

The Evolution of a Global Labor Governance Regime

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During the last decade, the approach by business and governments toward labor and social issues at the global level has fundamentally changed. Industrial relations are rapidly internationalizing by developing new actors and forms of governance to deal with the regulation of labor. This article looks at the evolution of self-regulatory standards in the global labor governance debate. Key is that notwithstanding problems with the lacking legal framework of global regulation and enforceability, patterns of local self-regulation, norm-setting, and international codes lead not only to higher expectations of the behavior of transnationally operating firms, but also to an indirect pattern of regulation. The article argues that particularly the adoption of the core labor standards by the ILO and the setup of the Global Compact by the UN serve as points of convergence. A plethora of voluntarist initiatives that converge over time toward a shared understanding of labor standards is part of the transformation of global labor governance institutions.

2

Introduction

During the last decade, the approach by business and governments toward global labor and social issues has fundamentally changed. Industrial relations are internationalizing rapidly by developing new actors and forms of governance to deal with the regulation of labor.¹ International labor law has been reshaped by moving away from ILO conventions toward the principle of core labor standards (CLS). Company codes of conduct have proliferated not only through consumer campaigns, but also through the Global Compact of the UN and the Organisation for Economic Co-operation and Development's (OECD's) guidelines for multinational companies. Firms have accepted responsibility for the personnel policy of their suppliers in industrial relations. Institutional investors have adopted social, environmental, and ethical principles. Global unions have negotiated international framework agreements (IFA) with multinational companies. No firm operating at the global level can afford to ignore issues of corporate social responsibilities.

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1 This article looks at the evolution of self-regulatory standards in the
2 global labor standards debate. Key is that notwithstanding the lack of a
3 legal framework of global regulation and enforceability, patterns of local
4 self-regulation, norm-setting, and international codes lead not only to
5 higher expectations of transnationally operating firms' behavior, but also
6 to an indirect pattern of regulation. The article argues that particularly the
7 adoption of the CLS by the ILO and the setup of the Global Compact by
8 the UN serve as points of convergence. They define a core of acceptable
9 behavioral norms related to business strategies. A plethora of voluntarist
10 initiatives that converge over time on a shared understanding is thereby
11 part of the transformation of global labor governance institutions.

12 Compared to national regulation, the nonbinding nature of self-
13 regulation still appears weak. While the national social contract conceived
14 in the 1940s and 1950s led to social expenditure levels of up to 30% of the
15 GDP and highly regulated labor markets in many countries, global labor
16 standards do not entail the notion of comprehensive labor protection. For
17 some, global voluntary standards run the risk of being something of a
18 gimmick that reconciles the wishes of naive activists with the need of
19 international organizations to strengthen their legitimacy in a fast-
20 changing world. The question therefore remains as to the regulatory
21 effectiveness of this new regime.

22 The article provides two theoretical reasons as to why a private gover-
23 nance regime can contribute to effectively raising global labor standards:
24 first, positive externalities of international coordination for firms, and
25 second, the interest of high-standard firms to impose these on other firms.
26 This motivates firms to monitor each others' behavior, thereby stabilizing
27 the regime.

28 Moreover, the article argues that the shift from a state-based to a private
29 regulatory regime enables progress on global labor standards by diverting
30 distributional trade-offs, which governments in low-standard countries
31 may face. It does not argue that private governance regimes at the global
32 level are superior to state-based regimes but points out the opportunity to
33 overcome regulatory deadlocks by moving from state-based to private
34 governance regimes. This result is counterintuitive because the opposition
35 by firms is usually seen as hindering labor standards advancements.

36 The article proceeds as follows: the second section presents the theo-
37 retical arguments; the third section gives a narrative account of the trans-
38 formation of labor standards; the soft law approach by the ILO in 1998, the
39 appearance of mainstreaming institutions of codes of conduct and public
40 private partnerships; the fourth section discusses the relationship of soft
41 and hard regulation; and the fifth section concludes.

42 **Theoretical Framework**

43
44 The process of global labor governance has been polycentric and not
45 extensively planned in advance of its realization. No single actor has been

TABLE 1
Characteristics of Two Regulatory Regimes of Labour Standards

Traditional Regime of Labor Regulation	Emerging Global Labor Governance Regime
Hard law provides hard sanctions	Soft law provides for incentives and information
Compliance by governments	Compliance by business
Regulated access of private actors: employers' confederation and trade unions	Unrestricted access of private actors: business, NGOs, and trade unions
Authority-oriented	Market-oriented

in control of designing the institution-building process or the process as a whole. Business and civil society initiatives interact in the context of changes in the legal approach toward labor standards, which then feed back to new public-private cooperation.

These different processes take place in various arenas involving many actors but together constitute the emergence of a new set of global labor governance by establishing a global labor standards regime. The new global labor standards regime draws, in principle, on the same type of norms as the traditional legislative model of labor standards developed by the ILO and the European Union (Block et al. 2001), particularly the CLS, 3 but it differs regarding the actors, the appliance of those norms, and "the institutional mechanisms through which social rights and rights of citizenship in the workplace are to be implemented" (Dombois, Hornberger, and Winter 2003, 422).

This new type of "non-state market-driven governance regime" (Cashore 2002) has emerged simultaneously across a number of policy fields, such as global environmental policies, but also the regulation of the internet can be characterized by a number of features (see, e.g., Busch, Jörgens; Tews 2005; Cashore 2002; Knill and Lehmkuhl 2002): market-oriented, based on incentives and information rather than prohibitions, largely voluntary, carried out in a number of partially overlapping networks that consist of public policies and civil society organizations (CSOs) and in cooperation with business. With regard to labor governance, new responsibilities are primarily addressed to firms and not to governments: firms, as the driving forces of globalization, are charged with building bridges between national communities and the global economy (Ruggie 2003, 3). The differences between traditional regimes and new regimes are detailed in Table 1.

As literature on "non-state market-driven governance systems" (Cashore 2002) and international private authority (Cutler 2003; Cutler, Haufler, and Porter 1999; Hall and Biersteker 2002) argue, states are turning to "market-based" and private voluntary strategies as an alterna-

1 tive or supplement to traditional regulation. Firms are already playing a
2 role in rule making, in setting international standards, or pushing for
3 intellectual property rights (Braithwaite and Drahos 2000; Genschel 1997).
4 Responsive regulation can also support and supplement the efforts by
5 underresourced state agencies. Self-regulation is often seen as increasing
6 legitimacy and effectiveness in monitoring compliance (Ayres and Braith-
7 waite 1992). These processes may also lead to a spiral of upward regula-
8 tion, as firms that are being monitored pressurize regulators to look at
9 others as well (Fung, O'Rourke, and Sabel 2001; Vogel 1995).

10 On the other hand, there may be reasons to doubt that regulation
11 necessarily constrains firms. Voluntary, market-driven, and private regu-
12 lation can be dismissed as public relations exercises that aim at deflecting
13 attention from discussions on enforcement mechanisms and legislation.
14 Pressure to compete on international markets may also drive firms to
15 sacrifice labor rights in order to cut costs. Indeed, Mosley and Uno (2007)
16 show that whereas increased financial flows are related to increases in
17 labor standards, heightened trade competition has the opposite effect. In
18 this way, creating international standards means overcoming the pressure
19 that competitive forces place on reducing labor standards.

20 Assessment of the evolution of the new global labor regime should
21 begin by looking at firms' fundamental interests in a global labor stan-
22 dards regime. Much of the literature on why firms join international orga-
23 nizations contends that international organizations are formed when the
24 costs of direct contracting are higher than those of creating and maintain-
25 ing an international organization. Abbott and Snidal (1998) contend that
26 centralization and independence stand as two main factors in transaction
27 cost economizing. Where firms stand to benefit from coordination, cen-
28 tralizing the functions that work to enforce cooperation improves effi-
29 ciency by realizing economies of scale and increasing the authority of the
30 enforcement agency. The independence of international organizations also
31 works to reduce transaction costs by safeguarding the organization's neu-
32 trality. Similarly, *public* agencies may also improve the independence and
33 authority of private interests, as Cutler, Haufler, and Porter (1999) point
34 out, because public institutions remain accountable whereas private firms
35 do not.

36 In their study of private international authority, Cutler, Haufler, and
37 Porter (1999) emphasize that firms may seek to coordinate their behavior
38 in the international sphere to strengthen their position. They suggest that
39 incentives to reduce transaction costs and to institutionalize their influ-
40 ence in the international arena may have increased over time because firms
41 today are under heightened pressure to compete in international markets.
42 These accounts, therefore, highlight efficiency concerns, power politics,
43 and structural factors at the root of firms' incentives to join international
44 organizations.

45 Gaining data on compliance is also difficult because labor standards are
46 largely open to interpretation and trade unions and collective bargaining

1 rights are particularly difficult to establish in a national context of authori-
2 tarian political regimes. Collective action in support for the maintenance
3 of standards is difficult to achieve where independent trade unions are
4 replaced by CSOs (Ebenshade 2001; O'Rourke 2000).

5 In international relations literature, some authors argue that in order to
6 enforce compliance with labor standards, international organizations
7 must have the authority to prevent abuse as well as punish defectors. In
8 designing the punishment, moreover, international organizations must be
9 sensitive to the individual needs of participants and ensure that temporary
10 defection does not preclude participation in the long run (Milner and
11 Rosendorff 2001). Therefore, one would assume that monitoring compli-
12 ance with labor standards demands that international organizations have
13 quite extensive resources and a high level of authority.

14 However, international organizations themselves are not the only
15 ones who have an interest in firms' compliance with standards. Firms
16 that are vulnerable to consumer campaigns via reputational risks or
17 political pressure are generally more proactive on social standards in
18 order to fend off public criticism. These firms suffer when competitors
19 succeed in not complying with the same standards as they do and have
20 an interest in monitoring procedures for the sector as a whole. In accor-
21 dance with the literature on compliance of states to private governance
22 regimes (Dai 2002; 2007), the victims of noncompliance are likely to act
23 in favor of monitoring and regulation. High-standard firms can thereby
24 be expected to form alliances with NGOs and governments of high-
25 standard states for imposing higher standards onto others and monitor-
26 ing their compliance.

27 Therefore, with regard to labor standards, a firm's preference to force
28 other firms to improve their labor standards generally depends on the
29 strength of their own labor standards vis-à-vis other firms. Brown, Dear-
30 dorff, and Stern (1996) look at a case where competing import firms are
31 forced to improve their labor standards. If these new regulations were
32 imposed bilaterally (say, under pressure from a large firm doing busi-
33 ness in that country), the competing import firm would face higher costs
34 without being able to externalize these costs on consumers. If, however,
35 these new standards were to be imposed unilaterally on all countries,
36 the global supply of the product would be reduced, thereby increasing
37 the price and retaining the competitiveness of the competing import
38 firms.

39 In this case, however, competing import firms do not choose whether
40 or not to implement labor standards per se, but rather how many firms
41 need to abide by higher labor standards. Firms may indeed retain a pref-
42 erence for lower labor standards, and therefore, are only motivated to
43 bring other firms up to their level, but not further. As such, if firms can
44 avoid such pressure in the first place, lowering existing standards may
45 actually be preferred in order to gain competitiveness in international
46 trade or accomplish domestic goals (Bagwell and Staiger 2000). Firms' 4

1 incentives to support higher labor standards therefore remain dependent
2 on the relative position of firms with respect to those standards.

3 In sum, a private governance regime on labor standards can be expected
4 to evolve if activities by international organizations and civil society coincide
5 with a sufficient number of firms who are willing to participate in and
6 support such a regime. This can be the case if (1) these firms benefit from
7 centralization and coordination at the international level and (2) victims of
8 noncompliance of competitors can use such a regime for punishing non-
9 complying firms. Not all firms are expected to participate; rather firms'
10 preferences are likely to vary.

11 **The Transformation of Global Labor Standards**

12
13 The labor standards debate has long been depicted as a distributional
14 conflict between the north and south, in which northern economic
15 interests—particularly U.S. trade unions—seek to protect their domestic
16 interest, while the adherence of firms to labor standards abroad only
17 increases labor costs minimally.² Firms from developing countries are
18 particularly disadvantaged by social clauses in trade regimes (Evans
19 2000). These distributional effects that strengthen northern interests at
20 the expense of the south have led to a standoff in the labor standards
21 debate during the past few decades. However, this conflict has been
22 rephrased through various developments over the last decade or so.
23 The developments are the adoption of the CLS, the new themes in the
24 trade debate, company codes, and rise of partnerships in global public
25 policy.

26 **The CLS of the ILO**

27
28 The international labor governance regime that existed during the golden
29 years of “embedded liberalism” was formed primarily from ILO conven-
30 tions. As a specialized agency of the UN, the ILO is an intergovernmental
31 body that establishes labor standards in the form of conventions and
32 recommendations. ILO conventions have the status of treaties and are
33 binding to the member countries that voluntarily ratify them (Block et al.
34 2001, 168). Over the years, the ILO has established 156 conventions (plus
35 25 outdated ones) that have been unevenly ratified by its member states.
36 The United States remains a reluctant member state, with only 12 ratified
37 conventions and several withdrawals from the ILO. Until the 1990s, the
38 process was characterized by intergovernmental high diplomacy, with
39 poorer countries (and the United States) resisting the pressure to ratify
40 conventions that might intervene in their national labor relations regime
41 or raise labor costs.

42 At its 86th session in June 1998, the ILO radically changed its approach
43 by adopting a “Declaration on Fundamental Principles and Rights at
44 Work.”³ The document named four fundamental rights that consequently

1 formed the basis for the "CLS": (1) freedom of association and the effective
2 recognition of the right to collective bargaining; (2) the elimination of
3 all forms of forced or compulsory labor; (3) the effective abolition of child
4 labor; and (4) the elimination of discrimination regarding employment
5 and occupation. These fundamental rights were to be respected, promoted,
6 and realized by all members of the ILO, even if they had not ratified the
7 conventions in question. By doing so, the ILO theoretically expanded
8 the spread of important labor standards to all its member states, with the
9 quality of these rights remaining on a lower standard than ILO conven-
10 tions. The CLS were explicitly liberated from the conventions that underlie
11 them and an entirely new mechanism was set up for their implementation
12 (Alston 2004, 467).

13 International labor lawyers, such as Philip Alston, call the 1998 Decla-
14 ration the "harbinger of a revolutionary transformation, the extent to
15 which continues to be downplayed by its proponents, while many tradi-
16 tional supporters of labour rights appear to be oblivious to the conse-
17 quences of the changes that have been wrought" (Alston 2004, 458). Alston
18 focuses his criticism on the fact that with the emphasis on core rights, a
19 normative hierarchy between different labor rights has been established;
20 that the notion of rights was replaced by principles, that soft promotional
21 techniques replaced traditional enforcement mechanisms, and that the
22 monitoring of these standards was decentralized.

23 From the perspective of the ILO, the adoption of CLS not only served
24 the purpose of a flexible instrument in the face of globalization, but also
25 helped to deflect criticism that emerged from various sides, particularly
26 after the fall of communism. Employers and governments were increas-
27 ingly unhappy with the emphasis of the ILO on standard setting and the
28 heavy-handed approach of enforcement; too many standards and too little
29 effect,⁴ in particular at a time when the eastern European transformation
30 countries were encouraged to take a tough stance toward labor market
31 deregulation. Also, campaigns by the ILO against child labor were seen as
32 ineffective compared to measures by other UN agencies. The ILO, who
33 criticized all countries alike for failing to accept collective bargaining
34 rights, was under immense pressure to define a new agenda. However,
35 the move toward more legitimacy of the ILO in an increasingly hostile
36 environment was only one factor that led to the change of position. The
37 other was that the adoption of a soft-law approach by the ILO and the
38 definition of a set of CLS also fitted into a wider debate of linking trade
39 with labor standards.

40 41 **Labor Standards and Trade**

42 Until a decade ago, the labor standards debate was exclusively set in the
43 context of trade negotiations. In the U.S. context, linking labor standards
44 with trade has always been on the agenda, although to different degrees

1 (Arthur 2001, 286). In particular, U.S. trade unions have used trade sanc-
2 tions as a means to protect jobs at home and lobbied Congress to uphold
3 these mechanisms in a new trade regime.

4 Labor standard clauses had been included in unilateral or bilateral
5 trade regulations, either in terms of product bans on imports made by
6 forced or child labor, or under the Generalized Systems of Preferences that
7 gave tariff concessions to certain products and countries. In the United
8 States, the Trade and Tariff Act of 1984 made eligibility conditional on
9 respect for "internationally recognized workers' rights" (Tsogas 2000,
10 352). These mechanisms were largely unilateral measures in which the
11 country that gave preferential treatment to the product of a poorer country
12 expected some good will with regard to labor practices.

13 In the early 1990s,⁴ the debate on trade and social clauses gained in
14 momentum with the negotiations of the WTO. Labor standards were a
15 major topic in the Uruguay round, with the U.S. administration claiming
16 to refuse to approve the ministerial declaration unless it contained a
17 reference to early consideration of the relationship of the trading system
18 and "internationally recognized labor standards."⁵ While this move failed
19 and the WTO refrained from integrating labor standards in their trade
20 regime, the urge to develop a set of "internationally recognized labor
21 standards" persisted.

22 If the United States had succeeded in making adherence to a set of ILO
23 conventions a condition of membership to the ILO, it would have
24 extended the reach of the ILO not only to other countries, but possibly to
25 its own borders, as well (Arthur 2001, 285). As the U.S. administration had
26 not ratified many of the ILO conventions, in particular not those conven-
27 tions that were to become the basis of the CLS (see in the succeeding
28 discussions), there was a strong interest in the adoption of a set of prin-
29 ciples that were part of the same norms of labor rights but different in their
30 legal status. Moreover, these standards needed to be flexible enough that
31 they could be redefined, depending on the situation. "But the proposed
32 declaration and its soft monitoring system provided an ideal route
33 through which the United States could escape from the dilemma of not
34 having ratified the key conventions itself while applying sanctions in its
35 domestic legislation and seeking them at the WTO level for other coun-
36 tries violations of CLS" (Alston 2004, 467).

37 Therefore, the report in 1994 by the director-general of the ILO, Michel
38 Hansenne, (Hansenne 1994), which proposed for the first time a differen-
39 tiation of labor rights and the need for soft law, presented a missing link
40 between the efforts of the U.S. administration to include labor clauses in
41 the WTO negotiations and the ILO's desire to move back to center stage
42 with regard to the promotion of labor issues. It added to the previous tool
43 of hard conventions the tool of soft law, which had not existed in the ILO
44 environment until then. The soft-law approach and in particular the
45 concept of CLS quickly submerged with other activities on global labor
46 governance.

Codes of Conducts

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

The big wave in adopting codes of conduct, however, emerged as a response to consumer campaigns. Fearing that consumers might reject products made under poor conditions, major corporations, such as Levi Strauss, Reebok, Liz Claiborne, and later Nike, decided to address the labor standards problem. Levi Strauss was the first company to develop a comprehensive code of conduct in 1991. The significance of the Levi Strauss example was that it was the first code of conduct on labor practices for suppliers, which were independent business partners that supply a brand name with products or services. More and more firms committed themselves to ensuring consistent application of labor norms to workers, regardless of where they do business and whether they directly own the operation.

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

As these accounts demonstrate, it was primarily business itself that reacted by introducing codes of conduct for the following reasons: first, in order to protect the reputation of the brand and the company, which is a valuable asset and is increasingly judged by consumers on the basis of social issues. Second, as a tool of improving supplier relations, because the compliance with codes also enhances quality and delivery times by suppliers and thereby increases trust to the supplier. Third, because higher labor standards may reduce the risk of future liability in the case that workers seek legal compensation or governments launch campaigns against particular industries. Finally, codes of conducts may increase the

1 capacity of firms to react to unexpected crisis and negative publicity.
2 Codes are thereby seen as a strategy to reduce reputational risks in the
3 marketplace (Conroy 2001; O'Rourke 2003).

4 That companies' awareness of reputation and crisis management
5 increased and was dealt with adhering to codes of conduct was largely
6 attributed to the pressure by public campaigns against big firms. The
7 consumer campaign against Nike in the mid-1990s triggered a wave of
8 similar initiatives. With regard to environmental policies, which also
9 became part of the codes of conduct, the Brent Spar experience by the oil
10 company Shell showed firms the potentially damaging effects of bad crisis
11 management and the importance of reputation in the global economy.

12 Moreover, the market for socially fair-traded and environmentally
13 sound goods, as well as the effects of consumer boycotts of consumer
14 brand goods, grew dramatically in the latter half of the 1990s. Fair trade
15 organizations set up their own international trading companies. Social and
16 environmental awareness in consumerism and public policy gained
17 momentum at the turn of the century as affluent consumers and investors
18 took the opportunity to act on social and ethical concerns. (Elliott and
19 Freeman 2003; Rodrik 1996, 59–62)

20 The proliferation of the codes of conduct within big multinational firms
21 was moreover embedded in an increasing drive of firms toward Corporate
22 Social Responsibility (CSR), a management tool that spread tremendously
23 during the 1990s. Even though CSR means many different things in differ-
24 ent contexts, the emphasis on responsibility and on the vital relationship
25 between business and the community has changed the language of busi-
26 ness behavior. CSR has not only become an industry in itself, with large
27 consultancy firms offering CSR advice to their clients. Most multinational
28 firms also have senior executives charged with coordinating CSR functions,
29 who have frequently been recruited from NGOs themselves.⁶

30 The general proliferation of the codes of conduct was accompanied by
31 a process of mainstreaming and standardizing. This again took place in a
32 number of ways and largely independent of each other. Guidelines and
33 general instruments for employing codes of conduct developed during
34 the mid to late 1990s. An assessment study by the OECD looked at seven
35 initiatives, which can be grouped into three categories (Gordon 2001, 3):

- 36 1. Those sponsored by international organizations, such as the OECD
37 guidelines for multinational companies and the Global Compact
38 setup by the UN. The OECD guidelines were set up in 1976 but
39 heavily revised in 2000; the Global Compact was set up in 1999.
- 40 2. Those sponsored by business itself, such as the Sullivan Principles,
41 the "Global Corporate Responsibility: Benchmarks and the Caux
42 Principles." These principles were issued by groups of senior execu-
43 tives or business leaders with a religious background and an interest
44 in corporate ethics. The Sullivan Principles first developed when
45 advising standards for U.S. companies investing in South Africa

1 under the apartheid regime. They were issued as general guidelines
2 in 1999. The Caux Principles were a set of recommendations cover-
3 ing many aspects of corporate behavior. They were issued in 1994.
4 The Benchmarks Principles were heavily revised in 1998.

- 5 3. Those sponsored by CSOs. This applies particularly to the Global
6 Reporting Initiative and Social Accountability 8000 (SA 8000). Both
7 organizations stem from North American NGOs. The Global Report-
8 ing Initiative was set up in 1999 and the SA 8000 initiative in 1998.

9 In addition, there are two more forms of mainstreaming codes of
10 conduct: the first by global union federations and the second by the
11 International Standard Organization (ISO): from the mid-1990s onward,
12 trade unions negotiated IFA that overlapped with CLS. And, in summer
13 2004, the ISO set up a working group to prepare a norm on CSR.

14 All of these initiatives aim to streamline existing practices with varying
15 degrees of monitoring. The business initiatives generally do not seek
16 endorsement by companies but rather provide benchmarks that firms or
17 investors themselves can use in order to judge the social or ethical perfor-
18 mance of firms. They also tend to be weaker on human rights, compared
19 to the NGO/public policy initiatives.⁷ (See Table 2.) 5

20 The NGO initiatives, on the other hand, put more emphasis on moni-
21 toring and certification. SA 8000 is modeled after the environmental audit-
22 ing processes that were developed through the ISO. The Global Reporting
23 initiative was founded by CERES, a coalition of NGOs, companies, con-
24 sultancies, and academics. It aims to give benchmarks for good reporting
25 practices on social and environmental activities of firms.⁸

26 The public policy initiatives by international organizations are volun-
27 tary standards for firms that nevertheless operate quite differently. The
28 Global Compact was launched by UN Secretary-General Kofi Annan, who
29 based his initiative on advice from John Ruggie.⁹ The Global Compact is a
30 voluntary initiative that deliberately refrains from monitoring firms. Firms
31 that sign with the Global Compact make a commitment to comply with the
32 10 principles the CG has established and are asked to provide evidence of
33 such compliance. The CG itself does not verify the information. The Global
34 Compact was designed not to replace civil society activities by state regu-
35 lations, such as the ILO, but rather to integrate private actors into an arena
36 that was exclusively dominated by state governments.

37 The OECD guidelines, on the other hand, are recommendations by
38 participating governments issued to the multinational companies based in
39 their countries. They were introduced in 1976 to preempt the worries of
40 developing countries vis-à-vis foreign direct investments. Previously, the
41 code did not really further the development of voluntary codes of conduct.
42 The OECD study in 1999 on codes of conduct found that only one of the
43 192 codes analyzed referred to the OECD guidelines (OECD 1999, 16).

44 The emergence of those initiatives, principles, and guidelines had the
45 effect of further establishing a soft web of standards of content and

TABLE 2
Initiatives for Setting Standards of Decent Corporate Behavior

Name	Date	Sponsor	Participating Firms
Caux Principles of Business	1994	Business	No participation expected
Global Sullivan Principles	1999	Business	No participation expected
Principles for Global Corporate Responsibility—Benchmark	Revised in 1998	Business	No participation expected
OECD guidelines	Revised in 2000	OECD	No participation expected
Global Compact	1999	UN	2,900 ^a
Social Accountability 8000	1998	NGO	1,200 ^b
GRI	1999	NGO	197 ^c
International framework agreements	Since 1996	Trade Unions	50 ^d
Corporate social responsibility norm	2004	International Standard Organization	Not yet adopted

OECD, Organisation for Economic Co-operation and Development.

^aAs of June 2007. Available online at: <http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html>

^bAs of June 2007. Available online at: <http://www.sa-intl.org/SA8000/certifiedfacilities.html>

^cAs of June 2007 there were 197 registered Organizational Stakeholders under the business category of GRI that use the GRI reporting standards. Available online at: <http://www.globalreporting.org/governance/os/OSlist.asp>.

^dAs of June 2007 (Steiert and Hellmann 2007).

procedures of codes of conduct for firms. While only 60% of codes included labor issues in their conduct (see previous discussion), the principles put labor and employment issues firmly on the agenda. The CLS, as established in the Declaration of the ILO in 1998, played an important role in what to expect of firms regarding labor rights. Only the Caux Principles for Business fail to mention the nonuse of child labor, forced labor, and the encouragement of freedom of association and collective bargaining as part of their labor standards (Gordon 2001, Annex Table). All other initiatives incorporate all items of the CLS in their guidelines. The Global Compact explicitly refers to the CLS as the reference point to 4 of the 10 principles. The concept of the soft norm of CLS thereby helped formulate a clear expectation of what labor standards should be. It is important to note that some of the guidelines go beyond the CLS. In particular, the question of fair wages is not only prominently raised by the SA 8000, but also referred to in the Caux Principles. However, the Global Compact, which has so far emerged as the dominant initiative on codes of conduct with almost 2,500 firms participating, does not mention the issue of fair wages.

1 Not only had the new approach toward CLS fed into the streamlining
2 process of codes of conduct. The major revision of the OECD guidelines of
3 multinational corporate behavior expanded the scope of the firm's corpo-
4 rate responsibility to all global operations of the firm based in the OECD,
5 including its subsidiaries. It also encourages firms to apply the guidelines
6 to their network of suppliers. This can be seen in direct reaction to con-
7 sumer campaigns, in particular, in the apparel industry. Codes of conduct
8 in these industries have traditionally suffered from the complex web of
9 subsidiaries and suppliers, where responsibility for corporate behavior is
10 diffuse and not transparent (Fichter and Sydow 2002). A major issue in
11 these campaigns is to hold global brand name firms accountable for the
12 actions of their suppliers. The OECD guidelines have thereby recognized
13 this need and included it in its newly revised version.¹⁰

14 The most comprehensive forms of establishing labor standards are the
15 IFA that are negotiated by international trade union bodies (Rusgard 2004; 6
16 Taylor 2004; Wills 2002). The trade unions themselves do not regard those
17 agreements as codes of conduct because they are negotiated rather than
18 unilaterally set (International Federation of Free Trade Unions [ICFTU]
19 2004). Moreover, with regard to the provisions on monitoring and trade
20 union consultation, the IFA go far beyond the average code of conduct.
21 They are typically negotiated within European firms in which labor rights
22 are already strongly entrenched.

23 However, the types of substantial rights these framework agreements
24 provide are similar to those of the codes of conduct. Out of the 34 IFA, 27
25 make reference to CLS (Bourque 2005). They are modeled on the ICFTU/
26 ITS Code of Labour Practices.

27 The most recent form of streamlining CLS takes place in the framework
28 of the ISO. A working group was set up in 2003 to explore the potential
29 to set a quality standard for companies on social responsibility (Tamm
30 Hallström 2006).

31 The second element of the new global labor governance regime there-
32 fore consisted of the emergence of streamlining initiatives for privately set
33 up codes of conduct. This process of streamlining was greatly enhanced by
34 the strategy of the UN to give these initiatives a new platform in the form
35 of the global compact.
36

37 **Combining the Building Blocks**

38 The emergence of a new global labor governance regime is based on a
39 number of building blocks that emerged from different actors whose
40 actions reinforced one another. The various threads leading to the new
41 regime were:

- 42
43 1. The attempt by governments to overcome the standoff between
44 industrializing and industrialized countries in the world trade
45 regime and within the ILO by replacing social clauses in the WTO
46 with commitment by firms;

- 1 2. The increasing pressure on global firms by CSOs to adopt responsi-
2 bility for their supplier network in countries with weak labor stan-
3 dards, thereby increasing interest of leading global firms within the
4 business community to share the burden of higher labor standards
5 among all global firms.
- 6 3. The mainstreaming process utilizing various codes of conduct
7 initiatives that are based on public policy, business itself, CSOs, trade
8 unions, and, recently, standard setting organizations.
- 9 4. The urge of the UN and their agencies to redefine their role and
10 assert new momentum in regulating the world economy.
- 11 5. The attempts by global unions to use the positive attitude and vul-
12 nerable position by business and the UN toward CLS to negotiate
13 global agreements.

14
15 The most important shared focal point of all these developments was
16 the acceptance of Core Labour Rights as defined by the ILO Declaration in
17 1998. It has provided a clear normative orientation within these processes
18 toward a shared understanding of what constitutes decent corporate
19 behavior with regard to global labor relations. The idea of CLS was later
20 taken up and widened to include environmental standards by the Global
21 Compact. In the words of Georg Kell, the head of the Global Compact
22 Office: "While the Global Compact cannot solve all the deficiency of global
23 capitalism, it can make a significant contribution to by laying a foundation
24 to shared values and harnessing the skills and resources of the private
25 sector" (Kell and Levin 2003, 152).

26 The analysis shows that institution-building processes are driven pri-
27 marily by the UN, in particular the Global Compact, by business, and by
28 CSOs. Traditional governmental labor standard organizations, such as the
29 ILO and the OECD, have been adjusting to the process rather than driving
30 it. Trade unions have jumped on the bandwagon by negotiating frame-
31 work agreements modeled on codes of conduct. These processes coined a
32 code for corporate behavior that is partly developed by business, partly
33 institutionalized by international agencies and networks of NGOs and
34 public policy. The result is a normative orientation toward corporate
35 responsibility of all actors, public and private, that frame the policymak-
36 ing agenda toward a decentralized private regulatory regime.

37 38 **Backing up Decentralized Private Governance Institutions**

39 Over the last 20 years, the debate of labor standards moved from regula-
40 tion by ILO convention to codes of conducts, from governments to mul-
41 tational firms, from centralized approaches to decentralized settings.
42 The emerging pattern of decentralized private governance institutions
43 suffers from proper implementation and monitoring procedures because

1 the voluntary mechanism only works if firms are not deterred from par-
2 ticipation by imposing too many obligations and commitment upon them.
3 Moreover, they introduce a two-tier regime of industrial citizenship in
4 which the distinction between the first and the second tier is defined by
5 the boundary of the firm.

6 Voluntarism is currently seen as a key instrument to engage business in
7 issues of sustainability and decent corporate behavior. In March 2006, the
8 EU commission launched a communication confirming its voluntarist
9 approach toward CSR. Similarly, the Global Compact has long shied away
10 from monitoring the implementation of its principles in firms that volun-
11 tary sign up for the compact.

12 Voluntarist initiatives rely on the firms' self-interests to improve corpo-
13 rate behavior for business reasons (the "business case"). Firms have a
14 number of reasons to improve the quality of working conditions of their
15 own subsidiaries and suppliers, if this improves the quality of manage-
16 ment and their products and minimizes risks. However, as with other
17 business decisions, decent corporate behavior becomes one item among
18 many within a larger equation. In a cost-benefit analysis, a firm might
19 come to the conclusion that implementing a code of conduct either makes
20 business sense or not.

21 Moreover, demands on transparency and reporting obligations by vol-
22 untary regulatory agencies will also impose costs. Multi-stakeholder pro-
23 cesses, such as the Global Compact and the Global Reporting Initiative,
24 aim to identify what level of obligation can be demanded from firms
25 without deterring participation. This creates a dilemma between high- and
26 low-quality regulation. Regulatory agencies have the choice to either keep
27 the threshold low in order to attract as many multinational enterprises as
28 possible to enter their schemes or to maintain relatively high standards in
29 order to protect their reputation within the multi-stakeholder community.

30 The primary stakeholders within these regulatory agencies are those
31 firms which have already accepted and implemented labor standard
32 regimes along their own value chain. Usually, these are firms that are
33 particularly vulnerable to public pressure and/or consumer campaigns. As
34 in national collective bargaining systems, firms seek the protection from
35 collective standards in order to fend off industrial action or other forms of
36 protest by either NGOs or trade unions. These firms are, however, unlikely
37 to push for lowering standards for the sake of luring other firms into the
38 scheme because this will not protect them from public criticism. Moreover,
39 these firms have an interest in sharing their costs with their competitors.

40 Private self-regulation is therefore likely to become more sophisticated in
41 dealing with problems of monitoring, reporting, and implementing in the
42 interest of those firms that are in the media spotlight and campaign groups
43 at the expense of broadening its membership base. As they are at the center
44 of regulatory agencies, private regulation is less likely to level downward.

45 However, even if voluntarism does not lead to a downward pressure
46 on standards, the effects of private regulation remains patchy as long as

1 not all firms participate in these activities. Currently, the uptake of firms in
2 the Global Compact is around 5% of all multinational firms (Benner and
3 Witte 2006). As a consequence, workers in the same country might enjoy
4 different rights depending on which firms employ them. Firms that are
5 actively engaged in the certification of its value chain will create better
6 working and health and safety conditions than those who shy away from
7 certification. In the absence of legally regulated minimum standards, some
8 firms might be tempted to continue the lack of protection and advantage-
9 taking of cheap labor and no regulation (Vogel 2005). This might particu-
10 larly be the case if the multinational firm itself is headquartered in a
11 country with weak labor standards, where regime competition will occur
12 between firm-based regimes of high- and low-quality management of the
13 value chain.

14 Whether firm-based regime competition will lead to upward or down-
15 ward pressure on the management of the value chain will ultimately
16 depend on the self-organization of those firms which are “trading up”
17 (Vogel 1995). These firms will attempt to deflect criticism of their own
18 behavior by pointing to other firms, in particular competitors who are not
19 yet part of the regulatory mechanisms. Peer pressure among firms in the
20 same sector and product market can lead to an upward pressure of regu-
21 lation in order to level out competition. The more firms are drawn into the
22 mode of voluntary regulation, the more easily defectors can be targeted by
23 NGOs and pressure groups.

24 As globally acting firms—vulnerable to consumer campaigns and CSO
25 pressure—experience increasing costs of corporate responsibility, they
26 might start lobbying for global regulation on these issues. For example,
27 the responses of firms to the green book by the EU Commission on CSR
28 shows that their attitudes on CSR regulations vary, with consumer brand
29 names such as Adidas and Levi Strauss having a more favorable approach
30 toward regulation than others.¹¹

31 For this, it is crucial that high-standard private firms organize in indus-
32 try associations at the global level. Political pressure and lobbying toward
33 a public regulation of labor standards will not be achieved without indus-
34 trial associations that have a minimum level of coherence and organiza-
35 tional structures and that are primarily based upon big firms that have
36 already achieved a high level of sophistication of quality management. In
37 this regard, private regulatory agencies play an important role. Private
38 self-regulatory regimes have as much as a standard-setting function as
39 they provide a forum for private firms to interact and form political com-
40 munities and are therefore the potential breeding ground for global indus-
41 try associations.

42 Conclusions

43
44 One can derive several implications from the emergence of a global
45 labor standard regime. First, national governments are not necessarily

1 veto players in the emergence of the new regime. The lack of govern-
2 mental commitment in implementing labor standards in some countries
3 does not rule out a convergence of globally set norms on labor stan-
4 dards. The distributional struggle between poor and rich countries and
5 their relative competitive interests can be superseded by a new constel-
6 lation of actors in which an alliance of high-standard firms, international
7 institutions, and CSOs can set and reinforce minimum standards of eco-
8 nomic activities.

9 Second, the lack of coordination and the existence of collective action
10 problems related to various decentralized activities have not prevented
11 the convergence on a coherent set of norms. It is an open question whether
12 a similar set of norms would have also developed without the ILO's
13 contribution to define CLS and the decision by the Global Compact to use
14 the CLS as part of their principles. It seems clear, however, that the
15 convergence on one set of norms has helped to streamline expectations on
16 all sides.

17 Third, as with compliance issues in the debate on international institu-
18 tions, the strongest incentives for monitoring compliance lie with the
19 victims of noncompliance. These can not only be marginalized groups of
20 workers, NGOs, but also business itself. Developing monitoring instru-
21 ments, with which costs can be shared between these actors—NGOs and
22 business—is likely to strengthen the monitoring effects.

23 Many aspects of the future development of the global regime of labor
24 standards have not yet been determined. The effectiveness of voluntary
25 enforcement mechanisms based on businesses' behavior depends on the
26 interests of competing firms. Whether the factors that prompt a firm to
27 become a leader in social standards are the same that lead them to partici-
28 pate in voluntary regulatory agencies or monitor the noncompliance of
29 other firms, remains to be seen. Although a virtuous circle of high-
30 standard firms pushing for high labor standards and thereby breeding
31 more high-standard firms may exist, it is by no means a quid pro quo.
32 Other forces may be at work, weakening high-standard firms' interest in
33 pushing for a global labor regime or undermining the enforceability of the
34 regime.

35 The limits and meaning of private actors' involvement in private regu-
36 latory agencies are also unclear. The scale and scope of firms' commitment
37 toward maintaining and monitoring labor standards is likely to depend on
38 sectors, size, the value chain, and leadership. Some firms, sectors, or
39 regions might remain outside the regulatory system. Weak enforcement
40 could provide incentives for some firms and sectors to compete by under-
41 cutting labor standards that might prevail elsewhere. Firms from weakly
42 regulated countries might look for niches in the regulatory system to
43 exploit competitive advantages. Rather than raising standards overall, a
44 segmentation of markets and firms could lead to an increasing gap of high
45 and low standards in specific sectors. How the regulatory regime can be
46 expanded to those areas remains unclear.

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

13 In sum, the evolution of a global labor governance regime is clearly
14 taking place. The development of a cognitive frame of (un)acceptable
15 corporate behavior is an essential step toward a “harder” institutional
16 setting. Given the experiences of the evolution of labor standards in the
17 context of national political economies, a push for hard norms should not
18 be ruled out. Further research should attempt to precisely explain the
19 nature of the mechanisms by which the global regime of labor standards
20 is being created, as well as the process by which hard laws could be
21 developed.

Notes

- 24 1. This article was first presented at the founding seminar of the Center of
25 International Studies at the Jacobs University in Bremen. It has benefited
26 from discussions with my colleagues and from the comments by the anony-
27 mous reviewers. I am grateful for superb research assistance by Marina
28 Krestinina and Moira Nelson.
- 29 2. For the very broad debate on the effects of linking trade and labor standards,
30 see Elliott and Freeman (2003), Brown (2000), and Rodrik (1996).
- 31 3. ILO Declaration on Fundamental Principles and Rights at Work, 86th
32 Session, Geneva, June 1998.
- 33 4. Frances Williams (1993): Soft bark and not much of a bite—ILO. *Financial*
34 *Times*, June 2.
- 35 5. Frances Williams (1994): World Trade News—US waves flag for workers
36 rights in WTO. *Financial Times*, March 30.
- 37 6. The Economist 2005: The good company. A survey of corporate social
38 responsibility. January 22: 3.
- 39 7. See Gordon (2001), Annex Table.
- 40 8. CERES, the largest (by its own description) coalition of investors, environ-
41 mental and public interest organizations, was set up in 1989 to provide
42 socially aware investors opportunities for ethical investment.
- 43 9. For the evolution of the Global Compact, see Kell and Levin (2003).
- 44 10. Code of conduct evaluations have identified as a major problem the fact that
45 supplier and subcontractor networks are too large to monitor and that not
46 all nodes and lines of the sourcing structure can be considered part of a
47 “network” (Fichter and Sydow 2002).
- 48 11. For responses by firms to the green paper see: [http://europa.eu.int/comm/](http://europa.eu.int/comm/employment_social/soc-dial/csr/csr_responses.htm)
49 [employment_social/soc-dial/csr/csr_responses.htm](http://europa.eu.int/comm/employment_social/soc-dial/csr/csr_responses.htm).

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