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**LABOUR AND HUMAN  
RIGHTS STANDARDS  
INTERNATIONALLY**

**- CSR as the New Paradigm?**

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Thesis in International Labour Law, 30 HE credits  
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Stockholm, Autumn Term 2013



*I would like to thank my thesis mentor Laura Carlson for her valuable advice during the writing of this thesis. I would also like to thank my proofreaders Gabriella Rondahl and Michael Kushner for their time.*

## **Abbreviations**

**CSR** Corporate Social Responsibility

**ILO** International Labour Organization

**MNE** Multi-National Enterprise

**NGO** Non Government Organisation

**OECD** Organisation for Economic Co-operation and Development

**WTO** World Trade Organization

## Table of Contents

<b>Chapter 1: Introduction</b>	1
1.1 Objectives	1
1.2 Method and Material	1
1.3 Demarcations	2
1.4 Disposition	3
<b>Part 1: The Traditional Approach</b>	
<b>Chapter 2: The International Labour Organization</b>	4
2.1 The Challenges of Globalisation	5
2.2.1 ILO's response – Emphasis on core standards	6
2.2.2 Which standards should be included among the core standards?	7
2.2 The ILO's Structure	8
2.3 The Adoption of International Labour Standards	10
2.4 The Application and Promotion of International Labour Standards	11
2.4.1 Ordinary supervision	11
2.4.2 Complaints and representations	12
<b>Chapter 3: Evaluation of the ILO Approach</b>	14
3.1 Evaluation of the Supervisory System	14
3.1.1 A voluntary approach	14
3.1.2 Complaints and representations	16
3.1.2.1 Article 33 – The Myanmar case	16
3.1.3 The question of sanctions	19
3.2 The Existence of a Global System of International Labour Standards	20

## **Part 2: Corporate Social Responsibility as a Potential Approach**

<b>Chapter 4: Corporate Social Responsibility</b>	25
<b>4.1 A Known Phenomenon in a New Context</b>	26
<b>4.2 A Broad vs. a Narrow View of CSR</b>	27
<b>4.3 The Role of the Consumer</b>	29
<b>4.4 Can and Should Corporations be Socially Responsible?</b>	29
<b>Chapter 5: Company Based Codes of Conduct</b>	31
<b>5.1 Challenges with Making Codes of Conduct Effective</b>	32
5.1.1 The adopting of a code; reasons, attitudes and the involvement of workers	33
5.1.2 Content and construction	36
5.1.3 Implementation	38
5.1.4 Development towards independent monitoring and beyond	42
<b>5.2 Violations of Codes of Conduct</b>	43
5.2.1 The company vs. suppliers – Cutting off or working for improvements	43
5.2.2 The company vs. workers and other stakeholders – Private litigation of human rights	44
5.2.2.1 The company vs. suppliers' workers	45
5.2.2.2 The company vs. other stakeholders	48

## **Part 3: Analysis**

<b>Chapter 6: Comparison of the ILO and CSR Approaches</b>	51
<b>6.1 The Codes' Potential to Reach a Wider Range of Workers</b>	52
<b>6.2 The Limits of Reliance on Consumer Pressure</b>	54
<b>6.3 The Question of Freedom of Association</b>	55
<b>6.4 The Handling of Violations</b>	56
<b>6.5 Can Codes of Conducts be Legally Enforceable?</b>	57
<b>6.6 Race to the Bottom Exchanged with Race to the Top?</b>	58
<b>Chap 7: Summary Conclusions</b>	60
<b>Bibliography</b>	63

## **Chapter 1: Introduction**

The international labour market has exploded in recent decades. Large multinational companies have moved their production abroad in order to reduce labour costs, increase profits and provide cheaper products. Cheaper products nevertheless come at a price. In the spring of 2013 a clothing factory in Bangladesh, producing well-known brands, collapsed and over one thousand persons died. Although this is one of the severest work-related accidents in modern history, it is only one of many. How can this occur in 2013, when international labour and human rights law has been developing for over hundred years, especially given that Bangladesh is a member of the International Labour Organization (ILO) and has ratified many of its international labour standards?

### **1.1 Objectives**

The main objective of this thesis is to examine the challenges existing in the enforcement of international labour and human rights standards and to detect whether a paradigm shift is taking place from the ILO to private actors. One of the primary actors when it comes to developing international labour law is the ILO. Inadequate working conditions and violations of human rights in the working environment have traditionally been handled by the ILO through its development of international labour standards. The objective thus is, firstly, to evaluate the traditional approach of the ILO. Secondly, the objective is to examine to what extent Corporate Social Responsibility (CSR), in the form of private codes of conduct, may work as an alternative or additional method to promoting worker rights internationally.

### **1.2 Method and Materials**

This thesis is a legal study based on legal primary and secondary sources. Material has primarily been sought in different databases and libraries and the material used has mostly been the legal literature. Literature from different periods of time has been sought in order to accurately understand and analyse developments in labour and human rights standards. Keeping in mind that primary sources may be guided by certain values, legal literature covering both positive and negative aspects regarding the two approaches has been sought, in order to give a comprehensive picture of the

different views existing in the area. Empirical studies have also been used to the extent available. Nevertheless, few comprehensive studies exist on the subject, and the aim has not been to draw a conclusion based on empirical evidence, but to identify existing challenges in order to be able to examine and compare the different approaches of the ILO and CSR. Case studies have also been referred to as examples, and in order to analyse the potentials, of the ILO and CSR approaches. The case law referred to primarily originates from the US. The reason for this is that private litigation regarding private codes has mostly taken place in the US involving US-based Multi-National Enterprises (MNEs) conducting business abroad. In addition, the law governing contracts of many MNEs is usually English or US law. Additional material used has been *inter alia* the ILO constitution, ILO conventions and recommendations, ILO and OECD reports/studies, private codes of conduct, news articles and web pages.

### **1.3 Demarcations**

One of the greatest challenges with this subject has been its width, as other methods exist promoting international labour and human rights than the two approaches covered herein. Nevertheless, the ILO approach has been chosen since it constitutes the traditional approach to combating violations of labour and human rights. Additionally, the focus has been on private codes of conduct, leaving other additional approaches such as industry wide codes, global codes and bilateral trade agreements outside the scope of this thesis. These other types of approaches potentially also would have been valuable to evaluate. However, considering that almost every large company in the world has adopted private codes of conduct and that the development in this area has been, and still is, expansive, this approach was considered to be the most relevant and interesting to compare with the ILO approach.

International labour law also touches upon other subjects such as economy, politics and social sciences. The legal perspective has been the focus in this discussion. Nevertheless, the law is not, cannot and should not, be an isolated subject, and consequently aspects besides the purely legal have inevitably been considered in this discussion.

## **1.4 Disposition**

The main body of this thesis is divided into three parts. The first part presents the traditional approach of the ILO. Chapter two aims to give the reader an insight into the philosophy behind the development of international labour law, as well as to the necessary background regarding how labour standards are developed and supervised. Topics covered in the chapter include the ILO's history, origin and structure. Additionally, questions relating to how the organisation sets its standards, how the supervisory system functions and to how the ILO has responded to the challenges of globalisation are reviewed. The material covered in chapter two forms the basis for the discussion in chapter three, which evaluates the limitations of the ILO approach as regards giving international labour standards effect in light of its supervisory system. Furthermore, the question whether a global system of international labour standards really is a worthwhile endeavour is also raised and discussed.

The second part of this thesis assesses whether there is a new approach with promoting international labour and human rights law in the form of CSR. Chapter four commences presenting the idea of CSR, its history, origin and different views regarding CSR. Additionally, the question of whether it is truly possible and desirable that corporations are socially responsible is reviewed. Chapter five introduces one recent measure that has emerged to implement CSR in practice, namely the corporate-based private code of conduct. The perspective sought will be that of the MNE making business in developing countries, either through its own factories or through suppliers. The challenges existing with making private codes effective are discussed, as well as the question of whether they may be legally enforceable in courts.

Part three, consisting of chapter six, compares the traditional ILO approach and the CSR approach with private codes of conduct, taking up the strengths and weaknesses of the different approaches. Finally, leaving the main body of the thesis, chapter seven provides a conclusive summary.

## **Part 1: The Traditional Approach**

This first part examines the traditional approach as exercised by the ILO in order to promote labour and human rights internationally. The second chapter introduces the ILO and its standard-setting and supervisory activities, while the third chapter provides an evaluation of the ILO's supervisory system, as well as discusses the existence of a global system of international labour standards.

### **Chapter 2: The International Labour Organization**

The ILO emerged from the revolution of thinking and political attitudes brought on by the First World War. After the war, labour was no longer seen only as a commodity, rendering it unacceptable to return to the pre-1914 working conditions. The war could never have been won without the workers' participation and they therefore demanded direct participation in the peace treaty, the Treaty of Versailles, creating the ILO.<sup>1</sup> Most of the original provisions included in the peace treaty are still in effect today and remain in the ILO Constitution, whose preamble states that “universal and lasting peace can be established only if it is based upon social justice”.<sup>2</sup>

The ILO was thus a direct product of the Treaty of Versailles. Nevertheless, the first ideas regarding the international protection of workers had existed for more than one hundred years, as a consequence of the industrial revolution. The motivations behind these ideas were threefold. Firstly, there was a humanitarian concern of improving the lives of workers. Secondly, there was a political motivation establishing a link between the protection of workers and social peace. Thirdly, there was an economic motivation based on the belief that international competition would be distorted by international differences in working conditions, i.e. that countries with low protections for workers would receive a competitive advantage.<sup>3</sup> These three motivations are all reflected in the preamble of the ILO Constitution, which defines the purpose of the ILO to be threefold; social justice, international peace and the

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1 Ghebali, *The International Labour Organisation*, pp. 1, 6 and 7.

2 International Labour Office, *International labour standards*, pp. 7 and 9; The Preamble of the ILO Constitution.

3 Ghebali, *The International Labour Organisation*, pp. 1, 2 and 3.

correction of patterns of international competition.<sup>4</sup> However, to what extent these objectives are still topical and effectively achieved will be the subject for discussion in later parts of this thesis.

It is outside the scope of this thesis to more closely account for the ILO's historical background. Nevertheless, one of the most important milestones in the organisation's lifespan should be mentioned; the Declaration of Philadelphia adopted in 1944, which further defined and expanded the aims and objectives of the ILO.<sup>5</sup> The Declaration of Philadelphia is extraordinary due to the extremely general scope that its mandate contains, addressed to “all human beings, irrespective of race, creed or sex”.<sup>6</sup> Consequently, the declaration was first with proclaiming the principle of international protection of human rights, as well as that it is impossible to separate social and economic objectives.<sup>7</sup> After the end of the Second World War the ILO became a specialised agency of the newly-created United Nations, responsible for labour and social issues.<sup>8</sup> Today, most countries in the world are members of the ILO and the world looks quite different from when the organisation was founded.<sup>9</sup>

## 2.1 The Challenges of Globalisation

In the last couple of decades, globalisation has caused the world to change dramatically. There has been a trend towards increased deregulation and privatisation.<sup>10</sup> Furthermore, MNEs with global reaches and great market power have emerged, moving their productions across borders in order to find cheap labour.<sup>11</sup> The labour market has thus increasingly become international while labour law remains national.<sup>12</sup> Considering difficulties for national governments and traditional labour unions as to controlling business and regulating labour conditions outside their own jurisdictions, their reach and influence has decreased. However, the ILO has been criticised for still holding tight onto “labourism”, i.e. the traditional employer vs.

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4 The Preamble of the ILO Constitution.

5 Ghebali, *The International Labour Organisation*, pp. 19, 62 and 63; International Labour Office, *International labour standards*, pp. 9 and 10.

6 The Declaration of Philadelphia art II (a).

7 Ghebali, *The International Labour Organisation*, p. 63.

8 International Labour Office, *International labour standards*, p. 10.

9 As of today ILO has 185 member states. See: ilo.org; International Labour Organization, *Labour standards, Information system of international labour standards, Normlex*. Last visited 7 October 2013.

10 Jenkins, Pearson, Seyfang, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, pp. 1, 2 and 3.

11 Rogers, *International Labour Organization and the Quest for Social Justice*, pp. 34 and 35.

12 Blanpain, Colucci, *The Globalization of Labour Standards*, pp. 4 and 5.

worker relationship within national borders.<sup>13</sup> This is an ill-suited approach in today's flexible and international labour market where the emergence of labour brokering, employment agencies and sub-contracting has blurred the traditional relationship of employer vs. worker. How the ILO can respond to such changes will determine its future relevance.<sup>14</sup>

### 2.2.1 The ILO's response – Emphasis on core standards

As a response to the challenges of globalisation and the increasing number of member states, the ILO adopted the Declaration of Fundamental Principles and Rights at Work in 1998. The Declaration is promotional in nature and aims at strengthening the application of the basic values inherent in ILO membership, namely; freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. These principles are embodied in eight conventions constituting the core labour standards that the ILO has recognised as fundamental for social justice.<sup>15</sup> In addition, as further response to the challenges of globalisation, the ILO adopted the Declaration on Social Justice for a Fair Globalisation in 2008.<sup>16</sup>

The obligation to respect the principles embodied in the core conventions follows directly from ILO membership and the follow-up mechanism, comprising of regular reports on the conformity of national laws and practices with the core conventions, thus applies to all member states.<sup>17</sup> Even though the quite burdensome reporting system has resulted in an increased number of ratifications of the core standards, it is worth asking why the fundamental rights are not made enforceable on all member states and the core standards made subject for the regular supervisory system,

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13 Standing, *ILO: An Agency for Globalization?*, p. 365.

14 Rogers, *International Labour Organization and the Quest for Social Justice*, p. 35.

15 International Labour Office, *Rules of the Game*, pp. 93 and 94. The eight core conventions are listed in the bibliography.

16 The declaration builds on the Philadelphia Declaration and the Declaration of Fundamental Principles and Rights at Work, and aims at strengthening the ILO's capacity to promote its Decent Work Agenda. A further presentation of the Decent Work Agenda is outside the scope of this thesis, but for the interested reader information can be found in: International Labour Organization, *About the ILO, Decent work agenda*, ilo.org, last visited in 3 July 2013; International Labour Office; *Rules of the game* p. 94; Rogers, *International Labour Organization and the Quest for Social Justice* p. 223.

17 The follow-up was justified on article 19 in the Constitution which allows the ILO to request reports regarding unratified conventions.

considering the special significance that the ILO argues that these rights have in order to achieve other worker rights.<sup>18</sup>

### 2.2.2 Which standards should be included among the core standards?

Although there is an international consensus that the ILO's core standards are indeed fundamental human rights, there is significant international support outside the ILO that substantial wages and protection against ultra-hazardous working conditions should also be included in the core standards.<sup>19</sup> It is unclear what impact globalisation has had on the health and safety of workplaces.<sup>20</sup> Nevertheless, it most likely has had a negative impact, particularly considering the emergence of large clothing industries in developing countries, where labour conditions are kept low in order to reduce costs. This is due to the demand of Western consumers for cheap clothes, resulting in factory accidents such as the recent one in Bangladesh. In light of this, it is difficult to understand why these issues are not included in the core standards. It is a human right to be protected from working conditions where human life is at risk and to have the right to a living wage.

The rationale behind not including these other rights was, *inter alia*, that they may affect countries' competitive advantages, which the core labour standards were considered not to do.<sup>21</sup> Even though a universal minimum wage is not suitable since low wages are one of the developing countries' most significant competitive advantages, a minimum “living wage”<sup>22</sup> could nevertheless be included in the core standards without risking the developing countries' competitive advantages. Moreover, it may be argued that some fundamental human rights should be protected regardless of the potential effect on competitive advantage.<sup>23</sup> The absence of health and safety standards and a minimum living wage among the ILO's core standards can perhaps be understandable due to the difficulties in defining the content of the rights. However, merely the fact that a matter is difficult to handle does not argue against it being subject to international regulation.<sup>24</sup>

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18 Maupain, *Reflections on the Myanmar Experience*, pp. 132 and 133.

19 Cleveland, *Why International Labor Standards?*, p. 157.

20 Gould, *Labor Law for a Global Economy: The Uneasy Case for International Labor Standards*, p. 93.

21 Maupain, *Reflections on the Myanmar Experience*, pp.131, 132 and 133.

22 It should be noted that work has been done by non-government organisations in defining a “living wage”. Factors such as the costs of goods, food and housing in the country can be included.

23 Cleveland, *Why International Labor Standards?*, pp. 156, 157 and 158.

24 Gould, *Labor Law for a Global Economy: The Uneasy Case for International Labor Standards*, p. 94.

Nevertheless, there are scholars who defend the ILO's choice of core standards, maintaining that they constitute procedural rights rather than material rights, and that core rights need to be fulfilled before non-core standards can be.<sup>25</sup> Although this reasoning has some merit, it must also be considered that in some countries, in particular the developing countries, other issues might even be more crucial than the core standards. If working hours are long and workers barely earn a living wage, how will they then have the opportunity to organise a trade union?

Finally, it should be questioned whether the declaration, by focusing only on some rights, is inconsistent with the 1948 Universal Declaration of Human Rights, stating that all rights are indivisible and interdependent. Thus, the focus on core standards has arguably moved the ILO away from its previous approach that different social rights are part of an interdependent whole without prioritising between them.<sup>26</sup> Leaving this discussion regarding the core standards for now, the ILO's structure and functions are next presented.

## **2.2 The ILO's structure**

The ILO's member states' governments, as well as the social partners, are brought together on an equal footing at the International Labour Conference held annually to discuss issues related to labour and social policy. The international labour standards are developed at this conference. Between conference sessions, the ILO is guided by the Governing Body, the executive council of the ILO. Another important organ of the ILO is the permanent secretariat; the International Labour Office. The ILO also has regional conferences and offices, which are important since they enable the ILO to have direct contact with the member states' governments and their worker and employer organisations.<sup>27</sup>

An important strength of the ILO comes from its unique tri-partite structure that allows the representatives of workers, employers and governments together to participate in the discussions and decision making.<sup>28</sup> Tri-partism is based on the idea of solidarity between the productive forces of nations working together in a climate

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25 Langille, *Core Labour Rights – the true story*, pp. 113-116 and 117.

26 Standing, *ILO: An Agency for Globalization?*, pp. 367 and 368.

27 Additional information regarding the ILO's organs' tasks may be found in: International Labour Office, *International labour standards*, pp. 11-14 and 15.

28 International Labour Office, *International labour standards*, p. 17.

of social peace to improve the conditions of life and work. Such a philosophy is based upon two major prerequisites; an equal division between workers, employers and government representatives, and a fairly homogeneous socio-economic system among member states.<sup>29</sup> However, considering the wide diversity of the ILO's member states' socio-economic situations, as well as that the labour organisations have a weak position in many countries, the prerequisites for this philosophy seem far from always being fulfilled. This is problematic considering that the effect and success of the ILO's standard setting activities depend on to what extent the workers and their organisations actively take part in the standard-setting process.<sup>30</sup>

Nevertheless, tri-partism gives the ILO's standards legitimacy and reduces the weight of political considerations that may inhibit decision-making.<sup>31</sup> Considering the broad scope of the ILO mandate as formulated in the Declaration of Philadelphia, as well as the dynamic nature of social issues, the ILO however has never been a purely technical agency. Its decisions have been, and probably will continue to be in the future, influenced by the political climate of the time.<sup>32</sup> Even though tri-partism may reduce this risk of politicisation, it should not be forgotten that every international organisation is a political institution and political motives behind its actions are inevitable. Nevertheless, tri-partism is valuable considering that diplomatic traditions make it unusual for governments to criticise each other.<sup>33</sup>

Furthermore, however appealing the philosophy that all workers are covered by the ILO's protection may be, it is somewhat frustrated by the tri-partite composition of the ILO's organs. Organisations other than traditional worker and employer organisations have a lower status, excluding a wide range of workers not formally organised. Some claim that it should primarily be for the national unions to represent all types of workers.<sup>34</sup> Arguably this reasoning is based on a depiction of a non-existent world. Consideration must be taken to the changes occurring in society during recent decades with an emerging international labour market. The concerns of representing all workers cannot be merely a national one.

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29 Ghebali, *The International Labour Organisation*, p. 29.

30 International Labour Office, *International labour standards*, p. 17.

31 Maupain, *Reflections of the Myanmar Experience*, p.117.

32 Ghebali, *The International Labour Organisation*, pp. 44-48 and 49.

33 Landy, *The Effectiveness of International Supervision*, p. 199.

34 Maupain, *Reflections on the Myanmar Experience*, p. 91.

### 2.3 The Adoption of International Labour Standards

The ILO is primarily a standard-setting body that has created a system of international labour standards, consisting of international conventions and recommendations covering all work-related matters. The conventions are legally binding international treaties while recommendations are non-binding guidelines. The recommendations could either be autonomous or work as supplements as to how conventions could best be applied.<sup>35</sup>

Before a labour standard is adopted, it must be discussed during, at least, two International Labour Conferences. The aim of this double discussion is to give the governments and social partners sufficient time to examine the instrument and comment on it.<sup>36</sup> The fact that it takes some time to adopt an instrument is important, as with all law-making, since it reduces the risk of influence by populist waves. When a convention has been adopted, member states may choose to accept it as legally binding through the formal process of ratification.<sup>37</sup>

A convention normally enters into force twelve months after it has been ratified by at least two member states. As of today the ILO has adopted 189 conventions and 202 recommendations.<sup>38</sup> Nevertheless, the conventions and recommendations are not ratified universally. Furthermore, denunciation, i.e. a declaration that a member state is no longer bound by a convention, is usually permitted at ten years intervals after a convention comes into effect. Denunciation is usually the result of the ratification of another revised convention regarding the same matter. Albeit, a convention can be denounced simply because a member state considers itself unable or unwilling to respect the convention.<sup>39</sup>

There is no possibility to make reservations against conventions as they are intended to be universal in nature, i.e. applicable to all member states despite having different

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35 International Labour Office, *Rules of the Game*, p. 14.

36 For more details regarding the adoption of conventions and recommendations see: International Labour Office, *International labour standards*, pp. 26, 29, 30 and 31; International Labour Office, *Rules of the Game*, pp. 16 and 17.

37 For more details regarding ratification and the member states' obligation to submit an adopted instrument to their national authority, see: International Labour Office, *International labour standards*, pp. 76 and 77; International Labour Office, *Rules of the Game* p. 18.

38 International Labour Organization, *Labour standards, Information system of international labour standards, Normlex*, ilo.org, last visited 7 October 2013.

39 International Labour Office, *International labour standards*, pp. 80 and 81.

social structures and in different stages of industrial development. In order to achieve this objective, the standards must be formulated in a flexible way taking into account the member states' differences. However, at the same time, the standards must set meaningful targets for social development. Some conventions therefore include “flexibility clauses” allowing member states to temporarily set lower standards than those that the convention requires as a minimum, to exclude certain workers from the application of the convention, or to only apply certain parts.<sup>40</sup>

Moreover, most of the ILO's conventions are short in form, only consisting of a few broad obligations. When more technical precise obligations are needed, they are usually made in recommendations. Indeed, the treaty form is very adaptable due to its general wording. The reluctance states may have towards ratification is usually not directed at the content of the conventions, but rather at submitting to international supervision.<sup>41</sup> Consequently, even standards not including a flexibility clause can provide a great deal of flexibility. The rationale behind flexibility may be comprehensible considering that the ILO should be open to all the worlds' countries. Too detailed and rigid conventions run the risk of not being ratified. Nonetheless, if conventions are too flexible they will risk losing their purpose, since they will cease to be standards.

## **2.4 The Application and Promotion of International Labour Standards**

After the potential ratification of a convention by a member state, the member state becomes subject to the ILO's supervisory system, responsible for the enforcement of the convention. The ILO's supervisory system consists of ordinary supervision, as well as the procedures of representations and complaints.

### 2.4.1 Ordinary supervision

When a country has ratified a convention its' government has an obligation to report to the ILO every two or five years<sup>42</sup> on the measures taken in order to make the convention effective.<sup>43</sup> Based on the governments' reports, the Committee of Experts<sup>44</sup>

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40 International Labour Office, *International labour standards*, pp. 34-36 and 37.

41 Leary, *Form Follows Function*, pp. 183 and 184.

42 Detailed reports every two years on priority conventions and simplified reports every five years on other conventions.

43 Article 22 in the ILO Constitution.

44 Consisting of twenty labour law experts from all parts of the world.

may make comments to a government found to be not fully complying with adopted standards or its constitutional obligations. The comments may take the form of either observations or direct requests.<sup>45</sup> The Committee of Experts' reports are later submitted to the International Labour Conference, where they are discussed and examined by the Conference Committee, a standing tri-partite Committee. This examination often results in the Conference Committee recommending the governments to take specific actions, inviting ILO missions or technical assistance regarding, for example, how to draft or revise national legislation.<sup>46</sup> The ordinary supervisory system consequently consists of a system of reports, comments and dialogue. The continuation of this dialogue under long periods has in many cases not led to any results. Therefore, since 1969, there is a possibility for a representative of the Director-General of the ILO to visit a violating state in which informal discussions with the government can take place in order to solve the implementation problem.<sup>47</sup>

#### 2.4.2 Complaints and representations

Individual member states, a delegate to the International Labour Conference or the Governing Body may also file complaints against another member state that has ratified the same convention.<sup>48</sup> The Governing Body may then appoint a Commission of Inquiry. This is the most high-level investigative procedure of the ILO, set up in cases where member states have severely violated a convention and repeatedly refused to take any correcting measures. The Commission consists of three prominent persons who then hold a quasi-judicial procedure resulting in a recommendation to the member state.<sup>49</sup> There are no set rules regarding the procedure that the Commission should follow, and naturally criticism has been directed towards the Commission of Inquiry's objectivity.<sup>50</sup>

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45 Observations are used for more serious or long-standing failures to comply with an instruments and are published in the committee's annual report. Direct requests, on the other hand, regards narrower, technical matters or requests for further information.

46 International Labour Office, *International labour standards*, pp. 87-94 and 95.

47 International Labour Office, *International labour standards*, p. 96.

48 Article 26 in the ILO Constitution.

49 International Labour Office, *International labour standards*, p. 104.

In case the member state does not accept the Commission of Inquiry's recommendation, it may refer the question to the International Court of Justice that either affirms, alters or reverses the Commission's recommendation.

However, The Courts' opinion is merely advisory and thus no sanctions are connected to it. See: Bartolomei, Potobsky, Swepton, *The International Labor Organization, The International Standards System and Basic Human Rights*, p. 95; International Court of Justice, *The Court*, icj-cij.org. last visited 10 October 2013.

50 Ghebali, *The International Labour Organisation*, p. 230.

As an ultimate step in the supervisory process, when a country refuses to take any actions in accordance with the Commission of Inquiry's recommendations, the Governing Body may recommend to the Conference “such actions as it may deem wise and expedient to secure compliance”<sup>51</sup> with the recommendation. The Governing Body made use of this possibility for the first time in 2000 when the Conference was asked to take measures against Myanmar to end the use of forced labour. The Myanmar case will be addressed in the following chapter.

In addition, representations can be made by an employer or worker organisation.<sup>52</sup> The Governing Body then turns to the governments for comments. If no comments are made or if they are unsatisfactory, the Governing Body may together with its own conclusions and recommendations, publish the representation, as well as any potential reply from the government.<sup>53</sup> Consequently, representations, just like the ordinary supervisory system, rely on comments, dialogue, reports and moral pressure.

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51 Article 33 in the ILO Constitution.

52 Articles 24 and 25 in the ILO Constitution.

53 International Labour Office, *International labour standards*, p.103; International Labour Office, *Rules of the Game*, p. 84.

## Chapter 3: Evaluation of the ILO Approach

The efficacy of the ILO system is determined not merely by the adaption of member states' legislation, but also through that the realities actually conform to the member states' obligations. Many international labour standards have been, and still are, violated by the member states. This is also true for the core conventions. Although countries do accede to the values that the core labour standards represent, and most countries have today ratified the core conventions, it nevertheless has been an increasing gap between the values that countries claim to represent and reality. More worrisome, countries' implementation problems seem to increase over time.<sup>54</sup> Consequently, the efficacy of the ILO should not only be assessed through cases of progress recorded by the ILO's supervisory system or through the number of ratifications, but through its impact on actual working conditions. Central in this assessment is how violations or inconsistencies are handled, i.e. how well the ILO's supervisory system actually functions.

### 3.1 Evaluation of the Supervisory System

The ILO's supervisory system has several benefits that are connected to the origins and powers of the system as described in chapter two; e.g. ratification is a legal obligation involving the supply of regular reports, the interaction between legal analysis carried out by experts (Committee of Experts or Commission of Inquiry) and pressure from tri-partite organs (the Conference or the Governing Body), as well as the combination of regular supervision with that of representations and complaints. Nonetheless, the fact that the ILO's supervisory system has a unique structure cannot in itself be evidence of efficacy. One of the inherent weaknesses is the reliance of “sociological sanctions” and the fact that the supervisory system cannot operate without the cooperation of the violating state.<sup>55</sup>

#### 3.1.1 A voluntary approach

It is the voluntary approach that the ILO's normative actions rest upon, which constitutes the greatest challenge in making labour standards effective in practice.<sup>56</sup>

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54 Böhning, *Labour Rights in Crisis*, p. 118; OECD, *International Trade and Core Labour Standards*, p. 30.

55 Landy, *The Effectiveness of International Supervision*, p. 199.

56 An alternative to the voluntary approach is that the International Labour Conference would be empowered to adopt labour standards that immediately becomes applicable to all member states, who would instead have the right to “opt out”. This more ambitious alternative was in fact considered by the founders of the ILO, but rejected since such a system was supposed to have a negative impact of the states' will to join the ILO, or if they joined they were

The voluntary approach can be said to consist of two components; will and good will. The will dimension of the approach derives from the reformist approach of the ILO, i.e. social progress does not take place spontaneously but requires voluntary actions of states. The goodwill dimension of the approach covers the fact that conventions and recommendations must be implemented at a national level in order to have any actual impact. However, the voluntary approach is the only realistic one considering that labour rights are human rights, involving social habits shaped by the conviction of that which is right and, like all international law, cannot be enforced by external coercion.<sup>57</sup> Therefore, the focus when getting countries to adhere to the international labour standards should not primarily be to condemn, but to persuade. It is indeed persuasion based on moral pressure that the ILO relies upon, and which is central for the whole concept of international supervision. The emphasis of persuasion was already spelled out when the ILO was founded and is, as discussed in chapter two, mainly done in the context of the ordinary supervision.<sup>58</sup>

The question regarding what means the ILO has at its disposal in order to successfully persuade unwilling countries should be raised. The public character of the ILO's supervisory proceedings may be one important aspect. However, the effect of this is to a large extent dependent upon the existence of an informed public opinion in the violating member state. This may in many cases be absent due to censorship, illiteracy or simply a lack of interest. Additionally, the repetitive character of the ILO's supervisory proceedings can also be a factor that facilitates persuasion. The fact that reports and explanations made by a member state have not been satisfactory, may help to convince governments that only full compliance with the ILO's recommendations will end the criticism. Governments' spokespersons in the ILO's organs are also an important aspect since these spokespersons can help to persuade the authorities at home.<sup>59</sup>

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anticipated to adopt the lowest common standards. The voluntary approach was instead chosen. Peer pressure and the benefits of social stability were considered to be sufficient means of making the labour standards effective. Furthermore, member states voting in favour of a draft convention were supposed to feel obliged to later on ratify the same. See: Maupain, *Reflections on the Myanmar Experience*, pp. 92 and 93.

57 Jenks, *Human Rights and International Labour Standards*, p. 153.

58 Landy, *The Effectiveness of International Supervision*, p. 167.

59 Ibid, pp.167 and 168.

It ultimately all comes down to a country's international reputation. Few countries are willing to acknowledge that they have decided to disregard their international obligations. Therefore, they will probably prefer to buy time by giving vague promises of improvement and cooperate to the least extent possible.<sup>60</sup> In this type of situation, a patient, repetitive approach will not succeed. Moral pressure is important, but its effect will be reduced if it is overused.<sup>61</sup> Consequently, additional methods, including more elements of coercion, are in some situations needed, which leads us to the alternative ways of supervision that the ILO has at its disposal and the question of sanctions.

### 3.1.2 Complaints and representations

The ILO has since its founding been very reluctant to make use of the system of formal representations and complaints.<sup>62</sup> Although the number of representations and complaints has increased in recent years, the procedures are still not commonly used. A reason for this might be that labour organisations prefer active participation in the regular supervisory system, instead of the more judicial and formal procedure of complaints and representations. As for governments, they might be hesitant to file complaints because they are afraid of receiving counter-complaints or due to the accusative and aggressive nature of filing complaints.<sup>63</sup> In addition, the mere existence of a sanction threat can in itself be sufficient and effective to get a country to cooperate. Nevertheless, threats will only be hypothetical if they are never enforced. Repetitive actions, that a country ignores, will, due to lack of respect and credibility, successively result in the supervisory system being undermined. In this context the Myanmar case is of interest since it was the first and only time that the ILO used the most “sanction like” action; article 33 in the ILO Constitution.

#### 3.1.2.1 Article 33 – The Myanmar case

The reason why article 33 never previously had been invoked was not because there had not been any serious violations.<sup>64</sup> However, the most serious violations brought under the complaint procedure had been resolved either because the country reluctantly and progressively had implemented the ILO's recommendations, or

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60 Ibid, p. 164.

61 Jenks, *Human Rights and International Labour Standards*, p. 153.

62 Landy, *The Effectiveness of International Supervision*, pp. 174 and 202.

63 International Labour Office, *International labour standards*, pp. 105 and 106.

64 Maupain, *Reflections on the Myanmar Experience*, p. 118.

because the regime of the country in question had collapsed. In the case of Myanmar, on the other hand, the ILO had no alternative but to act, or the supervisory machinery would have been seriously undermined. Myanmar ratified the ILO Forced Labour Convention (no. 29) in 1955 and had been criticised by the ILO for violating its convention obligations for over thirty years. The Myanmar's government repeatedly refused to cooperate with the ILO and there was no sign of a potential collapse of the regime.<sup>65</sup>

The Conference adopted a resolution (the 2000 resolution), based on article 33, in which the Governing Body recommended that the organisation's constituents as a whole, i.e. governments, employers and workers, should review their relations to Myanmar, using the measures the member states found appropriate to ensure that Myanmar would not take advantage of such relations in order to perpetuate or extend the system of forced labour. The member states were thus given a wide discretion regarding what types of actions they could take towards Myanmar and the effective application of sanctions was thus left to the individual member states, who eventually took measures such as import and export restrictions, frozen assets, as well as cessations of awards of funds.<sup>66</sup>

The Burmese authorities eventually started to cooperate with the ILO and decided to abolish the old legislation that permitted slave labour. However, the use of slave labour did not simply disappear with the legislative change and slave labour does still exist in Myanmar. Nevertheless, the situation in the country has improved and at the 102<sup>th</sup> session of the ILO Conference held in June 2013, the remaining restrictions on Myanmar were lifted. The Conference also requested that the ILO and the Government of Myanmar continue their work towards eliminating all forms of forced labour by 2015.<sup>67</sup>

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65 Ibid, p. 95.

66 International Labour Office, *Seventh item on the agenda, Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, GB.292/7/1, 292<sup>nd</sup> Session, Geneva, March 2005.

67 International Labour Organization, *Meetings and events, International Labour Conference, ILC sessions, 102<sup>nd</sup> Session 2013, Media Centre, News and articles, ILO lifts remaining restrictions on Myanmar*; ilo.org, last visited 8 October 2013; International Labour Conference, *Provisional Record 2-1*, 102<sup>nd</sup> Session Geneva, June 2013, 2007.

The outcome of the Myanmar case may indeed suggest that the ILO system has “teeth”. Nevertheless, the case should not be overestimated. Since the actual sanction enforcement was in the hands of the individual member states, it is impossible to know exactly which measures would have been taken regardless of the 2000 resolution and what the actual motives were behind the sanctions. The significance that legislation such as the “Burmese Freedom and Democracy Act”,<sup>68</sup> which the US Congress enacted in February 2003, directly refers to the 2000 resolution, should not be exaggerated. In the Burmese Freedom and Democracy Act, the 2000 resolution is mentioned as only one of several different reasons for adopting the legislation, and the act would most likely have been enacted regardless of the 2000 resolution. In addition, the Myanmar case was exceptional since it involved serious violations of one of the most fundamental conventions for more than thirty years. Less serious violations not constituting *Jus Cogens* will most likely never lead to an article 33 resolution.<sup>69</sup>

Furthermore, considering that the Myanmar case indicates that complaints, under article 26,<sup>70</sup> can only be made in cases where a potential article 33 resolution may follow, it becomes evident that there is no intermediary way to bring additional pressure if the comments made under article 22<sup>71</sup> do not lead to corrective measures. Consequently, it exists a gap between comments made under article 22 and complaints made under article 26.<sup>72</sup> Lastly, considering that Myanmar is a country of political isolation and thus an easy target for international sanctions, it is unlikely that the ILO would have invoked a resolution against a more political significant country. To conclude, the Myanmar case was rather a political manifestation from the ILO, defending the organisation's future significance, than evidence of an effective supervisory system, and article 33 will probably not be used more frequently in the future.

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68 The Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, §§ 1-9, 117 Stat. 864 (2003) (codified as 50 USC § 1701 (2000)).

69 Maupain, *Reflections on the Myanmar Experience*, pp. 116-118 and 119.

70 See section 2.4.2 regarding complaints made under article 26 in the ILO Constitution.

71 See section 2.4.1 regarding comments, i.e observations or direct request, made under article 22 in the ILO Constitution.

72 *Ibid*, pp. 121 and 122.

### 3.1.3 The question of sanctions

The case of Myanmar consequently confirms that ultimately the ILO's supervisory system can lead to economic trade sanctions. The question regarding linking trade and labour rights, in order to improve enforcement, has been up for discussion since the birth of the ILO. Additionally, when the World Trade Organization (WTO) was founded in 1994, there was a debate regarding strengthening the effectiveness of standard-setting by linking the ILO and the WTO. This could be done by including a sanction-based social clause mechanism in the WTO agreement, which would result in trade sanctions towards countries violating internationally agreed labour standards. However, these discussions were ended already in 1995 and labour standards are not likely to be subject for the rules of the WTO in the near future, considering that the WTO has clearly spelled out that the question of labour standards should be handled by the ILO alone.<sup>73</sup>

However, the failure to reach agreement on a linkage of global trade and labour standards has resulted in a widespread linkage of trade and labour rights in other areas, such as in regional and bilateral trade agreements and unilateral legislation.<sup>74</sup> The criticism directed towards economic trade sanctions, by the developing countries in particular, is that they would give rise to protectionism and opportunism.<sup>75</sup> The question could be raised whether bilateral agreements run a greater risk of being protectionist compared to a global system. In addition, the international trade system does have mechanisms for scrutinising trade behaviour from protectionist behaviour, and labour rights' measures could, and should, be subject to the same scrutiny as other trade measures.<sup>76</sup> Thus, the argument that trade sanctions should not be imposed because they are protectionist can easily be rebutted.

Nonetheless, economic trade sanctions can naturally have a negative impact on a country. In addition, goods made contrary to fundamental rights, with the exception of freedom of association, only represent a small % of the total goods produced. By closing trade markets to those goods there is a risk that the problem will only be

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73 Malmberg, Johnsson, *Social Clauses and Other Means to Promote Fair Labour Standards in International Fora – A Survey* pp. 10-11 and 12.

74 Cleveland, *Why International Labor Standards?*, p. 152.

75 Fields, *International Labor Standards and Decent work: Perspectives from the Developing World* pp. 70, 71 and 72.

76 Cleveland, *Why International Labor Standards?*, p. 151.

transferred to the informal market, instead of promoting social justice.<sup>77</sup> Arguably, it is a better alternative to impose sanctions at an individual company level instead of at the state level. Leaving this question aside for now, and before leaving the ILO approach, the problems with a global system of international labour standards must be reviewed.

### **3.2 The Existence of a Global System of International Labour Standards**

Many developing countries not only question linking trade sanctions to labour standards, but also the mere existence of a system of international labour standards. According to their view, low labour standards in developing countries are unintended consequences of the economic situation; the “state of development argument”. The real concern behind this argument is that imposing international labour standards would increase labour costs and consequently deprive the developing countries of their competitive advantage. Furthermore, developing countries argue that the way to improve labour conditions is through economic growth, which they claim is achieved through access to the industrialised countries markets and through aid and technical assistance and not through imposing international labour standards.<sup>78</sup>

Consequently, the developing countries and the neoliberal economists share the same view; that social justice is best achieved through open market politics. These ideas stand in contrast to one of the objectives of the ILO, namely the correction of patterns of international competition, which is based on the belief that international competition would be distorted by international differences in working conditions, i.e. that countries with low protections for workers would receive a competitive advantage, potentially resulting in those countries lowering their labour conditions in order to attract foreign investments; a “race to the bottom”.

It is disputed whether the “race to the bottom” phenomenon really occurs in reality. Companies consider several factors when investing, low labour costs only being one of them. Education and skills, political stability, transportation, bureaucratic structure and reputation can affect a corporation's business decisions as well.<sup>79</sup> In a study by

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77 Maupain, *Reflections on the Myanmar Experience*, p. 134.

78 Malmberg, Johnsson, *Social Clauses and Other Means to Promote Fair Labour Standards in International Fora – A Survey*, p. 6.

79 Cleveland, *Why International Labor Standards?*, p. 140.

the Organisation for Economic Co-operation and Development (OECD) in 1996 and in its follow-up in 2000, it was concluded that there is no evidence that countries with lower core labour standards enjoy trade benefits.<sup>80</sup> On the contrary, it was found that respecting core labour standards may in fact have positive effects on a country's growth.<sup>81</sup> Regardless of a country's economic and social development, it will thus be favoured in the long run by eliminating, for example, prison and child labour. Nevertheless, other studies have shown that prison and child labour actually can benefit companies in the short run.<sup>82</sup> Additionally, the OECD study indicated that non-core standards, such as minimum wages and work time regulations, may affect the competitive advantages due to increased costs.<sup>83</sup>

Furthermore, from a political cost analysis perspective, it is likely that countries will choose only to ratify the conventions that their legislation already is in conformity with, considering that altering legislation and labour conditions could result in political and economic costs. This claim, which was made in a study and supported by statistical evidence, actually indicates that ratification, at least of the core conventions,<sup>84</sup> is driven mainly by a country's existing social values and labour conditions, and thus only constitutes a political symbolic act. Furthermore, the study revealed that ratification of ILO conventions, core as well as non-core, actually does not influence the labour conditions in a country, nor a country's labour costs or trade. On the other hand, strong evidence was found that an open trade policy improves labour rights, and that consequently trade sanctions would rather reduce labour conditions.<sup>85</sup>

It is worth questioning the purpose of ratification if it to a large extent does not lead to any changes, but merely corresponds to a country's social values and pre-existing labour conditions. What is it then, besides some form of a social label for a country? One should nevertheless be careful when it comes to taking the ratification of the

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80 OECD, *International Trade and Core Labour Standards*, pp. 32-33 and 34.

81 An exception to this reasoning is China, whose trade has been growing rapidly in recent years although the country violates core labour standards, such as freedom of association. See: Cleveland, *Why International Labor Standards?*, p. 141; OECD, *International Trade and Core Labour Standards*, p. 34.

82 Cleveland, *Why International Labor Standards?*, p. 153.

83 OECD, *International Trade and Core Labour Standards*, p. 33.

84 For non-core conventions, other factors such as particularly the size of the trade sector influenced ratification behaviour according to the study.

85 Flanagan, *Labor Standards and International Competitive Advantage*, pp. 20,28, 35, 39, 46 and 47.

ILO's standards as an indicator of observance, since varying strategies are used when it comes to implementing conventions. Some countries make their national laws and practices in conformity with a convention before ratification, while others ratify a convention and then gradually adapt their laws and practices.<sup>86</sup> Thus ratification, being a symbolic act in some cases, does not necessarily mean that a country has not taken, or will not take, the convention into account.

It is evident from the studies presented above that there is inconsistent empirical evidence regarding to what extent labour costs and trade are influenced by keeping high labour conditions. Nevertheless, it ought to be quite generally accepted that while core standards do not generally raise labour costs nor negatively influence a country's trade, non-core standards, on the other hand, could lead to an increase in labour costs, at least in the short term, and thus potentially to a race to the bottom.

Either way, it is unacceptable for states to refer to their stage of development and not do anything to raise the labour conditions, in the belief that things will improve with time as their economies develop. Arguably, and as the reformist approach of the ILO also dictates, social progress does not take place spontaneously but requires that states take action. Even though there have been empirical studies showing a strong correlation between an open trade economy and economic growth on the one hand and improved labour rights on the other, economic growth in itself does not necessarily mean that working conditions in a country will be improved. Experience tells us that the result of economic growth is distributed unequally, and that those who already have power and capital, may it be countries or individuals, tend to be most favoured.<sup>87</sup> Open trade policies and economic improvements may be necessary conditions, but not sufficient. It is important to keep in mind that correlation does not only run from economic growth to improved labour conditions, but also the other way around.<sup>88</sup> The precondition for this of course is that the standards are actually implemented in practice.

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86 Sengenberger, *Globalization and Social Progress*, p. 50.

87 Sengenberger, *Globalization and Social Progress*, pp. 30 and 85; International Labour Office, *Rules of the game*, p. 8.

88 Sengenberger, *Globalization and Social Progress*, pp. 43 and 44.

In order to create willingness among governments to do this, accurate information regarding the connection between economic growth and labour standards is needed. Considering the many different views and inconsistent empirical evidence that exist in this area, this is indeed not an easy task. As long as the developing countries believe, correctly or not, that their competitive advantage will suffer from the implementation of international labour standards, the “stage of development argument” will be used regarding core as well as non-core standards, creating a risk of a race to the bottom. Concerning this, I share the view of the Indian labour activist Sujata Gothoskar who posits that “[w]ith this argument, every struggle by the workers for a better life may be argued as eroding the competitive advantage of our country. Does this not negate the rationale and existence of the trade unions themselves?”<sup>89</sup>

Although a country's competitiveness may be affected due to increased labour costs, there must exist a baseline below which a country should not be allowed to fall.<sup>90</sup> Instead of internationally recognising that a country may be excused from respecting fundamental human and labour rights, the country should be given international aid and technical assistance in order to compensate for possible increased labour costs. Aid may also be needed, for example, in order to compensate families for income loss since their children are no longer permitted to work.<sup>91</sup> It would be irresponsible for the international community to simply ban child labour without considering and taking responsibility for the consequences that may follow.

However, regardless of the increased cost argument, which in many cases may be out of proportion, and taking into consideration that in the long run improved labour standards are usually self-financed,<sup>92</sup> developing countries should be allowed to have lower labour standards to a greater extent than industrialised countries. Increased costs, even though they may merely be of short-term character, can constitute an excessive burden. To what extent labour standards should be allowed to differ is another question. If the standards are too general and flexible in order to make

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89 Fields, *International Labor Standards and Decent work: Perspectives from the Developing World*, p. 71.

90 Cleveland, *Why International Labor Standards?*, p. 156.

91 Gould, *Labor Law for a Global Economy: The Uneasy Case for International Labor Standards*, pp. 87 and 100.

92 This is not surprising when one thinks of it. Improved workers employment protection leads to increased cooperation and safety measures at workplaces, which in turn will lead to an absence of heavy costs that follow from accidents and diseases, etc. See: Sengenberger, *Globalization and Social Progress*, p. 48.

countries actually conform to the international consensus, it is worth questioning what purpose they will serve.

## Part 2: Corporate Social Responsibility as a Potential Approach

The second part of this thesis examines whether a potential new approach might be developing with respect to promoting compliance with international labour and human rights. In chapter four, a background will be given to the idea of CSR followed by an examination in chapter five regarding to what extent private company codes of conduct may give effect to international labour and human rights.

### Chapter 4: Corporate Social Responsibility

When describing CSR many academics<sup>93</sup> refer to Archie Carroll, one of the leading academics in the CSR field, and his work, *Pyramid of Corporate Social Responsibility*.<sup>94</sup> Carroll's pyramid consists of an economic base, followed by a legal, an ethical and a philanthropic segment. The economic responsibilities constitute the base of the pyramid since these are the foundation of any business, and without economic profitability, the additional responsibilities cannot be met. The pyramid is based on Carroll's suggested definition of CSR, as that "(t)he social responsibility of business encompasses the economic, legal, ethical and discretionary expectations that society has of organisations at a given point in time".<sup>95</sup> Consequently, CSR concerns the concept that companies have obligations towards society which reach beyond their economic and legal obligations. Nonetheless, one should be aware that there is no single established definition of CSR, but the meaning of CSR and the ways to address it are ambiguous and several even within the same groups and geographical areas.<sup>96</sup> However, the vagueness of the idea of CSR does not necessarily have to be negative, since it makes it possible for the idea to spread and develop more easily into different interest, geographical and organisational contexts.<sup>97</sup>

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93 Such as Schwartz in *An Ethical Approach*, Torres, Hordijk and Olup, in *Four Case Studies on Corporate Social Responsibility* and Murphy and Ng'ombe in *Corporate Social Responsibility*.

94 Carroll Archie B.; *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders*, Business Horizons, July-August 1991.

95 Carroll, *Corporate Social Responsibility. Evolution of a Definitional Construct*, pp. 283 and 284.

96 Crowther, Rayman-Bacchus, *Perspectives on Corporate Social Responsibility*, p. 2; Schwartz, *Corporate Social Responsibility. An Ethical Approach*, p. 18; Windell, *CSR Conferences as Catwalks: The Translation of an Idea*, p. 20.

97 Windell, *CSR Conferences as Catwalks: The Translation of an Idea*, pp. 50 and 51.

The different approaches to CSR have been developed alongside the emergence of human rights. The first generation of human rights begun to develop already with the issuing of the Magna Carta in 1215 and consisted of negative rights, i.e. freedom from state interference, such as freedoms of thoughts and expression. The second generation of human rights developed during industrialisation and introduced positive obligations and state interference on behalf of the claimants, which extended outside the corporation's own jurisdiction. Examples of these rights are worker rights such as safe working environments and fair and equitable wages. Finally, the third generation of human rights has evolved in more recent times and is concerned with the rights of humankind. These rights are thus collective rather than individual in nature. What these rights should include is contested but living in peace in a healthy environment is usually categorised as third generation rights. This shift from individual to collective rights, as well as from negative to positive rights, reflects the development of CSR and its view of the role of the firm as having duties beyond its fiduciary duties and national borders.<sup>98</sup> The totality of a firm's impact globally has received increased importance and during the last decade the global wave of CSR has been emerging covering issues such as human rights, climate change and poverty issues.<sup>99</sup>

#### **4.1 A Known Phenomenon in a New Context**

Consequently, the ideas which CSR encompasses are not new, but have evolved for centuries. However, CSR in more modern times can be dated back to the early industrial revolution, and as an academic subject to the 1950's.<sup>100</sup> If one should compare the CSR of today with that of the 1800's it would be evident that many of the same concerns are still relevant, such as working conditions, environmental issues, as well as the relationship between the company's managers, owners, employees and customers.<sup>101</sup> What has changed on the other hand is the context in which CSR appears, i.e. globalisation.<sup>102</sup>

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98 Stohl; Stohl; Townsley, *A New Generation of Global Corporate Social Responsibility*, pp. 33 and 34.

99 Murphy, Ng'ombe; *Corporate Social Responsibility*, p. 11.

100 Carroll, *Corporate Social Responsibility. Evolution of a Definitional Construct*, p. 268; Murphy, Ng'ombe; *Corporate Social Responsibility*, p. 8.

101 Roome, *Company Strategies for Corporate Responsibility and Sustainability in an Era of Fragmented Globalization*, p. 303.

102 Murphy, Ng'ombe; *Corporate Social Responsibility*, p. 11.

In addition to the decline in power of national governments and labour unions, there are gaps in the legislation in many developing countries, since their governments are unwilling or unable to regulate or enforce labour laws.<sup>103</sup> This is utilised by MNEs moving their production to locations where labour laws are less strict. To give an example, developing countries sometime establish “export processing zones” with less strict regulations for foreign companies, in order to attract foreign investments.<sup>104</sup> Consequently, in countries where human rights protection is most needed, is usually where governments are most unwilling or unable to enforce them.<sup>105</sup>

MNEs, which in many cases are larger and more powerful than national governments, have increasingly been filling this power vacuum by voluntarily taking measures for regulating their own conduct, thus taking on tasks that traditionally have been seen as public sector activities.<sup>106</sup> To conclude, CSR may not be a new phenomenon, but its importance and relevance has significantly increased in recent decades due to the effects that globalisation has had on society. Nevertheless, it is still disputed how far CSR should reach.

#### **4.2 A Broad vs. a Narrow View of CSR**

The views regarding how far CSR should reach can roughly be said to fall under two schools of thought. There are those who advocate a more narrow definition, meaning that businesses' responsibilities should not reach beyond the fiduciary duties to the firm's owners, and thus that businesses are only obligated to maximise profit within the limits set by minimal legal and ethical duties. On the other hand, there are those who advocate that corporations should take into account additional ethical considerations, even though profit maximisation sometimes may be affected, and that corporations have responsibilities to other stakeholders besides their own shareholders.<sup>107</sup>

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103 Graham, Woods, *Making Corporate Self-Regulation Effective in Developing Countries*, p. 868.

104 Schwartz, *Corporate Social Responsibility. An Ethical Approach*, p. 62; Cleveland, *Why International Labor Standards?*, p. 141.

105 Posner, Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, p. 207.

106 Stohl, Stohl, Townsley, *A New Generation of Global Corporate Social Responsibility*, p. 39; Rayman-Bacchus, *Assessing Trust in and Legitimacy of the Corporate*, p. 37; Jansson; Nilsson, *Corporate Citizenship and the Citizen Consumer: Introducing the cc-matrix*, p. 98; Crowther; Rayman-Bacchus, *Perspectives on Corporate Social Responsibility*, pp. 6 and 14.

107 Schwartz, *Corporate Social Responsibility. An Ethical Approach*, pp. 19 and 59; Windell, *CSR Conferences as Catwalks: The Translation of an Idea*, p. 50; Crowther; Rayman-Bacchus, *The Future of Corporate Social Responsibility*, p. 232.

The narrow view of CSR is best represented by the Nobel prize winner, economist Milton Friedman. According to this narrow view, which many countries have today, a firm is only socially responsible to maximise profit as acting within the limits set by law and ethical custom in the place where the firm is doing business. The primary argument of this narrow view of CSR is that the managers and directors of the firm have fiduciary duties towards the shareholders. They are in fact principals working as agents for their shareholders, and thus should be serving their interests. The shareholders, as owners of the company, have a right to property in the firm, and spending the shareholders' money against their will would be an infringement of this right. By spending the shareholders' money on activities that are not profit-maximising, the company is actually imposing taxes on the shareholders and thus taking over governmental functions. According to Friedman, policy decisions should be left to governments, since these are democratically selected and possess the best knowledge and skills to take decisions for society. Finally, profit maximisation is considered to benefit society in the best way possible; jobs will be created, dividends, wages and taxes will be paid and consumers and suppliers will be satisfied.<sup>108</sup>

It is difficult to argue that Friedman's arguments lack validity. However, it can be argued that they are too theoretical and presuppose a “perfect” world. Due to negative externalities that corporations have on society, such as industry accidents and pollution, it is not justified that corporations and their shareholders merely would be responsible for what happens within the corporation. Other stakeholders, who are affected by the firm's actions, must be taken into account as well. With increased power and influence over individuals and society, responsibilities must follow. Considering the negative externalities that a company may have, it is also questionable whether maximising profit always leads to the best societal outcomes. A decision that may maximise a firm's profit may have devastating consequences for society, which for example the tragedy with the factory collapse in Bangladesh illustrates. It is also difficult to assess the long-term consequences that companies' decisions may have on society. In addition, one might question whether it is true that governments are always best-suited for taking policy decisions. Managers of firms

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<sup>108</sup> Schwartz, *Corporate Social Responsibility. An Ethical Approach*, pp. 53-57 and 58; Friedman, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine, September 13, 1970.

usually have more specific knowledge of the problems existing in the business area, and may be able to act as quickly as a situation may require. Legislation on the other hand, may lag behind developments or be lacking because governments may be unable or unwilling to regulate corporate conduct.

### **4.3 The Role of the Consumer**

The rapid development in communication technology has resulted in corporations being subject to greater public scrutiny.<sup>109</sup> Consumers, often organised in different Non-Government Organisations (NGOs), may likely play the most important role when it comes to promoting and developing CSR. There are several examples where consumer pressure<sup>110</sup> has led to that MNEs actually have changed their CSR agendas. To give an example, Nike was the first apparel company to disclose the name and location of all its suppliers' factories.<sup>111</sup> When the power of traditional governments has shifted to the large corporations, the political arena has lost certain influence, and consumers have to make their votes through the market. Consumers should thus not merely be seen as stakeholders who should be protected, but that they also have responsibilities. In order for CSR to have any effect, corporations and consumers must have a joint responsibility.<sup>112</sup> For example, considering that improved labor rights, such as higher wages, may result in increased production costs, it is reasonable that consumers bear some of these costs by paying a higher price for goods. However, there are limitations on relying on consumers, since they are still mostly driven by economic considerations when purchasing products.<sup>113</sup>

### **4.4 Can and Should Corporations be Socially Responsible?**

Concerns have been raised regarding whether companies are suitable for taking over tasks traditionally belonging to governments. Due to a company's narrow mission, i.e. to create profit for its shareholders, the modern corporation arguably is unfit for

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109 Murphy, Ng'ombe; *Corporate Social Responsibility*, p.10.

110 The pressure could take many forms, such as e.g. boycotts, consumer campaigns and demonstrations, phone calls and letter writing, etc.

111 Torres, Hordijk, Olup; *Four Case Studies on Corporate Social Responsibility*, pp. 69-72 and 73; Stohl, Stohl, Townsley, *A New Generation of Global Corporate Social Responsibility*, p. 40; Kendall, Gill, Cheney, *Consumer Activism and Corporate Social Responsibility. How strong connection?* pp. 243-248 and 249.

112 Jansson, Nilsson, *Corporate Citizenship and the Citizen Consumer: Introducing the cc-matrix*, pp. 108-112 and 119.

113 Sukdeo, *Transnational governance models: codes of conduct and monitoring agencies as tools to increase worker's rights*, p. 1561.

carrying social responsibilities.<sup>114</sup> Some questions will be more attractive for companies to invest in and their long-term interest with developing societies may therefore be questioned as other crucial aspects are left unaddressed.<sup>115</sup> There are also those who from a democratic viewpoint question the fact that corporations take on government tasks considering that this in fact constitutes a form of minority rule, as a corporation may survive without society's general trust; trust from key shareholders and a minimum lack of distrust from society is sufficient.<sup>116</sup> Nevertheless, the lack of general trust will result in that corporations remain under scrutiny.<sup>117</sup> This paradoxically legitimises the power of corporations to some extent. Nonetheless, in many developing countries governments may be weak and corrupt and may have failed for decades with even enforcing their own laws, and the MNEs may be the only powerful actors available. Although the concerns outlined above are relevant and important to keep in mind one may thus ask, in the absent of governments, what is the alternative?

The question should also be raised whether these democratic concerns are equally relevant for all types of CSR. There have been attempts to categorise CSR, in order to predict, in the absence of empirical studies, which type of CSR benefits both the firm and society in the best ways possible. One categorisation divides CSR into philanthropy, CSR integration and CSR innovation. CSR integration has, for example, to do with keeping high working and environment standards and paying fair wages. With CSR innovation, the company tries to solve a societal problem through its business, while philanthropy involves, for example, giving to charity.<sup>118</sup> When a MNE ensures that their workers in factories situated in developing countries have decent working conditions, corresponding at least to the laws in that country and the ILO's international labour standards, it can be argued that the same democratic concerns do not arise. In such cases, CSR primarily reinforces existing legislation and international labour standards. Thus, the democratic concerns are more prominent regarding CSR philanthropy and innovation than concerning CSR integration.

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114 McMillan, *Why Corporate Social Responsibility*, pp. 16 and 17.

115 Halme, *Something good for everyone?*, p. 218.

116 Ritz, *Can Corporate Personhood Be Socially Responsible?*, p. 201.

117 Rayman-Baccus, *Assessing Trust in and Legitimacy of the Corporate*, pp. 38 and 39.

118 Halme, *Something good for everyone?*, pp. 234, 235 and 236.

## Chapter 5: Company-Based Codes of Conduct

This chapter examines to what extent company-based codes of conduct may effect international labour rights and thus promote worker rights internationally. Since CSR has been criticised for being somewhat Western-orientated, while most MNEs operate in the third world, the perspective in this chapter is that of MNEs making business in the developing world, whether through subcontracting or directly through their own factories.<sup>119</sup>

Codes of conduct, or codes of ethics as they can also be called, are the primary tools for companies to put their CSR policy into practice. A code of conduct can be defined as a “written, distinct and formal document which consists of moral standards used to guide employees or corporate behaviour”.<sup>120</sup> As a part of the general shift from state regulation to private regulation, there has been a rapid growth of corporate codes of conduct regulating labour conditions since the early 1990s.<sup>121</sup>

There are different types of codes of conduct. Firstly, there are company-based codes (private codes), developed by the company itself. These codes can in turn be divided into three categories; those directed to the company's own employees, to the conditions of work at the company's suppliers and sub-contractors and finally, those focusing on the company's position, i.e. in which country a company does or does not want to engage itself in business.<sup>122</sup> Private codes directed to the company's own employees are part of the company's internal CSR agenda, as opposed to the latter two which are part of its external CSR agenda. Today, most MNEs in the world have adopted codes of conduct covering their own employees, as well as their global supply chains.<sup>123</sup> Secondly, there are industry-based codes of conduct developed among voluntary business groupings. Thirdly, there are universal codes, developed through cooperation between companies and international organisations, such as the ILO's guidelines for Multinational Enterprises and the United Nation's Global

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119 Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?* p. 310, Murphy, Ng'ombe, *Corporate Social Responsibility*, p. 29.

120 Jensen, Sandström, Helin, *Translating Corporate Codes of Ethics*, p. 53.

121 Jenkins; Pearson; Seyfang, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, pp. 1, 2 and 3.

122 Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, p. 170.

123 Lambooi, *Corporate Social Responsibility*, p. 247.

Compact.<sup>124</sup> The focus in this thesis will be on private codes of conduct and therefore it is outside the scope of this essay to more closely analyse industry-based and universal codes. Nevertheless, a few short remarks are included.

Industry-based codes, and universal codes in particular, can be argued to be more generally accepted, since they are often developed through cooperation by different stakeholders. These codes consequently represent a broader range of interests, which in turn increases their legitimacy.<sup>125</sup> Nonetheless, the large number of participants makes compromises inevitable. When a lowest common denominator must be reached the result unfortunately becomes broad-based principles requiring a low level of commitment, and one may thus question these codes' effectiveness with making actual work place changes.<sup>126</sup> However, these codes can still be important since they create a platform for learning and cooperation.<sup>127</sup> In addition, they may also serve as model codes that can be used by individual companies when they formulate their own codes. Leaving these codes aside now, the next chapter examines the challenges existing with making private codes of conduct effective in practice.

### **5.1 Challenges with Making Private Codes of Conduct Effective**

In the absence of systematic empirical studies on the societal outcomes of CSR measures, the debates on CSR and codes of conduct have to some extent been focused on anecdotal evidence, suggesting that efforts have been successful with promoting change or that they have failed.<sup>128</sup> Evidently, more studies of the codes' actual effects on working conditions are needed, but may have been difficult to achieve so far due to lack of transparency and independent external monitoring. The focus in this section therefore is not to try to establish, by limited empirical data, whether codes of conduct may be effective. This is not possible considering the scope of this thesis, nor meaningful considering that the quality of private codes varies to a great extent, and that the answer thus always will be that it depends on the

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124 Sethi, *Self-Regulation through Voluntary Codes of Conduct*, pp. 7 and 8; Mamic, *Implementing Codes of Conduct*, pp. 43 and 44.

125 Mamic, *Implementing Codes of Conduct*, pp. 43 and 60.

126 Sethi, *Self-Regulation through Voluntary Codes of Conduct*, pp. 8 and 11.

127 See e.g.: Ruggie, *The Theory and Practice of Learning Networks*, regarding the Global Compact as a learning forum.

128 Halme, *Something good for everyone?*, p. 233; Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, p. 189; Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?*, p. 317; International Labour Office, *Information note on corporate social responsibility and international labour standards*, p. 5.

circumstances. It is more constructive to highlight the challenges existing with making codes effective. After having identified these challenges, whose fulfilment constitutes the prerequisites for making codes work in practice, it is possible to more appropriately evaluate their potentials in comparison to the traditional ILO approach, which will be the focus of the subsequent chapter. Cases are thus referred to for illustrative purposes and not in order to establish whether codes in general are effective.

#### 5.1.1 The adopting of a code; reasons, attitudes and the involvement of workers

The reasons for adopting codes of conduct vary among companies and it usually is not possible to know exactly the reasons behind the adoption. Naturally, companies will claim that the adoption is for altruistic reasons and the willingness to do good for society. Nevertheless, self-limitation generally occurs when it is advantageous for the firm.<sup>129</sup> Consequently, in most cases the adoption of codes has probably been due to business reasons; public pressure from consumers has left companies with little option but to adopt codes if they would like to keep their market share. Another reason for adoption could be the belief that it constitutes good business to keep a high profile as regards to labour conditions; the workers will perform better, fewer accidents will occur, the company will become an attractive working place and the company will get an increase in good-will.<sup>130</sup> These reasons are thus also in the self interest of the firm.

However, even more important than the reasons behind the adoption, are the attitudes of management and workers towards the code. In order to have a real effect on working conditions, a code cannot simply be a dead piece of paper, fixated in time adopted to calm an angry public. Both management and workers must be genuinely committed to the code, which should be a living instrument within the company at every level and revised in line with changing circumstances. This is not possible without on-going stakeholder engagement.<sup>131</sup>

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129 Murray, *Corporate Codes of Conducts and Labour Standards*. See note regarding page numbers for this article in the bibliography; Mamic, *Implementing Codes of Conduct*, p. 36.

130 Colucci, *Implementation and monitoring of codes of conduct. How to make codes of conduct effective?*, p. 286.

131 Sethi, *Self-Regulation through Voluntary Codes of Conduct*, p. 6; Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?* pp. 310 and 311; Murray, *Corporate Codes of Conducts and Labour Standards*.

In respect to workers' commitment to the code, a crucial aspect thus is that private codes are created with consideration to the inherent imbalance between management and workers, and that workers themselves, through local NGOs or labour organisations, are involved in the creation and revising of the code. The code needs to be developed in the environment it is to function by those affected by its terms.<sup>132</sup> It is thus important that consultation takes place not only with NGOs and worker organisations where the company is based, but also with organisations at the local level.<sup>133</sup> Unfortunately, worker involvement seems to have been a far from regular practice and there have been negative examples where workers have not been aware of that they even have a code of conduct.<sup>134</sup> Workers in developing countries, even if they are aware that a code of conduct exists, may also be sceptical towards the code if they feel that it does not take into account their reality. When codes are developed at arms-length without the involvement of workers, consequently not taking into consideration the particular circumstances where they should function, the codes will have limited potential to improve worker rights.

Turning to the managements' commitment, CSR integration is preferable, where the code of conduct is integrated in the core business.<sup>135</sup> Such an approach is expected to generate higher outcomes for both the firm as well as for society.<sup>136</sup> In public companies, managers often have limited opportunities to take a moral stance. Their shareholders demand returns, and stock values need to at least progress as fast as the market average. If not, new managers are likely to be appointed.<sup>137</sup> Therefore, it is necessary that it is considered to be good business to upkeep and implement the provisions in the code in order for management to retain a long-term commitment. Otherwise, there is a great risk that the firm's efforts will be reduced to ad hoc philanthropic activities depending on the top management's preferences for the

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132 Mamic, *Implementing Codes of Conduct* pp. 35, 36 and 37; Murray, *Corporate Codes of Conducts and Labour Standards*.

133 Shaw, Hale; *The emperor's new clothes: what codes mean for workers in the garment factory*, p. 104.

134 Diller, *Social conduct in transnational enterprise operations: the role of the International Labour Organization*, p. 25; Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, p. 184.

135 The difference between philanthropy on the one side and CSR integration and innovation on the other is that the latter two are integrated in the core business.

136 Halme, *Something good for everyone?*, pp. 234, 235 and 236.

137 Peters, *Social Responsibility is Free-How Good Capitalism can Co-exist with Corporate Social Responsibility*, p. 214.

time-being, and that these efforts will cease in times when scrutiny from society is less harsh.

An illustrative example of the need to incorporate codes of conduct into the core business, in order for them to have any long-term effect on working conditions, is the case study with one of the largest toy producers in the world; Mattel Inc. Mattel was one of the first MNEs to establish an independent externally-based monitoring system, where audits were made on a regular basis and public disclosure of the findings was provided. Mattel thus took a major step away from “me too” codes of conducts. During the first four years, there was a great success with the compliance to the code. However, after the initial years there was a gradual erosion of Mattel’s commitment to the code, and after only nine years from its creation it was abandoned. Mattel instead implemented the industry-wide code that did not provide for independent third-party monitoring or public disclosure of audits.

Mattel did abandon the code since the expectation that it would gain strong public support, and that other companies would follow suit, never was fulfilled. Other companies with less rigorous monitoring schemes did equally well. Moreover, the NGO campaigns against sweatshops were short-lived. Mattel thus did a cost-benefit analysis and concluded that it would benefit the company to discard the ambitious code of conduct. All the easily attainable goals had already been achieved and further progress would require additional resources and management commitment, which would need to be gradually implemented and accommodated into normal business operations.<sup>138</sup>

Lastly, regarding suppliers' commitment to a code, one should keep in mind that the suppliers are aware of the fact that they are unlikely to get orders if they do not accept the MNEs code of conduct, which creates an unequal bargaining situation.<sup>139</sup> It is thus likely that suppliers “adopt” the code, i.e. agree to incorporate the code into the supplier contract, even though they may not be committed nor have the necessary resources for code compliance. Therefore, it is crucial that the company does not take advantage of this situation and ignores ensuring the supplier's commitment to the

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138 Sethi, Veral, Shapiro, Emelianova, *Mattel Inc. Global Manufacturing Principles (GMP): A life-Cycle Analysis of a Company's Voluntary Code of conduct*, pp. 17, 18, 22, 56, 65 and 66.

139 Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?*, pp. 315 and 316.

code in contract negotiations. The company should bear some of the costs for code compliance considering that it otherwise will be highly unlikely that the suppliers will be committed to the code and strive to incorporate it into their business, but will rather abide by the code in the least possible way in order to keep their contracts. It is thus important that actual negotiations take place over the code.

### 5.1.2 Content and construction

Commitment to the code is reflected in its content and construction, and the formulation of code standards is thus crucial regarding whether the code will be an effective means for promoting worker rights. Private codes vary to a large degree both regarding which labour standards they include and as to how strictly the company should hold itself or its suppliers to the standards. Some codes are merely of promotional nature while others are of mandatory nature. Some codes consist of vague, broad principles while others contain more detailed provisions.<sup>140</sup>

Moreover, private codes only infrequently refer directly to the ILO's conventions, and differ in the way they incorporate them. On the other hand, codes frequently refer to compliance with national law in the place where the company operates.<sup>141</sup> The industry factor can also be important regarding the content of the code. A 2001 OECD study revealed that codes in the apparel sector differed from the average and more strongly emphasised issues such as child labour, working environment and adequate compensation.<sup>142</sup>

Arguably, codes should obey national law while at the same time striving to reach beyond the protection provided by national law. When codes merely refer to national legislation without striving beyond the requirements set by law, it might be questioned whether codes are truly CSR measures and what purpose they serve. This especially considering that one of the most prominent potentials of codes of conduct

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140 Mamic, *Implementing Codes of Conduct*, p. 40; Murray, *Corporate Codes of Conducts and labour Standards*; Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights*, p. 209; Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, p. 179; OECD, *Codes of Corporate Conduct: Expanded Review of their Content*, pp. 2-3, 9, 10 and 11.

141 Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, p. 180; OECD, *Codes of Corporate Conduct: Expanded Review of their Content*, pp. 9 and 10; International Labour Office, *Information note on Corporate Social Responsibility and International Labour Standards*, pp. 2 and 4; Brudney, *Envisioning Enforcement of Freedom of Association Standards in Corporate Codes: a journey for sinbad or sisyphus?* pp. 559, 560 and 561.

142 OECD, *Codes of Corporate Conduct: Expanded Review of their Content*, pp. 2, 19, 20 and 21.

is their ability to take into consideration the local needs of a particular industry or workplace and thus quickly adapt to changing norms in society. Nevertheless, codes merely providing that national regulation should be adhered to can be meaningful as a reinforcement of national regulation, where national legislation is in conformity with international labour standards but government enforcement is weak. In addition, in many developing countries, where it is not uncommon that suppliers may be sceptical towards international labour standards that they view as products from the West, a reference to national law could result in the suppliers being more committed to the code. Nevertheless, it is worth repeating that this presupposes that the national legislation provides the necessary minimum protection, which is far from always the case.

Some scholars criticise codes for not referring directly to the ILO's conventions and advocate that private codes of conduct at least should refer directly to the core conventions, since these constitute generally accepted minimum labour standards at the international level. Direct reference would then open the gates to the ILO's praxis and interpretation.<sup>143</sup> Others however are critical, meaning that when reference is made to the ILO's core standards, the code makes the workers objects for regulation rather than political subjects who are able to determine themselves which standards that are needed at their particular workplace.<sup>144</sup>

Reference to the ILO's core conventions would nevertheless be desirable in most cases, and would be a further legitimising aspect of a code. However, one should not forget that the ILO's conventions, particularly the core conventions, are usually generally worded and can therefore be of limited assistance at the factory level.<sup>145</sup> Therefore, when reference is made to the ILO's labour standards, they need to be elaborated upon, taking local issues and preferences into consideration, if they are to provide meaningful guidance for corporate conduct. Even though the ILO's core standards should serve as guiding principles, firms' codes, particularly in the absence of state action, need to do more than just mirror the core standards' clauses.

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143 Murray, *Corporate Codes of Conducts and Labour Standards*; Tapiola, *The ILO Declaration on Fundamental Principles and Rights at Work and its Follow up*, p. 15; Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, pp. 212 and 213.

144 Jenkins, Pearson, Seyfang, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, pp. 4 and 5; Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, p. 213.

145 Mamic, *Implementing Codes of Conduct*, p. 342.

Furthermore, in some firms, issues such as living wages and safe working environments may constitute even more crucial problems that may need to be tackled even before workers are able to exercise the rights conferred to them in the core standards.<sup>146</sup> This echoes the critique directed towards the ILO for not including other additional rights in the core, as discussed in chapter two. Codes of conduct, having the potential to extend beyond the core standards, should take this opportunity when the situation allows or requires. Imposing prohibitions like those in the core standards, without considering the effects in a particular situation, is not always the best way to improve labour conditions, but might rather have a counterproductive effect on labour conditions.<sup>147</sup>

In addition to the content of codes, the actual formulation of the standards is crucial. Codes of conduct should ideally be detailed and specific so that it is clear what can be expected by the company. Standards which provide little or no definition of their terms are problematic since these will leave the implementation of the code to a company's or supplier's discretion. It is also crucial that codes are formulated with their audience, i.e. the workers, in consideration, so that they understand the code. Lastly, codes should also provide for systematic independent verification and full disclosure of results, as well as address the issue of sanctions in case of non-compliance.<sup>148</sup>

### 5.1.3 Implementation

Presuming that a company in cooperation with relevant stakeholders develops measurable meaningful standards regarding what is to be monitored, as well as the monitoring procedures themselves, the code would still be meaningless if not effectively implemented. To ensure that this happens systematically is probably one of the greatest challenges, particular for MNEs with complex supply chains in different countries. It is outside the scope of this thesis to more closely analyse different methods for monitoring, which differ greatly among companies.<sup>149</sup> Instead,

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146 Murray, *Labour rights / corporate responsibilities: the role of ILO's labour standards*, pp. 39 and 40.

147 An example of this is when children are banned from working in export industries, but ends up in even worse conditions. This was reported to have happened in Bangladesh during the 1990s after child workers were dismissed from the garment factory. See: Jenkins, *Corporate Codes of Conduct. Self-Regulation in a Global Economy*, p. 29.

148 Mamic, *Implementing Codes of Conduct*, pp. 38, 40 and 42.

149 Posner, Nolan; *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, pp. 209 and 211; Liemt, *Codes of*

the discussion focuses on some characteristics of effective monitoring as well as on existing challenges of the same.

To begin with, a factor that must be kept in mind, and which makes implementation of codes particular challenging, is that one factory might be producing many different brands. Consequently, the same workplace may thus be covered by a wide variety of codes. The lack of common auditing standards for social auditing creates a risk that decisions are taken by individual monitors on a case-by-case basis, which may endanger the auditors' independence. Common auditing standards would remove the discretion of auditors and thus increase audits' credibility.<sup>150</sup> Furthermore, common auditing standards would facilitate the comparison of different companies' monitoring findings and make it easier to assess their credibility and accuracy. Consequently, it seems clear that there is need for standardised and widely-accepted monitoring procedures in respect to social auditing. Industry-based codes may have an advantage over private codes in this regard. Although there have been attempts to develop social auditing standards, further development is needed.<sup>151</sup>

To continue, it can be concluded that most companies already have a system for overseeing quality and this system could be used for ensuring code compliance as well. However, some provisions in the code might need special knowledge by the monitors and require onsite examination. In such cases the existing monitoring system within the company might not be sufficient, but additional personnel with the necessary knowledge may for example be needed.<sup>152</sup>

Nevertheless, internal monitoring, conducted by the company itself, is not sufficient. One of the most crucial aspects regarding code implementation is external monitoring of the company's own factories or the factories of suppliers, conducted by a third party. There are those advocating that local NGOs or local trade unions are the ideal

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*Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, pp. 184, 185 and 186; Murray, *Corporate Codes of Conducts and Labour Standards*.

150 OECD, *Making Codes of Corporate Conduct Work: Management Control Systems and Corporate Responsibility*, pp. 10, 12 and 13; Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, pp. 212 and 213.

151 Examples of initiatives to develop common standards of social auditing are the Global reporting Initiative (GRI guidelines) and the SA 8000. See: OECD, *Making Codes of Corporate Conduct Work: Management Control Systems and Corporate Responsibility*, pp. 12 and 13.

152 Murray, *Corporate Codes of Conduct and Labour Standards*; Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, p. 184.

independent monitors. Considering that they are familiar with the local business climate, speak the local language and have the possibility to monitor factories at a more consistent and regular basis, they may indeed be suitable monitors.<sup>153</sup> However, many NGOs and trade unions are unwilling to monitor factories due to the distrust it could create among the workers to see their representatives cooperating with management.<sup>154</sup> An alternative could therefore be that the monitoring is made by an external auditing company. Nevertheless, local NGOs and labour unions may play other important roles besides monitoring. They have perhaps an even more important role to play as watchdogs of on-going labour conditions in nearby factories, and can thus serve as the monitors of the monitor.<sup>155</sup>

Albeit, even more important than the choice of monitor, is that they have the expertise needed for the task and are truly independent from the company. In order for external monitoring to be considered independent, the monitoring should be performed by an organisation not controlled by the company and the monitors should not report exclusively to the company, but to all relevant stakeholders. Furthermore, the results should ideally be reported to the public.<sup>156</sup> The monitoring firm's independence may be questioned in cases when they are paid by the company, considering the monitoring firm's commercial interest of keeping good business relations.

Another crucial aspect, regarding both internal and external monitoring, is how the review of labour conditions actually is conducted. Some aspects such as the level of wages and amount of over time work may be addressed through reviewing records of the company, and may be done by an accounting firm. Nonetheless, most issues, such as discrimination, sexual harassment, safety and health requirements and freedom of association, requires onsite examinations and interviews with workers.<sup>157</sup> These visits should preferably be made unannounced in order to reduce the risk of cheating. One

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153 Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, p. 214; Gould, *Labor Law for a Global Economy: The Uneasy Case for International labour Standards*, p. 110.

154 Ascoly, Zeldenrust, *Working with codes: perspectives from the Clean Clothes Campaign*, p. 178.

155 Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, p. 217.

156 Colucci, *Implementation and monitoring of codes of conduct. How to make codes of conduct effective?*, pp. 287 and 288.

157 Gould, *Labor Law for a Global Economy: The Uneasy Case for International labour Standards*, p. 110.

might question whether traditional accounting firms, without specific expertise in labour conditions, are suitable for conducting this kind of auditing.

To continue, correct information regarding working conditions is crucial for the effective implementation of codes. The workers are those who actually know what the daily practices at the workplace are. Interviews with workers are, together with actual observations, probably the most crucial source of information for onsite monitors. It is therefore fundamental that they are conducted so that accurate information is disclosed. It is important that interviews are conducted off-site in a trusting environment without the involvement of management, in order for the workers to feel that they can share their knowledge without being subject for sanctions.<sup>158</sup>

An illustrative example of how monitoring should not be done is a case study regarding PwCs auditing conducted in factories situated in over 60 different countries belonging to famous companies, such as Nike, Disney, Walmart and Gap. First of all, the auditing was planned beforehand and thus providing the opportunity to hide and cover up existing problems. The auditors had little experience regarding safety and health issues and missed several things when examining the factories. Nevertheless, the most striking fault with the auditing arguably was manager bias; the managers provided most of the information, selected the workers to be interviewed and the interviews were held inside the factories with the management's knowledge regarding what each worker was asked. The risk is great that such flawed monitoring will do more harm than good since it can create a falsely positive impression.<sup>159</sup>

Lastly, it is important that workers' voices are heard even between onsite examinations. Therefore monitoring system should preferably include a complaint system, where the workers can make anonymous complaints to an independent body.<sup>160</sup> To give an example, Walmart Inc. has a complaint system in their code of conduct, where workers can email or phone anonymously.<sup>161</sup> Nevertheless, the email

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158 Ascoly, Zeldenrust, *Working with codes: perspectives from the Clean Clothes Campaign*, p. 178.

159 O'Rourke, *Monitoring the monitors: a critique of corporate third-party labour monitoring*, pp. 197-205 and 206.

160 Colucci, *Implementation and monitoring of codes of conduct. How to make codes of conduct effective?*, p. 286; Murray, *Corporate Codes of Conducts and labour Standards*.

161 Walmart Inc., *Standards for Supplier*, corporate.walmart.com, Global Responsibility, Ethical Sourcing, Ethical Standards & Resources, last visited 6 September 2013.

address and phone number belong to Walmart. Although it is better than no complaint system at all, this is not a suitable construction. There is a risk that the workers might feel inhibited by the fact that the complaints go directly to Walmart. A better alternative is that the complaints are made to an independent NGO or to a labour union. Naturally, in order for such “whistle blowing” to function the workers must be aware of the code's existence and truly understand what it means.

#### 5.1.4 Development towards independent monitoring and beyond

In the beginning of this millennium, a significant number of private codes did not even mention monitoring and few contained explicit commitment to systemic monitoring, independent verification and full disclosure of results.<sup>162</sup> Two studies made by OECD in 2001 revealed that only 23 % of the supplier codes mentioned external third party monitoring and 23 % mentioned internal monitoring. In addition, 61 % of private codes<sup>163</sup> did not mention disclosure of relevant information and only 22 % of the labour codes included commitment of public disclosure.<sup>164</sup> Nevertheless, while social and environmental audits were an optional extra one decade ago, it seems that private and independent monitoring of suppliers' factories has become entrenched in certain labour intense areas, such as the apparel and footwear sectors.<sup>165</sup> In addition, firms and organisations specialising in external independent monitoring have emerged.<sup>166</sup> This is indeed a positive development. Nevertheless the question remains whether the auditing made is truly independent and full disclosure to relevant stakeholders is given. The lack of recent and comprehensive studies regarding the development towards independent monitoring makes definitive conclusions difficult.

Either way, one must keep in mind that there is still cheating in the supply chains going on. Managers struggling to pass audits might keep duplicate books over working hours, or put in place protective equipment when auditors are in the factory. Furthermore, workers might be coached by the managers to give certain answers to the auditors. These cheating measures, together with poor qualities of auditing, as the

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162 Colucci, *Implementation and monitoring of codes of conduct. How to make codes of conduct effective?* p. 287.

163 It should be noted that these codes also included environmental codes.

164 OECD, *Making Codes of Corporate Conduct Work: Management Control Systems and Corporate Responsibility*, p. 10; OECD, *Codes of Corporate Conduct: Expanded Review of their content*, p. 12.

165 Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?*, pp. 315 and 316; Brudney, *Envisioning enforcement of freedom of association standards in corporate codes: a journey for sinbad or sisyphus*, p. 574.

166 See for example: The Fair Labor Association, *FLA accredited monitoring organizations*, fairlabor.org, last visited 9 September 2013, which provides a list of independent monitoring organisations.

case study with the PwC audit illustrates, have led to an increasing distrust of auditing results. There is therefore a trend towards new approaches such as building skills in the supply chain through training programs for both managers and workers. Although auditing and inspections are necessary for compliance, it is clear that these measures alone will not do.<sup>167</sup>

Before moving on to the next section, it can be concluded that there exist many challenges with making codes of conduct effective, and many private codes probably do not fulfil the criteria as outlined above, but are vaguely worded, created without the honest commitment of companies and sufficient stakeholder engagement, and may lack effective independent monitoring schemes. Such codes will have limited opportunity of improving worker rights and may in contrast rather have unwanted consequences such as contra-productive effects on moral practices. Critique has been directed towards codes in this regard; moral responsibility is claimed to be set aside if it is subordinated to a standardised scheme regarding how to act in certain situations.<sup>168</sup> This illustrates the importance of codes being living instruments that are revised in line with changing circumstances. Only then may they have the potential to be platforms for moral development, rather than barriers.

## **5.2 Violations of Codes of Conduct**

If the auditing reveals that a supplier is violating the code, the company should provide assistance with getting the supplier to comply to it. Nevertheless, when the violations do not end, it is worth raising the question of what means other stakeholders have at their disposal to promote compliance.

### 5.2.1 The company vs. suppliers – Cutting off or working for improvements

Many of the early codes of conduct stipulated that non-compliance would lead to termination of the supplier contract. This is an easy way for companies to “solve” problems. However, such behaviour does not promote worker rights, but workers will instead potentially be even worse off if, for example, a factory has to close down. When codes contain such clauses, workers are put in a dilemma of choosing between working for better conditions or risking losing their jobs. Already in the beginning of

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167 Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?*, pp. 315 and 316.

168 Jensen, Sandström, Helin, *Translating Corporate Codes of Ethics*, pp. 67-69 and 70.

the millennium however, codes started to include commitments to working with suppliers to improve working conditions.<sup>169</sup> In addition, companies should help their suppliers to abide by the code both by educating the suppliers and their workers, as well as bearing some of the costs of code implementation, before non-compliance and cheating occurs.<sup>170</sup>

### 5.2.2 The company vs. workers and other stakeholders- Private litigation of human rights

As has been evident, there are many challenges with making monitoring schemes reach the intended effects, and auditing and inspection measures alone will not do. An additional option for code compliance is to think more creatively about private enforcement. Some scholars claim that codes of conduct generally are not considered legally binding, while others suggest that codes may indeed constitute legally binding contracts given the right factual circumstances.<sup>171</sup> Either way, during recent decades transnational litigation, promoting compliance with international labour standards, has increased, especially in the US. The more traditional suits brought have involved foreign workers bringing suit against their employer, in order to enforce individual employment contract rights.<sup>172</sup> Codes of conduct that are incorporated into the employment contract<sup>173</sup> naturally are binding on both parties, i.e. the employer and the employee. It should not matter whether the employees are situated in another country.

Nevertheless, other interesting questions have begun to emerge, such as whether suppliers' workers may have legally enforceable rights towards the company in case of violations of the company's code of conduct, as well as whether other stakeholders can enforce compliance with private codes through litigation. Firstly, the question of

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169 Colucci, *Implementation and monitoring of codes of conduct. How to make codes of conduct effective?* pp. 285 and 286; Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export industries*, pp. 184 and 187.

170 Ascoly, Zeldenrust, *Working with codes: perspectives from the Clean Clothes Campaign*, p. 178.

171 Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*, p. 209.; Arthurs, *Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation*, p. 484.

172 Cleveland, *Why International Labor Standards?*, p. 134.

173 Which they might be considered to be if they are e.g attached to the employees' pay-checks and displayed at posters at the workplace. This was the case in a German lawsuit where Walmart Inc was defendant. The German workers council brought suit against Walmart claiming that the provisions in their code of conduct violated German law and the Court ruled in favour of the employees. The code was thus considered to be legally binding. See: Revak, Haley, *Corporate codes of conduct: binding contract or ideal publicity*, p. 1656.

whether a company can be legally responsible for violations of the company's code conducted by a foreign supplier is discussed below. This question was raised in the recent case of *Doe v. Walmart Inc.*

#### 5.2.2.1 The company vs. suppliers' workers

In 2005, workers in several of Walmart suppliers' factories<sup>174</sup> filed a class action lawsuit against Walmart in California Superior Court. Walmart removed the case to federal court based on diversity of citizenship and plaintiffs filed an amended complaint in federal court. The plaintiffs alleged *inter alia* breach of contract as third-party beneficiaries, based on Walmart's failure to ensure that its suppliers respected its *Standards for Suppliers code of conduct*.<sup>175</sup> The code, incorporated in Walmart's supplier contracts, required suppliers to abide by local laws and industry standards regarding working conditions.

In 2008, the district court granted Walmart's motion to dismiss for failure to state a claim. The workers from the supplier factories appealed and the Ninth Circuit upheld the district court's decision in 2009, and subsequently held that the third-party beneficiary claim failed since Walmart had made no promise clear enough to constitute an offer to monitor the suppliers' factories. As no contractual duty to monitor the suppliers' factories was found, no such duty could flow to the plaintiffs as third party-beneficiaries. The language in the code, which the plaintiff relied on, stated that Walmart would undertake affirmative measures, such as on-site inspections of production facilities, to implement and monitor said standards. Furthermore, the provisions in the code did not provide for any consequences in case Walmart would fail to monitor its suppliers, but merely contained sanctions such that the supplier contract could be terminated in case the suppliers violated the code.<sup>176</sup> Consequently, the language and structure of the code was interpreted as merely giving Walmart the right, and not an obligation, to monitor its suppliers.

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174 In China, Bangladesh, Indonesia, Swaziland, and Nicaragua.

175 Plaintiff presented four distinct legal theories and except for the third-party beneficiary claim, which is the one discussed here. Plaintiff also argued that Walmart was plaintiff's joint employer, that Walmart had negligently breached a duty to monitor and protect the plaintiff from the suppliers' working conditions and that Walmart was unjustly enriched by plaintiffs' mistreatment.

176 *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, (9th Cir. 2009).

Although the plaintiffs had no success with their claim, and the code of conduct was not considered to be legally enforceable, the *Walmart case* nevertheless illustrates that codes of conduct can constitute legally enforceable contracts. It all comes down to the construction of the code and basic rules of contract formation. If the provisions of a code of conduct are specific and detailed, the code should constitute an offer<sup>177</sup> from the company, which if communicated to the foreign suppliers' workers (through for example providing the code in the local language easily available in the workplace), and accepted by them (by for example the workers continuing to work), will result in a binding contract.<sup>178</sup> It seems that courts will be reluctant to view codes of conduct as legally binding when they only contain ambiguous terms as general policy statements since these do not form an expression of the willingness to contract on *certain* terms. In addition, under American and English common law in general, which usually are the law of the contract of many MNEs, the acceptance need to be communicated in the same manner as the offer was made. There are however no fixed rules regarding communication of acceptance.<sup>179</sup> Presuming that a distinct and clear offer is made, with the intention that it should be binding when accepted, it is likely that the acceptance is considered to be communicated to the employer by the workers continuing or commencing to work, having knowledge of the code. This is given that the workers also understand that the code constitutes an offer.

Turning to the specific provisions in Walmart's *Standards for Supplier* one may read, for example: "Slave, child, underage, forced, bonded, or indentured labour will not be tolerated".<sup>180</sup> Furthermore, in the *Standards for Suppliers' Manual* one may read: "those factories that are found to have violated this provision will cease producing merchandise".<sup>181</sup> Consequently, it does not seem that these statements are intended to directly confer rights upon foreign suppliers' workers. Rather they are directed

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177 An offer can be defined as "an expression of willingness to contract on certain terms with the intention that it shall become binding as soon as it is accepted by the person to whom it addresses", See: Tretel, *The Law of Contract*, p. 8.

178 The workers continuing to work should also be able to constitute sufficient consideration. Consideration is an additional requirement for contract formation according to the common law. See: Carlson, *American Business Law. A Civil Law Perspective*, pp. 138 and 139.

179 Ibid, p. 137.

180 Walmart Inc., *Standards for Supplier*, corporate.walmart.com, Global Responsibility, Ethical Sourcing, Ethical Standards & Resources, last visited 6 September 2013.

181 Walmart Inc, *Standards for Suppliers' Manual*, corporate.walmart.com, Global Responsibility, Ethical Sourcing, Ethical Standards & Resources, last visited 6 September 2013.

towards the suppliers and gives examples of conduct that will give Walmart the right to terminate the contract. From *Doe v. Walmart Inc.* one may thus draw the conclusion that provisions such as these are not specific enough in order to create a legally enforceable contract. Furthermore, it seems that the Court interpreted the codes as providing rights to Walmart, rather than to its suppliers and their workers. This interpretation can be questioned. The aim of the code of conduct should be to improve working conditions and it is thus primarily in the workers' interest that the implementation of the code should be done.

Nevertheless, since the lawsuit it seems that Walmart has placed greater emphasis addressing human rights violations of its suppliers. Walmart has for example shifted all of its auditing responsibility to third parties.<sup>182</sup> As this development continues one might raise the question whether the provisions in the code of conduct will be interpreted differently in the future. Hopefully Walmart will have more difficulties arguing that the provisions of the code are not intended to confer rights upon workers. However, considering the weight that the Court put on the construction and language of the code, the formulation of standards seems to be crucial. The code would probably need to be rewritten as to explicitly granting rights to workers, such as the possibility to seek remedy if monitoring is not made correctly, in order for it to be legally enforceable.

All the same, one must keep in mind that this suit was filed in a US court, and the outcome of a similar case in Sweden according to Swedish law might have been different. In respect of contract interpretation common law systems are radically different from civil law systems.<sup>183</sup> This in turn affects whether a court finds that an offer has been made, since the provisions in the code must be interpreted in order to conclude if they constitute an offer. According to Swedish law the starting point regarding contract interpretation is the intention of the parties. Thus, the written contract is merely one out of several aspects which affects the interpretation of an agreement. On the other hand, in common law systems much more emphasis is given to the written contract. When a final written contract has been agreed upon, its provisions may not be contradicted or supplemented by evidence extending beyond

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182 Walmart Inc., *Global Responsibility, Ethical Sourcing, Ethical Standards & Resources, Audit Process*, corporate.walmart.com, last visited 6 September 2013.

183 Carlson, *American Business Law. A Civil Law Perspective*, p. 141.

the written contract, according to the *Parol Evidence Rule*. In addition, according to the *Plain Meaning Rule*, the wording of the contract forms the basis for contract interpretation and one may only extend beyond the four corners of the document if it is not possible to come to any conclusions regarding the meaning of the contract by merely looking at its wording.<sup>184</sup> Consequently, a Swedish court would probably take other evidence, outside the code of conduct, into consideration in order to conclude whether an offer had been made. Such evidence would include the intention of the parties, the underlying purpose with the code, as well as other circumstances surrounding the creation of the code.

In relation to the speculation regarding an alternative outcome in the *Walmart case*, it is important to consider the consequences if the plaintiffs had been successful. Companies may naturally be reluctant to face litigation by thousands of suppliers' workers. Consequently, in order to hinder this, Walmart and other MNEs would potentially revise their supplier codes, ensuring that they are not precise enough to be interpreted as legally binding contracts. This would not improve the conditions for workers. However, pressure from consumers and other stakeholders might hinder such a behaviour. Leaving the relationship between the company and the suppliers' workers, another recent interesting case, dealing with whether other stakeholders other than the workers themselves, may enforce compliance with codes of conduct, is discussed below.

#### 5.2.2.2 The company vs. other stakeholders

In July 2012, the Board of Regents of the University of Wisconsin filed a lawsuit in Dane County Circuit Court against Adidas American Inc., for breach of provisions in the University's code of conduct, included in their sponsorship agreement. The code required Adidas *inter alia* to pay minimum wages, overtime compensation, and other legally mandated benefits to workers who produced goods with the University's logo.<sup>185</sup> Although the code was developed by the University, one might argue that Adidas accepted it as their own through the signing of the sponsorship agreement.

The University petitioned the court to declare that the sponsorship agreement

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<sup>184</sup> Ibid, pp. 141 and 142.

<sup>185</sup> University of Wisconsin, *UW-Madison Licensing Code of conduct*, wisc.edu; code of conduct, UW Madison Policies on Sweatshops, last visited 6 September 2013.

obligated Adidas to pay severance and other benefits to approximately 2800 Indonesian workers, who were left without their jobs when Adidas' Korean contractor, PT Kizone, left the Indonesian factory in 2011. PT Kizone had failed to pay severance wages since September 2010 and stopped pay wages altogether 5 January 2011. Additionally, PT Kizone had failed to pay death benefits to families of workers who died during the time when PT Kizone manufactured goods on behalf of Adidas. Adidas did not question that PT Kizone owed the benefits to the workers, but nevertheless argued that the code of conduct did not require Adidas to guarantee unpaid benefits of a contractor.<sup>186</sup> The case is now settled since Adidas agreed to pay compensation to the workers in April this year. Nevertheless, the pressure put on Adidas to pay the Indonesian workers did not only come from the lawsuit filed by Wisconsin University. Pressure from various other universities, which threatened to, and also did, end their contracts with Adidas, probably led to Adidas finally agreeing to pay the benefits.<sup>187</sup> Albeit, the lawsuit most likely formed an important part of the pressure put on Adidas.

One may only speculate regarding the outcome of the case, presuming it had not been withdrawn. Once again, the construction of the contract would probably be critical. The code of conduct stated that Adidas should “comply with all applicable legal requirements of the country(ies) of manufacture” and “provide legally mandated benefits”, such as wages to workers, where Adidas apparel was produced.<sup>188</sup> Furthermore, according to the contract, Adidas remained “fully responsible for ensuring that the Licensed Articles [were] manufactured in accordance with the License Agreement, including the codes”. In case Adidas had subcontracted the production of goods Adidas was obliged to “ensure that all Manufactures [complied]” with the codes.<sup>189</sup>

As opposed to the *Walmart case*, the wording of the code thus clearly stated that it was Adidas responsibility, regardless if it had sub-contracted the production, to make

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186 *Board of Regents of the University of Wisconsin System vs. Adidas America Inc.*, Complaint for declaratory judgement, Case No. 12CV2775, 13 July 2012.

187 Yates Christopher, *Adidas agrees to pay severance to workers*, April 25 2013, The Cornell Daily Sun, available at [cornellsun.com](http://cornellsun.com). Last visited 6 September 2013.

188 University of Wisconsin, *UW-Madison Licensing Code of conduct*, [wisc.edu](http://wisc.edu); code of conduct, UW Madison Policies on Sweatshops, last visited 6 September 2013.

189 *Board of Regents of the University of Wisconsin System vs. Adidas America Inc.*, Complaint for declaratory judgement, Case No. 12CV2775, 13 July 2012.

sure that all products covered by the sponsorship agreement were produced in accordance with the code of conduct. In addition, the purpose of the code was, as the University also stated in their complaint for declaratory judgement, to make sure that the goods covered by the contract were produced under socially responsible circumstances. Consequently, it is very likely that the judgement would have been in the University of Wisconsin's favour, i.e. that the code would have been considered to be legally enforceable. In light of this it is not surprising that Adidas at last agreed to pay the benefits to the workers. However, considering the wording and purpose of the code, it is rather surprising that Adidas claimed that it was not responsible for their sub-contractors conduct in the first place.

## **Part 3: Analysis**

This final third part assesses the traditional ILO approach and the recent CSR approach with private codes of conduct, in order to fully understand the recent decades' rapid development of private codes as addressing issues of international labour standards, as well as codes' potentials and limitations. When discussing the limitations of codes, it is important to distinguish between their practical limitations, arising from the way in which codes have, or have not, been implemented in practice up till now, and their inherent weaknesses. In this comparison the focus is mainly on codes' inherent weaknesses, and it is presumed that the challenges with implementing codes, as discussed in Part Two, are met, since this results in a more meaningful discussion.

### **Chapter 6: Comparison of the ILO and CSR Approaches**

The two means of achieving an application of labour standards are addressed here; the one via the ILO and the other through CSR and private codes of conduct. It is important to understand that the two approaches function at different levels. The ILO's conventions and recommendations are directed to states, thus relying on states taking action, usually through legislation, in order to give effect to its labour standards. Due to this reliance on state regulation the ILO approach can be categorised as a regulatory approach, while CSR measures such as private codes of conduct may be categorised as soft law approaches. Legislation and the ILO's conventions have an inherent legitimacy due to the involvement of democratically-elected elements, which private codes of conduct lack. Soft law measures get their normative status from their potential quality rather than from democratic elements. Soft law's potential to involve different stakeholders, which increases its legitimacy, together with its flexible and adaptable nature to societal changes, adds to its quality.<sup>190</sup> Codes, having the opportunity to take local needs of a particular industry or workplace into consideration and quickly adapt to changing norms in society, may thus have potential of receiving a high normative status. Law

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<sup>190</sup> Lambooi, *Corporate Social Responsibility, Legal and Semi-Legal Frameworks Supporting CSR. Developments 2000-2010 and Case Studies*, pp. 252 and 256.

making, on the other hand, is a slow process which may lag behind societal developments. Nevertheless, the slow process of law-making makes it less vulnerable to populist trends in society, which in turn increases legal certainty and predictability.

As many situations are not covered by law or the ILO's labour standards, codes of conduct thus have the potential to reach where law and the ILO's standards cannot reach. The ILO approach, through its flexibility clauses and widely worded conventions, does nevertheless take into account the diversity of the member states to some extent. However, too much flexibility cannot be provided since standards would then cease to be standards. The universal approach, which the ILO rests upon, is indeed one of the organisation's greatest strengths, having resulted in labour standards accepted at a wide level internationally<sup>191</sup> that may provide useful guidelines for private initiatives. Albeit, it is in light of this lack of potential flexibility and reach that the development of CSR measures as private codes of conduct must be seen. Additionally, the ILO's increased focus on core standards has to some extent encouraged private initiatives like codes of conduct. The core standards constitute a frame of widely worded principles which need to be filled with more specific content in order to effectively be implemented.

Although one should be aware of the lack of democratic elements in the creation of codes, the importance of this fact should not be exaggerated. A soft law and a regulatory, "hard" law approach do not need to exclude one and another. The development of codes of conduct is evidence of emerging norms in a society. Private codes of conduct might therefore serve as a first step and a catalyst to increased regulation and give rise to international law.

### **6.1 The Codes' Potential to Reach a Wider Range of Workers**

Codes flexible and adaptable nature make it possible for them to extend and reach a wider range of workers, compared to the ILO approach. The tri-partite structure of the ILO is a unique feature which brings the international labour standards legitimacy. Nevertheless, the tri-partite structure excludes other organisations, such as consumer organisations and human rights groups, from participating in the ILO. This

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<sup>191</sup> One should keep in mind that the ILO's conventions are not ratified universally among member states. However, most member states have ratified the core conventions.

is unfortunate, especially considering that these are the most current dynamic social movements. The increasing numbers of workers today who are not formally organised, particularly in developing countries, are thus excluded from being represented by the ILO.

To give an example, trade unions have historically primarily championed for the rights of male breadwinning workers, which has been reflected in the marginalisation of women workers in collective bargaining processes, may it be at plant level or in international tri-partite agreements.<sup>192</sup> Women workers might gain increased influence in the negotiations over codes of conduct through their involvement in NGOs, raising problems specific to women previously overlooked by the male-led trade unions. Considering that the majority of workers in large export industries, such as the garment factories, are women, the involvement of women workers in the development of labour standards is crucial.<sup>193</sup> When NGOs have been included in the negotiations over codes, the codes tend to go beyond the ILO's core conventions and cover more of the issues of concern for women, compared to when workers are solely represented by trade unions.<sup>194</sup> In addition, the core labour standards fail to address structural discrimination, while they do cover anti-discrimination.<sup>195</sup> In other words, the standards cover discrimination at the individual workplace, and not the way in which discrimination is built into the structure of particular industries. Due to gender discrimination, women have limited access to other types of employment and therefore accept low paid jobs without employment contracts.<sup>196</sup> Codes of conduct have the potential to provide a new platform for women to get involved in the creation of code standards and have them reflect concerns for women in a way that the ILO approach does not.

The example of women workers is only one and an equal reasoning is applicable on other non-organised workers such as home based workers,<sup>197</sup> who may be found at the

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192 Pearson, Seyfang; *I'll tell you what I want...': women workers and codes of conduct*, p. 44.

193 O'Konek, *Corporations and human rights law: The emerging consensus and its effects on women's employment rights*, p. 265.

194 Pearson, Seyfang; *I'll tell you what I want...': women workers and codes of conduct*, p. 51.

195 In the priority conventions Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Equal Remuneration Convention, 1951 (No. 100).

196 O'Konek, *Corporations and human rights law: The emerging consensus and its effects on women's employment rights*, p. 284.

197 The informal workforce consists of both men and women. Nevertheless women are over represented in the informal economy, particularly in marginalized and vulnerable occupations such as home based work. See: *Ibid.*, p. 282.

bottom of the global supply chain.<sup>198</sup> Albeit, a certain amount of realism is necessary. Supply chains may be very long and complex, making it difficult to keep track of its different suppliers and sub-contractors. Many workers are also invisible due to lack of formal employment contracts. Due to the difficulties that MNEs face with ensuring compliance along their supply chains, they may choose to work with fewer suppliers, leaving many workers without jobs.<sup>199</sup> Although codes have the potential to reach a wider range of workers, the introduction of ambitious supplier codes might thus have the reverse effect and instead exclude workers.

## **6.2 The Limits of Reliance on Consumer Pressure**

Consequently, even though one of the strengths of codes is their potential to involve different NGOs, it can be questioned if the involvement of NGOs is always equally positive. The drivers behind the adoption of private codes have mostly been consumers organised in NGOs, reacting to corporate scandals, while the ILO's conventions and recommendations, on the other hand, are primarily adopted for political reasons. Consumer pressure at home, as well as the media, may naturally have influenced the politicians' decisions however.

Although consumer campaigns are valuable in creating pressure on MNEs to adopt codes of conduct, they are not necessarily the best approach for implementing and enforcing the codes. Auditing results may provide consumers with new information regarding code implementation, potentially leading to new campaigns towards companies. Transparency of auditing results is of course crucial since it makes companies constantly subject to scrutiny. However, consumer campaigns may result in companies rather choosing to end suppliers' contracts or stop making business in a certain country. Abandoning workers will not improve worker rights. Companies must be allowed some time to work for improvement and critique can therefore be directed towards harsh consumer campaigns.

Furthermore, just as critique might be directed towards the ILO approach for an increased focus on core standards, private codes of conduct may be equally criticised for a rather selective application. Considering that the drivers behind the adoption of

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198 Brill, *Can codes of conduct help home based workers*, pp. 115 and 118.

199 Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?*, p. 316.

codes are primarily consumers, the codes tend to highlight issues regarded to be particularly damaging for companies to be associated with, such as child labour.<sup>200</sup> It is important that the issues covered are not merely those giving rise to the most emotional reactions in the Western world since these issues are not necessarily those that are most crucial to other stakeholders, such as to the workers themselves. Additionally, codes of conduct tend to be focused on certain branches, such as the consumer goods sectors, where brand names and corporate image are important, which explains why certain industries, such as the apparel and toy industries, have been more prominent with developing codes than other industries.<sup>201</sup> However, violations of labour and human rights do not only take place in these sectors.

### **6.3 The Question of Freedom of Association**

Nevertheless, selective application does not merely depend on companies striving to meet consumers' demands, but some subjects may be better suited for state regulation. Arguably this is the case for freedom of association. Freedom of association could be categorised as a first generation human right because it constitutes a freedom from state interference, and thus concerns the relationship between the state and the individual. Freedom of association is therefore one of those matters that is more difficult to govern through corporate codes.<sup>202</sup> This is not saying that freedom of association should not be included in corporate codes, but merely that it will be difficult to practically implement the right in those situations when a state restricts freedom of association. In addition, the effectiveness of corporate codes is naturally negatively affected if freedom of association is prohibited, since this makes worker involvement in the creation and implementation of codes largely impossible. In such a situation reliance on pressure from other external stakeholders, such as NGOs, becomes even more crucial. Related to this is the question regarding codes becoming substitutes to self-organisation, as some scholars fear.<sup>203</sup> It may be argued that it is rather the opposite. Private codes have the potential to create room for creative solutions, such as worker committees, where formal worker organisations are

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200 Jenkins, *Corporate Codes of Conduct. Self-Regulation in a Global Economy*, p. 28; Sengenberger, *Globalization and Social Progress*, p. 125; Halme, *Something good for everyone?* p. 218.

201 Jenkins, *Corporate Codes of Conduct. Self-Regulation in a Global Economy*, p. 27 and 28; Baker, *Promises and platitudes: Towards a new 21<sup>st</sup> century paradigm for corporate codes of conduct?*, p. 135; Stohl, Stohl, Townsley, *A New Generation of Global Corporate Social Responsibility*, p. 40.

202 While other matters such as safety at workplaces and wages ought to be easier to regulate through codes.

203 Jenkins; Pearson; Seyfang, *Corporate Social Responsibility and Labour rights: Codes of Conduct in the Global Economy*, p. 5.

not permitted. Thus codes should be seen as platforms, rather than barriers, to worker involvement.

#### **6.4 The Handling of Violations**

Considering that the ILO approach relies on states taking actions, the effective implementation of conventions face the same difficulties as national regulation does in today's global workplace, where national governments have limited power and may be unwilling to regulate companies' conduct abroad. Although the ILO may succeed with getting countries to adopt conventions and adapt their legislations, the ILO's supervisory machinery remains quite toothless regarding getting countries to actually implement their own national law. The ILO's ordinary supervisory system, based on public reports, comments and dialogue, relies upon persuasion based on moral pressure. The additional supervisory system, consisting of representations and complaints, is seldom used. Furthermore, as the case of Myanmar illustrates, sanctions are only invoked in very exceptional cases and will probably not be invoked more frequently in the future. In addition, it was the member states that actually took the sanctions in question and many of these would probably been invoked without the 2000 resolution. Considering this fact, as well as the fact that Myanmar is a small, insignificant country in the international political arena, it is worth raising the question whether the case of Myanmar was a political extravaganza in order to justify the continuous existence of the ILO, rather than evidence of a well-functioning supervisory system.

The question should be raised whether a CSR approach would have been more effective with solving the situation in Myanmar. Serious violations of the forced labour convention took place for over thirty years, with continuous critique from the ILO during this time. The Myanmar case thus illustrates to what extent the ILO approach relies on government cooperation. In addition, even when the government eventually started to cooperate and abolished the old legislation permitting slave labour, the violations did not stop. It can be argued that private codes have an advantage over the ILO's supervisory system considering that the monitoring of codes is directed to those with the actual power to change working conditions, as opposed to the ILO approach which relies on government action. When violations are detected the monitors and the company may work together for improvements taking

specific measures directed to the workplace where the violations take place, such as providing education and financial assistance with procure safety equipment, in contrast to the ILO's assistance, usually consisting of helping the country getting their legislation in conformity with adopted conventions and recommendations. With such approach, changes will, if they ever occur, take longer time, which the case of Myanmar is a telling example of.

Additionally, even though sanctions may be justified in serious cases, sanctions directed against individual workplaces, for example by MNEs ending supplier contracts, probably have less severe overall consequences for a country, considering that only the individual violating companies will be affected. Sanctions directed against a country will, on the other hand, hit both the companies that violate labour and human rights, as well as those that respect them. Naturally a CSR approach, based on private supplier codes, would not have solved all problems with forced labour in Myanmar, but government action was needed as well, especially considering that all firms are not connected to the global supply chain. All the same, presuming that all companies in Myanmar supplying goods to foreign MNEs would have been prevented from using forced labour in order to keep their supplier contracts, a gradual attitude change among the country's businesses would most likely have occurred, resulting in positive changes at an earlier stage.

To conclude, the ILO approach has limited ways of enforcing compliance with international labour standards. In the end it comes down to the willingness of individual countries to cooperate. However, where violations of private codes of conduct take place and the willingness to resolve the situation does not exist at either company or supplier level, it is worth raising the question whether codes are equally toothless with enforcing compliance. Or are they?

### **6.5 Can Codes of Conducts be Legally Enforceable?**

The cases of *Walmart* and *Adidas* illustrate the interesting development of other stakeholders, besides the companies own employees, now trying to enforce codes of conduct through litigation. This is an important development since, regardless of the outcome of litigations, it puts pressure on companies to comply with their codes, a pressure that usually the suppliers themselves will not put on their procurers.

Furthermore, the cases illustrate that codes of conduct, as contracts, may indeed be legally enforceable. Nevertheless it seems clear that in order for codes to be legally enforceable they must constitute contracts, i.e. the basic rules of contract formation must be fulfilled. Unfortunately, as was the case with Walmart, it seems as many supplier codes are too generally worded in order to constitute offers, even though the interpretation of codes differs between jurisdictions.

After having established that codes may constitute legally enforceable contracts and not merely statements of policy or letter of intent, the question arises if this improves labour conditions internationally. This of course depends on the individual code's provisions. Merely the fact that the code is considered to be a legally binding contract does not necessarily mean that it obligates the company to ensure that the provisions are implemented. The contract could, for example, stipulate that each party has the right to cancel the contract and seek damages in case of a breach. This would not improve worker rights. It is therefore desirable that explicit reference is made to the company's responsibilities regarding monitoring of the code. However, even where no explicit reference is made, the code might be interpreted as obligating the company to ensure that the code is complied with, provided that the code for example stipulates that the company should work together with the supplier for improvements.

Either way, both the *Walmart* and *Adidas* cases illustrate that codes of conduct have the potential to affect worker rights, regardless of whether a controversy leads to a court decision. Walmart has made improvements in their monitoring of suppliers and has been moving away from internal and towards independent monitoring, which will probably have a positive effect on code implementation. In addition, in the *Adidas* case the workers did receive their benefits. The most important aspect is whether working conditions actually are improved by the litigation efforts, and not the outcome in a particular case.

## **6.6 Race to the Bottom Exchanged with Race to the Top?**

Lastly, a few remarks are provided regarding how private codes may affect the international labour market in the long run. Although labour standards can give rise to economic growth and improved working conditions if complied with, the individual member states of the ILO and individual companies must have the political

will to actually do so. As long as developing countries believe, correctly or not, that their competitive advantage will be reduced by improved labour conditions, they will remain reluctant to improve working conditions, creating a risk of a race to the bottom.

This is where the importance of consumer pressure appears. However, not all companies are subject for scrutiny. In developing countries there are many small and medium sized companies who are usually not involved in the global supply chain.<sup>204</sup> When public disclosure and pressure from NGOs are lacking, these companies are unlikely to voluntarily self-limit their conduct if there are no immediate favourable observable outcomes. When there are no incentives for self-limitation, codes of conduct will have limited effect until the individual companies realise that the adoption of codes will be good for business. Until then, the ILO approach with reliance on domestic regulations is arguably a better alternative.

Nevertheless, for supplier codes the situation is somewhat different. Basically all MNEs today have adopted supplier codes and suppliers need to at least accept their existence, and try to comply with their terms, in order to get and potentially maintain valuable contracts. Consequently, codes of conduct may contribute to counteracting the tendency of a race to the bottom among suppliers.<sup>205</sup> The introduction of CSR and codes of conduct in the international labour market has resulted in companies not merely looking at economic, but also at social aspects, when choosing whom to make business with. With time, codes of conduct might hopefully give rise to a tendency of a race to the top.

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204 Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?*, pp. 311 and 312; Jenkins, *Corporate Codes of Conduct. Self-Regulation in a Global Economy*, p. 27.

205 Jenkins; Pearson; Seyfang, *Corporate Social Responsibility and Labour rights: Codes of Conduct in the Global Economy*, pp. 5 and 6.

## **Chapter 7: Summary Conclusions**

The ILO has unquestionably had a great historical significance when recognising worker rights' importance for peace and being the first international organisation proclaiming the principle of international protection of human rights. In addition, the ILO has created a universal system of international labour standards covering a wide variety of work related issues. Today almost all countries in the world are members of the ILO and many cases of progress are reported by the ILO's supervisory system each year, usually concerning states having adapted their legislation in conformity with the ILO's conventions and recommendations.

Nevertheless, the question in this thesis has been raised to what extent the traditional ILO approach is still relevant in the era of globalisation, where national governments and traditional labour unions have lost certain influence over the emerging international labour market. The ILO, relying on national governments taking action in order to give rise to its international labour standards, has limited opportunities to actually implement the labour standards in its member countries. Its voluntary approach with the reliance on “sociological sanctions” has proven ineffective without the active cooperation of the violating member state. In the end, as with all international law, it comes down to the individual states' willingness to cooperate.

To meet the challenges of globalisation and an increasing number of member states, in different stages of development, the ILO has focused on some fundamental core labour standards. It may be understandable considering that the organisation, having the same structure as when it was created but acting in a new international labour market, plainly is unable to cope with the implementation of the overwhelming number of conventions all over the world. All the same, the focus on some broad flexible core standards created need for, and to a certain extent even gave rise to, additional approaches, such as private codes of conduct.

In light of the limitations of the traditional ILO approach, the emerging approach of CSR, in the form of private codes of conduct, has been examined in this thesis, in order to evaluate to what extent it may be effective in promoting international labour and human rights. Just as the traditional ILO approach, private codes also face great challenges regarding the effective implementation of the labour standards they

contain. Many prerequisites must be fulfilled, such as the formulation of meaningful measurable standards, worker involvement in the creation and implementation of codes, management's commitment, as well as independent, qualitative monitoring of code compliance.

Presuming these challenges are met, codes may nevertheless have great potentials. Their flexibility makes it possible for them to reach where national legislation and the ILO's labour standards cannot reach, considering that codes have the opportunity to take the particular workplace's problems into consideration. In addition, codes have the potential to reach a wider range of workers since they allow involvement of organisations other than traditional labor unions, in contrast to the ILO approach, which relies on tri-partism. Given that a truly and qualitative monitoring system is established, private codes may have an advantage over the ILO's supervisory system; monitoring of the codes is directed to those with the actual power to change working conditions, as opposed to the ILO approach relying on government action. Even in cases where the prerequisites for effective monitoring are not fulfilled, private codes may, as opposed to the ILO's labour standards, potentially be legally enforceable in courts by workers or other stakeholder.

Furthermore, even though consumer pressure is valuable as one of the prime drivers behind companies adopting codes of conduct, it also explains some of the codes of conduct's limitations, namely a selective application regarding which sectors, as which issues, are covered by the codes. An outer limit of CSR indeed is that it is only appropriate for those who wants to engage themselves in business. Some issues are thus best suited to state regulation, such as issues regarding freedom of state interference.

To conclude, both the ILO and CSR approaches face great challenges with giving effect to international labour standards. The approaches constitute different tracks promoting the same objective. CSR and private codes of conduct should be seen as a valuable complement to, and not as a replacement of, the traditional ILO approach. The fact that some codes when referring to the ILO's conventions usually elaborate upon them in order to adapt them to the particular situation, which some scholars criticise, should arguably rather be seen as a good illustration of how the two

approaches may integrate and strengthen each other. The approaches function at different levels, which explains one of the reasons why they may serve as good complements to each other. The ILO, with its reliance on state regulation, can be categorised as a regulatory approach, while private codes may be categorised as soft law. The ILO's legitimacy and strength comes from its universal nature and involvement of democratic elements. Furthermore, there is inertia in the creation of conventions and recommendations, which makes the system less vulnerable to populist trends. Codes of conduct, on the other hand, are flexible and adaptable by nature, having the potential to take into consideration emerging norms in society. Even though this makes them less predictable, it is from the flexibility and potential to involve workers themselves that codes receive their legitimacy and quality. In addition, soft law measures may be the first step towards increased legislation and may give rise to international labour standards.

Lastly, although the ILO and CSR approaches may be complementary to each other, it nevertheless appears as though a paradigm shift has taken, and is still taking, place, considering the development of private codes during recent decades. CSR and private codes of conduct are here to stay, at least as long as society has the structure it has today, with global trade and MNEs having more power than many nation states. The ILO is certainly here to stay as well. However, the organisation has lost some of its former influence, or perhaps it is more proper to say that the ILO today has had to accept sharing its influence over the international labour market with other actors. A final question should be raised regarding whether the increased focus on CSR is the right path. Are companies really suitable for taking social responsibility? Do they have a long term commitment to promoting worker rights and will the challenges of making private codes of conduct effective ever be fully met by the majority of companies? Naturally only time will tell. Nevertheless, in my opinion, private codes will only succeed to improve working conditions in the long run if they are considered to be good for business, and a power balance is needed where governments, consumers and NGOs are present as counterweights, constantly keeping companies under scrutiny.

## Bibliography

### Literature:

Arthurs Harry, *Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation* in Conaghan Joanne, Fischl Richard Michael, and Klare Karl, *Labour Law in an Era of Globalization: Transformative Practices and Possibilities*, Oxford Scholarship Online, March 2012 (Cit. Arthurs, *Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation*).

Ascoly Nina, Zeldenrust Ineke, *Working with codes: perspectives from the Clean Clothes Campaign* in Jenkins Rhys, Pearson Ruth, Seyfang Gill, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, Earthscan Publications Ltd, London, 2002 (Cit. Ascoly, Zeldenrust, *Working with codes: perspectives from the Clean Clothes Campaign*).

Baker Mark B., *Promises and platitudes: Towards a new 21<sup>st</sup> century paradigm for corporate codes of conduct?*, Connecticut Journal of International Law, 2007 (Cit. Baker, *Promises and platitudes: Towards a new 21<sup>st</sup> century paradigm for corporate codes of conduct?*).

Bartolomei de la Cruz Héctor G., von Potobsky Geraldo, Swepton Lee, *The International Labor Organization, The International Standards System and Basic Human Rights*, Westview Press Inc., Colorado and Westview Press, Oxford, 1996 (Cit. Bartolomei, Potobsky, Swepton, *The International Labor Organization, The International Standards System and Basic Human Rights*).

Blanpain R., Colucci M., *The Globalization of Labour Standards*, Kluwer Law International, The Hague, The Netherlands, 2004 (Cit. Blanpain, Colucci, *The Globalization of Labour Standards*).

Brill Lucy, *Can codes of conduct help home based workers?* in Jenkins Rhys, Pearson Ruth, Seyfang Gill, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, Earthscan Publications Ltd, London, 2002 (Cit. Brill, *Can codes of conduct help home based workers?*).

Brudney James J., *Envisioning enforcement of freedom of association standards in corporate codes: a journey for sinbad or sisyphus?*, Comparative Labor Law and Policy Journal, 2012 (Cit. Brudney, *Envisioning enforcement of freedom of association standards in corporate codes: a journey for sinbad or sisyphus?*).

Böhning W. R., *Labour Rights in Crisis: measuring the achievement of human rights in the world of work*, Palgrave Macmillan, New York, 2005 (Cit. Böhning, *Labour Rights in Crisis*).

Carlson Laura, *American Business Law. A Civil Law Perspective*, Iustus förlag, Uppsala, 2004 (Cit. Carlson, *American Business Law. A Civil Law Perspective*).

Carroll Archie B., *Corporate Social Responsibility. Evolution of a Definitional Construct*, Business & Society, Vol. 38 No. 3, September 1999 (Cit. Carroll, *Corporate Social Responsibility. Evolution of a Definitional Construct*).

Carroll Archie B., *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders*, Business Horizons, July-August 1991.

Cleveland Sarah H., *Why International Labor Standards?* in Flanagan, Robert J., Gould IV William B., *International Labour Standards; Globalization, Trade and Public Policy*, Stanford University Press, Stanford, California, 2003 (Cit. Cleveland, *Why International Labor Standards?*).

Colucci Michele, *Implementation and monitoring of codes of conduct. How to make codes of conduct effective?* in Blanpain R., *Multinational Enterprises and the Social Challenges of the XXIst Century*, Kluwer Law International, The Hague, 2000 (Cit. Colucci, *Implementation and monitoring of codes of conduct. How to make codes of conduct effective?*).

Crowther David, Rayman-Bacchus Lez, *Perspectives on Corporate Social Responsibility*, Ashgate Publishing Limited, Aldershot, 2004 (Cit. Crowther, Rayman-Bacchus, *Perspectives on Corporate Social Responsibility*).

Crowther David, Rayman-Bacchus Lez, *The Future of Corporate Social Responsibility in Perspectives on Corporate Social Responsibility*, Ashgate Publishing Limited, Aldershot, 2004 (Cit. Crowther, Bacchus, *The Future of Corporate Social Responsibility*).

Diller Janelle M., *Social conduct in transnational enterprise operations: the role of the International Labour organization* in Blanpain R., *Multinational Enterprises and the Social Challenges of the XXIst Century*, Kluwer Law International, The Hague, 2000 (Cit. Diller, *Social conduct in transnational enterprise operations: the role of the International Labour Organization*).

Fields Gary S., *International Labor Standards and Decent work: Perspectives from the Developing World* in Flanagan, Robert J., Gould IV William B., *International Labour Standards; Globalization, Trade and Public Policy*, Stanford University Press, Stanford, California, 2003 (Cit. Fields, *International Labor Standards and Decent work: Perspectives from the Developing World*).

Flanagan Robert J., *Labor Standards and International Competitive Advantage* in Flanagan, Robert J., Gould IV William B., *International Labour Standards; Globalization, Trade and Public Policy*, Stanford University Press, Stanford, California, 2003 (Cit. Flanagan, *Labor Standards and International Competitive Advantage*).

Ghebali Victor-Yves, *The International Labour Organization; A Case Study on the Evolution of U.N. Specialised Agencies*, Martinus Nijhoff Publishers, Kluwer Academic Publishers, Netherlands, 1989 (Cit. Ghebali, *The International Labour Organisation*).

Gould IV William B., *Labor Law for a Global Economy: The Uneasy Case for International Labor Standards* in Flanagan, Robert J., Gould IV William B., *International Labour Standards; Globalization, Trade and Public Policy*, Stanford University Press, Stanford, California, 2003 (Cit. Gould, *Labor Law for a Global Economy: The Uneasy Case for International Labor Standards*).

Graham David, Woods Ngaire, *Making Corporate Self-Regulation Effective in Developing Countries*, *World Development* Vol. 34, No. 5, pp. 868-883, Elsevier Ltd., 2006 (Cit. Graham, Woods, *Making Corporate Self-Regulation Effective in Developing Countries*).

Halme Minna, *Something good for everyone?* in Dobers Peter, *Corporate Social Responsibility. Challenges and Practices*, Santérus Academic Press Sweden, Stockholm, 2010 (Cit. Halme, *Something good for everyone?*).

International Labour Office, *International labour standards, a workers education manual*, 4<sup>th</sup> ed, 1998 (Cit. International Labour Office, *International labour standards*).

International Labour Office Geneva, *Rules of the Game*, Revised edition 2009 (Cit. International Labour Office, *Rules of the Game*).

Jansson Johan, Nilsson Jonas, *Corporate Citizenship and the Citizen Consumer: Introducing the cc-matrix* in n Dobers Peter, *Corporate Social Responsibility. Challenges and practices*, Santérus Academic Press Sweden, Stockholm, 2010 (Cit. Jansson, Nilsson, *Corporate Citizenship and the Citizen Consumer: Introducing the cc-matrix*).

Jenks C. Wilfred, *Human Rights and International Labour Standards*, Steven & Sons Limited, London and Frederick A. Praeger Inc., New York, 1960 (Cit. Jenks, *Human Rights and International Labour Standards*).

Jenkins Rhys, *Corporate Codes of Conduct. Self-Regulation in a Global Economy*, United Nations Research Institute for Social Development, Technology, Business and Society Program Paper Number 2, April 2001 (Cit. Jenkins, *Corporate Codes of Conduct. Self-Regulation in a Global Economy*).

Jenkins Rhys, Pearson Ruth, Seyfang Gill, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, Earthscan Publications Ltd, London, 2002 (Cit. Jenkins, Pearson, Seyfang, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*).

Jensen Tommy, Sandström Johan, Helin Sven, *Translating Corporate Codes of Ethics* in Dobers Peter, *Corporate Social Responsibility. Challenges and practices*, Santérus Academic Press Sweden, Stockholm, 2010 (Cit. Jensen, Sandström, Helin, *Translating Corporate Codes of Ethics*).

Kendall Brenden E., Gill Rebecca, Cheney George, *Consumer Activism and Corporate Social Responsibility. How strong connection?* in May Steve, Cheney George, Poper Juliet, *The Debate over Corporate Social Responsibility*, Oxford University Press Inc., New York, 2007 (Cit. Kendall, Gill, Cheney, *Consumer Activism and Corporate Social Responsibility. How strong connection?*).

Lambooij Tineke Elisabeth, *Corporate Social Responsibility, Legal and Semi-Legal Frameworks Supporting CSR. Developments 2000-2010 and Case Studies*, Instituut voor Ondernemingsrecht (Rijksuniversiteit Groningen en de Erasmus Universiteit), No. 77, The Netherlands, 2010 (Cit. Lambooij, *Corporate Social Responsibility, Legal and Semi-Legal Frameworks Supporting CSR. Developments 2000-2010 and Case Studies*).

Landy E. A., *The Effectiveness of International Supervision, Thirty years of ILO experience*, Stevens and Sons Limited, London and Oceana Publications Inc, New York, 1966 (Cit. Landy, *The Effectiveness of International Supervision*).

Langille Brian A., *Core Labour Rights – the true story*, in Leary Warner Daniel, *International studies in human rights, Volume 84: Social Issues, Globalization and International Institutions: Labour rights and the EU, ILO, OECD and WTO*, Martinus Nijhoff Publishers, Leiden, 2005 (Cit. Langille, *Core Labour Rights – the true story*).

Leary Virginia A., *Form follows function* in Flanagan, Robert J., Gould IV William B., *International Labour Standards; Globalization, Trade and Public Policy*, Stanford University Press, Stanford, California, 2003 (Cit. Leary, *Form follows function*).

van Liemt Gijsbert, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labor standards in export industries* in Blanpain R., *Multinational Enterprises and the Social Challenges of the XX1st Century*, Kluwer Law International, The Hague, 2000 (Cit. Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labor standards in export industries*).

Mamic Ivanka, *Implementing Codes of Conduct: how businesses manage social performance in global supply chains*, Greenleaf Publishing, Sheffield, 2004 (Cit. Mamic, *Implementing Codes of Conduct*).

Maupain Francis, *Is the ILO Effective in Upholding Workers' Rights?: Reflections on the Myanmar Experience*, in Alston Philip, *Labour Rights as Human Rights*, Oxford University Press, New York, 2005 (Cit. Maupain, *Reflections on the Myanmar Experience*).

Murray Jill, *Labour rights / corporate responsibilities: the role of ILO's labour standards* in Jenkins Rhys, Pearson Ruth, Seyfang Gill, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, Earthscan Publications Ltd, London, 2002 (Cit. Murray, *Labour rights / corporate responsibilities: the role of ILO's labour standards*).

Murray Jill, *Corporate Codes of Conducts and Labour Standards* in Kyloh R., *Mastering the Challenges of Globalisation: towards a trade union agenda: working paper*, International Labour Office, Geneva, 1998 (Cit. Murray, *Corporate Codes of Conducts and Labour Standards*). Note: the article was found at the internet and unfortunately no page numbers are available in the version that I have access to.

Murphy David, Ng'ombe Austine, *Corporate Social Responsibility* in Werna E., Murphy D., Keivani R., *Corporate Social Responsibility and Urban Development*, Palgrave Macmillan, Basingstoke and New York, 2009 (Cit. Murphy, Ng'ombe; *Corporate Social Responsibility*).

O'Konek Tiana, *Corporations and human rights law: The emerging consensus and its effects on women's employment rights*, *Cardozo Journal of Law & Gender*, 2011 (Cit. O'Konek, *Corporations and human rights law: The emerging consensus and its effects on women's employment rights*).

O'Rourke Dara, *Monitoring the monitors: a critique of corporate third-party labour monitoring* in Jenkins Rhys, Pearson Ruth, Seyfang Gill, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, Earthscan Publications Ltd, London, 2002 (Cit. O'Rourke, *Monitoring the monitors: a critique of corporate third-party labour monitoring*).

Pearson Ruth, Seyfang Gill, *I'll tell you what I want...': women workers and codes of conduct* in Jenkins Rhys, Pearson Ruth, Seyfang Gill, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, Earthscan Publications Ltd, London, 2002 (Cit. Pearson, Seyfang, *I'll tell you what I want...': women workers and codes of conduct*).

Peters John, *Social Responsibility is Free-How Good Capitalism can Co-exist with Corporate Social Responsibility* in Crowther David, Rayman-Bacchus Lez, *Perspectives on Corporate Social Responsibility*, Ashgate Publishing Limited, Aldershot, 2004 (Cit. Peters, *Social Responsibility is Free-How Good Capitalism can Co-exist with Corporate Social Responsibility*).

Posner Michael, Nolan Justine, *Can Codes of Conduct Play a Role in Promoting Workers Rights?* in Flanagan, Robert J., Gould IV, William B., *International Labour Standards; Globalization, Trade and Public Policy*, Stanford University Press, Stanford, California, 2003 (Cit. Posner; Nolan, *Can Codes of Conduct Play a Role in Promoting Workers Rights?*).

Rayman-Bacchus Lez , *Assessing Trust in and Legitimacy of the Corporate* in Crowther David, Rayman-Bacchus Lez, *Perspectives on Corporate Social Responsibility*, Ashgate Publishing Limited, Aldershot, 2004 (Cit. Rayman-Bacchus, *Assessing Trust in and Legitimacy of the Corporate*).

Revak Haley, *Corporate codes of conduct: binding contract or ideal publicity?*, Hastings Law Journal, August 2012 (Cit. Revak, *Corporate codes of conduct: binding contract or ideal publicity?*).

Ritz, Dean, *Can Corporate Personhood Be Socially Responsible?* in May Steve, Cheney George, Poper Juliet, *The Debate over Corporate Social Responsibility*, Oxford University Press Inc., New York, 2007 (Cit. Ritz, *Can Corporate Personhood Be Socially Responsible?*).

Rogers Gerry Swepton, Lee Lee Eddy, *International Labour Organization and the Quest for Social Justice 1919-2009*, International Labour Office, Washington DC, 2009 (Cit. Rogers, *International Labour Organization and the Quest for Social Justice*).

Roome Nigel, *Company Strategies for Corporate Responsibility and Sustainability in an Era of Fragmented-Globalization* in Dobers Peter, *Corporate Social Responsibility. Challenges and Practices*, Santérus Academic Press Sweden, Stockholm, 2010 (Cit. Roome, *Company Strategies for Corporate Responsibility and Sustainability in an Era of Fragmented-Globalization*).

Ruggie John Gerard, *The Theory and Practice of Learning Networks*, Greenleaf Publishing, 2002 (Cit. Ruggie, *The Theory and Practice of Learning Networks*).

Schwartz, Mark S., *Corporate Social Responsibility. An Ethical Approach*, Broadview Press, Peterborough, Ontario, 2011 (Cit. Schwartz, *Corporate Social Responsibility. An Ethical Approach*).

Sengenberger Werner, *Globalization and Social Progress: The Role and Impact of International Labor Standards*, Friedrich-Ebert-Stiftung, Bonn, 2005 (Cit. Sengenberger, *Globalization and Social Progress*).

Shaw Linda, Hale Angela, *The emperor's new clothes: what codes mean for workers in the garment factory* in Jenkins Rhys, Pearson Ruth, Seyfang Gill, *Corporate Social Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, Earthscan Publications Ltd, London, 2002 (Cit. Shaw, Hale, *The emperor's new clothes: what codes mean for workers in the garment factory*).

Sethi S. Prakash, Veral Emre A., Shapiro Jack, Emelianova Olga, *Mattel Inc. Global Manufacturing Principles (GMP): A life-Cycle Analysis of a Company's Voluntary Code of conduct* in Sethi S. Prakash, *Globalization and Self-Regulation. The Crucial Role The Corporate Code of Conduct Play in Global Business*, Palgrave Macmillan, New York, 2011 (Cit. Sethi, Veral, Shapiro, Emelianova, *Mattel Inc. Global Manufacturing Principles (GMP): A life-Cycle Analysis of a Company's Voluntary Code of conduct*).

Sethi S. Prakash, *Self- Regulation through Voluntary Codes of Conduct*, in Sethi S. Prakash, *Globalization and Self-Regulation. The Crucial Role The Corporate Code of Conduct Play in Global Business*, Palgrave Macmillan, New York, 2011 (Cit. Sethi, *Self- Regulation through Voluntary Codes of Conduct*).

Standing Guy, *ILO: An Agency for Globalization?* In *Development and Change*, Vol. 39, No. 3, May 2008, pp. 355-384 (Cit. Standing, *ILO: An Agency for Globalization?*).

Stohl Michael, Stohl Cynthia, Townsley Nikki C., *A New Generation of Global Corporate Social Responsibility* in May Steve, Cheney George, Poper Juliet, *The over Corporate Social Responsibility*, Oxford University Press Inc, New York, 2007 (Cit Stohl, Stohl, Townsley, *A New Generation of Global Corporate Social Responsibility*).

Sukdeo Vanisha, *Transnational governance models: codes of conduct, and monitoring agencies as tools to increase worker's rights*, *German Law Journal*, December 2012 (Cit. Sukdeo Vanisha, *Transnational governance models: codes of conduct, and monitoring agencies as tools to increase worker's rights*).

Tapiola Kari, *The ILO Declaration on Fundamental Principles and Rights at Work and its Follow up* in Blanpain R., *Multinational Enterprises and the Social Challenges of the XXIst Century*, Kluwer Law International, The Hague, 2000 (Cit. Tapiola, *The ILO Declaration on Fundamental Principles and Rights at Work and its Follow*).

Torres Cedillo, Hordijk Garcia-French, Olup Lana, *Four Case Studies on Corporate Social Responsibility: Do Conflicts Affect a Company's Corporate Social Responsibility Policy?*, *Utrecht LawReview*, Volume 8, Issue 3, 2012. (Cit. Torres, Hordijk, Olup, *Four Case Studies on Corporate Social Responsibility*).

Tretel G.H, *The Law of Contract*, 10 ed, Sweet & Maxwell, London, 1999 (Cit. Tretel, *The Law of Contract*).

Welford Richard, *Epilogue Corporate Social Responsibility: The Next Agenda?* in Dobers Peter, *Corporate Social Responsibility. Challenges and Practices*, Santérus Academic Press Sweden, Stockholm, 2010 (Cit. Welford, *Epilogue Corporate Social Responsibility: The Next Agenda?*).

Windell Karolina, *CSR Conferences as Catwalks: The Translation of an Idea* in Dobers Peter, *Corporate Social Responsibility. Challenges and Practices*, Santérus Academic Press Sweden, Stockholm, 2010 (Cit. Windell Karolina, *CSR Conferences as Catwalks: The Translation of an Idea*).

### **Statutes, Constitutions and Declarations:**

Burmese Freedom and Democracy Act of 2003, Pub. L. No. 108-61, §§ 1-9, 117 Stat. 864 (2003) (codified as 50 USC § 1701 (2000)).

Constitution of the International Labour Organization.

Declaration of Philadelphia, 1944.

### **ILO Conventions:**

#### The eight priority conventions:

Freedom of association and Protection of the Right to Organise Convention, 1948 (No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Forced Labour Convention, 1930 (No. 29).

Abolition of Forced Labour Convention, 1957 (No. 105).

Minimum Age Convention, 1973 (No. 138).

Worst Forms of Child Labour Convention, 1999 (No. 182).

Equal Remuneration Convention, 1951 (No. 100).

Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

### **Official Reports and Studies:**

International Labour Office, Seventh item on the agenda, *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, GB.292/7/1, 292<sup>nd</sup> Session, Geneva, March 2005.

International Labour Office, Third item of the agenda, *Information note on corporate social responsibility and international labour standard*, GB.288/WP/SDG/3, 288<sup>th</sup> Session, Geneva, November 2003 (Cit. International Labour Office, *Information note on corporate social responsibility and international labour standard*).

International Labour Conference, *Provisional Record 2-1*, 102<sup>nd</sup> Session, Geneva, June 2013, 2007.

Malmberg Jonas, Johnsson David, *Social Clauses and Other Means to Promote Fair Labour Standards in International Fora – A Survey*, Arbetslivsrapport ISSN 1401-2928, Department of Labour Market Research, 1998 (Cit. Malmberg, Johnsson, *Social Clauses and Other Means to Promote Fair Labour Standards in International Fora – A Survey*).

OECD, *Codes of Corporate Conduct: Expanded Review of their content*, Working papers of International Investment Number 2001/3, May 2001 (Cit. OECD, *Codes of Corporate Conduct: Expanded Review of their content*).

OECD, *International Trade and Core Labour Standards*, Paris, 2000 (Cit. OECD, *International Trade and Core Labour Standards*).

OECD, *Making Codes of Corporate Conduct Work: Management Control Systems and Corporate Responsibility*, Working papers of International Investment Number 2001/3, February 2001 (Cit. OECD, *Making Codes of Corporate Conduct Work: Management Control Systems and Corporate Responsibility*).

### **Case Law and Related Material:**

Doe I v. Wal-Mart Stores, Inc, 572 F.3d 677, (9th Cir. 2009).

*Board of Regents of the University of Wisconsin System vs. Adidas America Inc.*, Complaint for declaratory judgement, Case No. 12CV2775, 13 July 2012.

### **Codes of Conduct:**

University of Wisconsin, *UW-Madison Licensing Code of conduct*, wisc.edu; code of conduct, UW Madison Policies on Sweatshops, last visited 6 September 2013.

Walmart Inc., *Standards for Supplier*, corporate.walmart.com, Global Responsibility, Ethical Sourcing, Ethical Standards & Resources, last visited 6 September 2013.

Walmart Inc, *Standards for Suppliers' Manual*, corporate.walmart.com, Global Responsibility, Ethical Sourcing, Ethical Standards & Resources, last visited 6 September 2013.

### **Web Pages:**

Fair Labor Association, *FLA accredited monitoring organizations*, fairlabor.org, last visited 9 September 2013,

International Court of Justice webpage, icj-cij.org; The United Nations, *The Court*, last visited 10 October 2013.

International Labour Organization, *About the ILO, Decent work agenda*, ilo.org, last visited in 3 July 2013.

International Labour Organization, *Labour standards, Information system of international labour standards, Normlex*, ilo.org, last visited 7 October 2013.

International Labour Organization, *Meetings and events, International Labour Conference, ILC sessions, 102<sup>nd</sup> Session 2013, Media Centre, News and articles, ILO lifts remaining restrictions on Myanmar*, ilo.org, last visited 8 October 2013.

Walmart Inc., *Global Responsibility, Ethical Sourcing, Ethical Standards & Resources, Audit Process*, corporate.walmart.com, last visited 6 September 2013.

### **Newspaper Articles:**

Friedman, Milton, *The Social Responsibility of Business is to Increase its Profits*, The New York Times Magazine, September 13, 1970.

Yates Christopher, *Adidas agrees to pay severance to workers*, April 25 2013, The Cornell Daily Sun, available at cornellsun.com. Last visited 6 September 2013.