate responsibility issues. This page also provides links to the Guidelines websites of adhering governments, relevant international organisations and others.

<http://www.yorku.ca/csr>

This Canadian project has compiled information on the most significant and influential codes and other instruments of corporate responsibility. The compendium offers overviews and full texts to various standards, principles and guidelines. Additional material includes CSR laws and government initiatives and information on socially responsible and sustainable investment

<http://www.business-humanrights.org>

The Business & Human Rights Resource Centre assembles news and reports about companies' human rights impacts worldwide. The site also includes a collection of items for an introduction to the subject of business and human rights.

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