The Regulatory Challenge of ‘Financialization’ and the Multinational Corporation: A review of ILO Standards, Social Clauses and Voluntary Corporate Initiatives

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Abstract

The paper examines some of implications of the current global economic crisis, the growth of global capital and the multinational corporation (MNC) for workers and, the existing regulatory means by which workers’ interests may be protected. The paper focuses first on the development of the ILO’s labour standards and shift to soft law in the late 1990s, second the efficacy of including labour standards in the social clauses of various forms of trade agreements and thirdly, the development of voluntary private initiatives by MNCs themselves. The findings suggest firstly, that the ILO’s shift to soft law is negative step for workers and although in part a pragmatic response to broader changes in the global economy, also reflects the ILO’s own weakness. Secondly, the increasing attention paid to the soft law of private voluntary codes and the inclusion of social clauses in trade agreements can be seen as symptomatic of this weakened ILO position. Overall the paper concludes that effective regulation is largely left to national law at a time when such law is shown to be increasingly inadequate in protecting workers’ interests.

Introduction

The economic crisis has come at a time of increasingly complex capital movements and unprecedented FDI growth, with multinational corporations (MNCs) growing in numbers and size. In the space of just 30 years the numbers of MNCs have increased nearly eightfold from 11,000 in 1976 to 79,000 in 2007 (UNCTAD, 2008) and are now employing some 82 million people. In the same period we have seen record increases in foreign direct investment (FDI); inward FDI stocks increased almost threefold in less than three decades; from $693 billion in 1980, to an unprecedented $15,210 billion in 2007 (UNCTAD, 2008). Some of biggest MNCs are so large that they control more assets than many nation states. Ten years ago Gorringe (1999) estimated that the 10 largest MNCs controlled assets three times the total income of the world’s poorest 38 countries; which represented the populations of over one billion people. UNCTAD’s top non-financial 10 MNCs alone are estimated to control $1.7 trillion in foreign assets and in 2006 the top 500 MNCs controlled 52 per cent of gross world product (Capdevilla, 2007).

The activities of MNCs continue to present the labour movement with considerable problems, not only because they have the power to move investment from one country to another, but also because they appear to have the ability and inclination to behave in qualitatively different ways to national firms, having a greater degree of power vis-à-vis labour as well as the ability to influence national governments (Ramsay, 1999). In addition recent decades have seen the development and growth of hedge funds; private equity companies and real estate investment trusts. Crotty (2005) argues that these new forms of global capital have played a considerable part in a fundamental change in the incentives of top managers, influencing their decisions towards short-term stock market price movements and the increasing alignment of top managers and shareholder interests.
through the increasing use of stock options. Many of these new forms of international capital are in
effect multinational corporations, but are not recognised as such by United Nations agencies and do
not figure in their reports, despite the fact that many of the top private equity companies (for
example Blackstone, Texas Pacific and Carlyle Group) control more assets and employ more
overseas workers than some of UNCTAD’s top 100 non-financial MNCs; the hedge fund industry
alone is $1.3 trillion. What is arguably new about these trends which some have described as
‘financialization’ (Oswald, 2006) is the drive for profit through the elimination of productive
capacity and employment, leading to less job security, job losses and degradation of working
conditions through outsourcing, casualization, production transfers and plant closures. In effect non-
financial MNCs are acting more like financial market players and being rewarded for the reduction
of their payrolls in which the strategic orientation of top management has shifted or is being
pressed to shift from ‘retain and invest’ towards ‘downsize and distribute’ (Lazonick and

Even before the current economic crisis was fully realised fairly conservative commentators were
raising concerns regards these developments, the Director General of the CBI, Richard Lambert,
described the ‘new capitalism’ of massive accumulation, private equity and hedge funds as having
created (Willman, 2007): …a general sense of insecurity and unfairness. The recent revelations
regards the tax avoidance schemes of the international banking firms and other MNCs such as
Google and Tesco have only compounded such concerns and are estimated to have lost the UK
government the equivalent about one percent of UK GDP, with a third of the top 700 UK
companies paying no tax at all (Hutton, 2009; Macalister, 2009a). All in all, the view that MNCs
have become too big, too powerful and too unaccountable will not go away. Ten years ago John
Pilger (1998: 10) described MNCs: as the ‘shock troops of the imperial powers’. For others they are
the means by which exploitative practices are dispersed world-wide (Sklair, 1995); or as
pathological institutions hell-bent on power and profits (Bakan, 2005). However, some
commentators suggest that MNCs are subject to the constraints of the global competitive economy
(Gray, 1992) and are mostly interested in promoting the common good, being a benign source of
investment, technology-transfer and a means of upgrading labour forces and national infrastructures
(Dunning, 1993; UNCTAD, 2008) with ‘the new kings of capitalism’ the private equity companies,
claiming to be the means by which greater ‘efficiencies’ can be achieved (Clark, 2008).

The Continuing Problem of Labour and Human Rights Abuses

For all the claims suggesting the positive effect of MNCs, there appears to be no lack of evidence
that MNCs can be the source of some of the worst forms of labour exploitation, suggesting that the
current means for controlling such abuses are far from adequate. The day to day exploitation of
workers has almost become routine and unnoticed (Bakan, 2005; Lewis, 2009) with the current land
grabs of oil and mining companies at the expense of indigenous populations around the globe for
example receiving scant attention in the media (Vidal, 2009). Meanwhile the mundane abuses of
labour rights in the multinational global supply chain go on unabated. In the more than 5,000
Export Processing Zones (EPZs) worldwide (which employ over 40 million people) workers have
to endure low wages and poor working conditions and where freedom of association, collective
bargaining have been constrained largely through the non-enforcement of national labour laws and
70-90 percent of such workers are thought to be women (Gordon, 2000; ILO, 2004; Gunawardana,
2006). Many of the scandals that make it into the mainstream media usually involve the well known
brands, such as Coca-Cola, Rio-Tinto, McDonald’s, Nike, Nestle and Wal-Mart. Wal-Mart has
60,000 supplier factories worldwide and about 4,500 supplier factories in China. In 1999 in one of
Wal-Mart’s Chinese supplier factories, 900 workers were locked up in a walled compound, working
fourteen hour days, seven days a week, thirty days a month, for an average wage of 3 (US) cents per
hour, and were beaten, fined, and fired if they complained about it (Roberts and Bernstein, 2000). A
few years later in 2004 it was shown that Wal-Mart’s Chinese workers were still experiencing terrible working conditions, unauthorized wage deductions and forced overtime (Goodman and Pan, 2004; NLC, 2005). In 2005 the International Labour Forum confirmed many similar problems in Wal-Mart’s suppliers in Africa, China, Bangladesh, Indonesia and Nicaragua, where labour standards were routinely violated (ILRF, 2009).

The ‘fast-fashion’ industry, which is driven by discount clothes retailers and big supermarket chains such as Wal-Mart, is symptomatic of many of the problems of ‘sweatshop’ work. The industry requires fashionable clothing to be produced in very quick turnaround times and at very low prices. In 2006 and 2007 for example, Bangladeshi workers who make the clothes for MNCs Primark, Tesco and Wal-Mart/Asda were allegedly being subjected to physical and verbal abuse for not meeting production targets and forced to work 12 hour days (84 hour weeks) for as little as four pence (sterling) per hour in appalling conditions. Any worker trying to form a union was automatically dismissed. The UK ‘fast-fashion’ clothes market is estimated to be worth some £7.8 billion with about 1.5 million workers employed in the Bangladeshi garment industry (McVeigh, 2007). Despite claims that all such abuses would be investigated and stopped by the MNCs concerned, within the space of a year a report by War on Want in 2008 stated that working conditions in Bangladeshi factories producing clothes for same three MNCs (Primark, Tesco and Wal-Mart/Asda) were actually worse than in 2006. These claims were also supported by a BBC Panorama (Primark: On the Rack) investigation into Primark’s supplier companies in the same year which found the same kind of abuses in back street sweat shops and even in refugee camps (Taylor, 2008). The £8 billion clothing MNC ‘Gap’ were also accused of similar practices and the use of child labour in India in 2000 and despite launching a ‘rigorous social audit system’ in 2004, the same use of slave and child labour was found again in Gap’s Indian suppliers with children as young as ten working in appalling conditions for no pay and receiving beatings with rubber pipes if they complained or cried in 2007 (MacDougall, 2007).

Whilst the most extreme forms of labour rights abuses tend to be found in developing countries, MNCs also pose problems for workers in the developed countries. The most obvious of which is the problem of off-shoring, IBM for example, one of the most profitable companies in its sector, recently announced huge job cuts in the USA, Germany, Ireland and the UK with jobs going to Eastern Europe, China, India and South America. At the same time IBM is about to receive billions of taxpayer dollars in ‘stimulus’ money; existing Indian workers at IBM earn a tenth or less of their US counterparts (Doran, 2009). Other management tactics associated with MNCs (but not exclusively MNCs) such as whipsawing and union suppression are used to keep labour costs low and workers quiet (Taylor and Bain, 2003; Hepple, 2005; Pulignano, 2006; Royle, 2005a; 2009; Wedderburn, 2007; McDougall, 2009). In the developed countries there are increasing concerns about long hours disrupting work life balance, increasing levels of labour turnover, absenteeism, stress, burnout, injuries and heart disease (Hobfoll, 1998; Reich, 2000). Around half of the employees in the EU report that they now have to work at very high speed to tight deadlines, that their work is monotonous and repetitive, with no possibility of task rotation and more than a third have no influence on task order (Docherty et al., 2002). In the UK where working hours are longer than the rest of Europe, work related enquiries have increased dramatically from 140,000 per annum in 1975 to 600,000 by 2002 and over 530,000 in 2006-2007 (NACAB, 2002; 2007). US labour rights violations are also increasing, over the last 50 years the numbers of US employees who have suffered reprisals for union activity or membership have increased to over 20,000 per year. However, these figures only scrape the surface: the vast majority of cases are never reported either because of employer intimidation or because employees do not know where or who to complain to (Human Rights Watch, 2000) with the US garment and meat processing industries having particularly terrible records regards labour rights violations in general (Bakan, 2005, Compa, 2004). Other work on low paid service sectors such as fast-food suggests that MNCs not only depress
wages and abuse core labour standards on a global level, but often influence their competitors to follow suit (Royle, 2000; 2004; 2005; 2006; 2009). These kinds of cases all add to the growing concern that an increasing number of workers in developing countries are outside effective legal protection (Voss, 2002; Stone, 2006; Pollert, 2007).

However, laying the blame entirely on the MNC and mobile capital is too simplistic; governments continue to play an important part in promoting neo-liberal ideology and creating the framework in which international trade takes priority over other issues, leading some to argue that it is government that is the problem (Wolf, 2004), or at least part of the problem (Gordon, 2000; McCallum, 2006; Smith and Morton, 2006; Wedderburn, 2007). The Chinese government for example, has complained about MNCs promising to impose stricter voluntary systems of compliance and monitoring on Chinese supplier firms as a form of camouflage of protectionism which threatens the Chinese economy (as such supplier firms are the mainstay of local tax revenues) with this being interpreted by the Chinese government as being symptomatic of the West’s ‘fear’ of Chinese manufacturing dominance (Qinglian, 2007). MNCs are part of a global system in which governments largely dictate the rules of the game, they have steadily removed barriers and conditions to trade, investment and outsourcing and appear to be more concerned with trade than worker’s rights. If MNCs commit labour violations it seems that this is because there is nothing in our international trading rules to stop them doing so. This leads us to ask, what are the current mechanisms available to protect workers from human and labour rights abuses? How have such mechanisms developed and changed and how effective are they in practice? What are the implications of the current economic crisis have for such mechanisms? The paper attempts to answer these questions by drawing on a review of secondary sources to examine first, the development of labour standards and the ILO’s shift towards ‘soft’ law and ‘core’ labour standards since the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work. Thirdly, we examine various attempts to include labour standards in the social clauses of various forms of unilateral, bilateral and multilateral trade agreements. Finally, we examine the development and growth of voluntary self-regulation through private codes of conduct and other initiatives of MNCs.

The Development of the ILO and its Labour Standards

The idea of international labour standards arguably goes back to the 18th century, with the main concern being the potential disadvantage arising to any country which unilaterally improved its working conditions if others did not follow suit (Servais, 2005). However, before the ILO was created in 1919, most protections were still based on a variety of national laws. The ILO had originally proposed an International Parliament of Labour, which would have produced international statutes having the same effect as national laws once ratified. Instead, the ILO only provided for conventions and recommendations which require the approval of two-thirds of delegates at the ILO annual conference. Furthermore, conventions or recommendations do not have automatic effects, but must be submitted to member governments to consider whether to accept them or not. They only become binding on Member States, when they are ratified by the member state and when they have passed through the relevant national constitution; in the UK for example through an Act of Parliament. The unions also wanted half the delegates, but the structure provided only one union delegate, one employer delegate and two government delegates from each country. A weak form of supervision was also introduced, complaints could be made to the International Labour Office (the permanent secretariat of the ILO) any disputes could then be referred to what is now the International Court of Justice in The Hague, however, in practice this court has not been referred to since the 1930s (Hepple, 2005). In effect the ILO standards that emerged were designed for national systems of regulation, allowing for nation states to interpret, select, ratify or ignore, conducive to several variants of capitalism so that different national systems could co-exist (Standing, 2008).
In the post war years the ILO was operating in a context of rising trade unionism, standardized employment relations, direct state involvement in a wide range of economic activities and various forms of social corporatism (Cooney, 1999). It was a unique period in which organized labour and its political allies were able to emphasize the importance of collective and substantive rights not individual and procedural rights. However, by the 1970s the ILO position was gradually being undermined by a variety of factors. The first of these was the increasingly difficult relationship with successive US administrations. The ILO was in its origins a fundamentally European institution standing for a model of national welfare capitalism which increasingly did not match the USA’s world view and which saw ILO conventions as of little relevance to the USA (Standing, 2008). As early as the 1950s the increasing number of ILO conventions being established provoked major US business-funded campaigns which portrayed the ILO as a threat to free enterprise and an attempt to impose socialism on the USA (McCormick, 1952: 44, cited in Alston, 2004: 468):

[The ILO is]...a gushing fountain of statist social and economic schemes, which aimed at higher living standards through more and more government decree

The Eisenhower Presidency of 1953 announced that it would terminate all US participation in the drafting of international human rights covenants and would call on all other states to do the same and as a compensation and diversion it proposed the introduction of a wholly voluntary reporting process based on what were then the soft standards contained in the Universal Declaration of Human Rights. This exercise went on for 30 years before eventually being abandoned, largely because nothing had been achieved and, in the period from 1953 to 1988 the US refused to ratify any ILO convention (Alston, 2004; Hepple, 2005). In 1970 the US government stopped its contributions to the ILO and then suspended its membership in 1975, giving the two-year mandatory notice of its intention to withdraw. This created immediate difficulties for the ILO as the USA contributed a quarter of the ILO’s budget and had also failed to pay a huge backlog of financial dues (Standing, 2008). The US’s withdrawal from the ILO probably suited its foreign policy stance regards Israel and the Soviet bloc and its shift towards neo-liberalism and supply side economics in that period. In addition relations between the ILO and the USA became more difficult over the human rights abuses in Chile when the US was supporting the Pinochet regime. Although the ILO survived the USA’s five year absence, this action arguably traumatized the ILO; from which it has never fully recovered. The USA rejoined the ILO in 1980 but only on the basis that US nationals would take a number of senior positions (Standing, 2008).

The second factor was de-colonisation, which gradually increased the number of member states in the ILO from a group of 52 mainly western countries in 1946 to 180 members by 2007; new members from the developing countries were demanding better representation of their interests and were also pressing for more flexible standard setting within the ILO (Hepple, 2005). Thirdly, after the election of right leaning governments of Thatcher in the UK and Reagan in the US the early 1980s the whole emphasis of the World Bank and the IMF changed to one based on market ideology; with these institutions becoming the missionaries of neo-liberalism. When the IMF was established in 1944 it was originally charged with preventing another global depression, (perhaps rather ironically in the current climate), based on the recognition that free markets often fail and that collective action was needed at the global level. However, the USA (the only country to have a veto policy) always had the biggest influence on IMF policy and particularly from the 1980s through the ‘Washington Consensus’; that is a consensus between the IMF, the World Bank and the US Treasury (Hepple, 2005; Standing, 2008). While the previous emphasis of the IMF had focused on why markets failed and what governments could do to reduce poverty, the new emphasis saw governments as the problem and free markets as the solution, commercial interests and values now predominated, while concern for the environment, democracy, human rights and social justice are
often ignored, undermined or seen as obstacles to be overcome (Stiglitz, 2002). At the height of this shift in ideology, the World Trade Organisation was established in 1995, taking over from the GATT (General Agreements on Tariffs and Trade) with the remit of ensuring that trade agreements are complied with. A fourth and important factor which boosted the neo-liberal agenda and undermined the attempt to develop a comprehensive code to regulate labour issues in the ILO was the fall of the Soviet bloc. Alston (2004) suggests that the reformist nature of international labour standards had always been an ally against totalitarian regimes, but now that communism appeared to be economically unviable, it removed the pressure that had long prompted Western politicians to pay attention to the labour rights agenda, arguably unleashing a degree of latent hostility. As Alston (2004: 463) puts it:

*Once [the alliance against totalitarian regimes] had run its course, employer groups began to identify with liberalizing free market governments as well as those of countries in transition states [of the old communist bloc], many of which had little time for the protection of labour rights.*

In Eastern Europe the approach of the IMF was to adopt the strategy of ‘shock therapy’, a devastating adjustment to neo-liberalism in these transition states which caused mass impoverishment an increase in child mortality rates and life expectancy (Pollert, 1999; Standing, 2008). Some Eastern Europe governments which sought to maintain labour rights were advised that the recognition of labour rights would (Sunstein, 1993: 35): …*pose especially severe risks*… as they could work against …*current efforts to diminish the sense of entitlement to state protection and to encourage individual initiative*. This approach was also reinforced by deregulation, privatisation and the rolling back of the state, weakening unions and the growing fear of jobs being offshored and outsourced (Arthurs, 2002; Stiglitz, 2002).

**Neo-Liberalism and Crisis at the ILO: the shift to promotional approaches**

The labour market flexibility debate of the 1980s arguably marked the start of a decline in the influence of the ILO and its ability to set international labour standards. In the 1980s when the European social model were coming under attack from neo-liberals, arguing that Europe was losing its competitiveness due to its protective regulations, the ILO did not respond allowing the IMF, the World Bank and OECD to dominate the debate. When the ILO finally responded in the 1990s, it first made concessions and contradicted its own long held positions (for example the Private Employment Agency Convention in 1997, which for the first time accepted the legitimacy of private employment exchanges), secondly, by trying to introduce new conventions that confronted some aspects of neo-liberalism. However, this latter approach failed. The Homework Convention of 1996 has only been ratified by four European countries and the Convention on Contract Labour was stopped by the employer lobby and symbolically marked the end of employment regulation at the ILO shifting its role more towards a development agency rather than standard setter (Standing, 2008)

By the 1990s the whole emphasis in international labour standards had shifted towards individual rights and promotional ‘soft’ law approaches (Alston, 2004). The last ILO convention to specifically promote collective bargaining for example, was adopted in 1981, of the 31 new conventions adopted between 1981 and 2003, ten related to health and social security, nine to individual employment protection, nine to seafarers and the rest were on labour statistics, inspectors, employment promotion and private employment agencies (already mentioned), even these recent and arguably less contentious conventions were hotly contested and only passed by small voting margins (Hepple, 2005).
Symptomatic of the broader shift in global economic climate towards neo-liberalism and the increasing difficulties faced by the ILO, was the example of British conservative government policy from 1979 until 1997. First under Margaret Thatcher and then John Major the UK government refused to ratify 25 new ILO conventions and denounced a number of ILO conventions which earlier UK governments had ratified. The UK was also on the receiving end of a number of complaints during this period, relating to core labour standards violations including freedom of association and the right to organize. The UK government was for example refused to allow civil servants at GCHQ to remain in a union and ignored the ILO’s ruling that this violated convention 87 (freedom of association) which the UK had already ratified, but no effective sanctions could be brought to bear against them. Furthermore, the European Community also ignored the ILO’s conclusions, stating that it did not breach the European Convention for the protection of Human Rights and Fundamental Freedoms, indeed the European Court of Human Rights has also ignored the ILO in deciding that workers can only have the right not to associate (Higgins, 2002; Standing, 2008). The election of UK labour governments since 1997 have not prompted dramatic change in this area, although GCHQ employees have now been allowed to organise, only 5 new ILO conventions have been ratified and there has been no change in the strike laws instigated by the Thatcher regime, which remain inconsistent with ILO conventions the UK has ratified (Hepple, 2005; Standing, 2008).

There are currently 188 ILO conventions, but production of conventions (only eight have been produced since 2000) and their ratification has slowed considerably. Three fifths of ILO Member States have ratified less than one quarter of ILO conventions and more than one fifth have ratified less than 20 conventions; the rate at which new conventions have been agreed has also declined steadily since WWII. In addition many countries that do ratify conventions do not implement or enforce them. Hepple (2005) argues that this trend can be partly explained by ‘bogus’ or ‘empty’ ratification. As governments have become required to ratify ILO conventions in order to get assistance from the World Bank and the IMF the pressure has come to ratify conventions. However, this does not mean that such conventions are applied in practice; many states have model labour codes, but do not enforce them, either due to lack of resources, incompetence or corruption. Hepple (2005) suggests that many governments do not ratify codes due to the strongly held view that ILO standards are too remote from the reality of their stage of economic and social development. Ratification may also depend on whether a peer country has already done so. The result is huge disparity between developed countries complying with a relatively high number of ratifications and a large number of developing countries with few ratifications and a high level of non-compliance.

Countries which feature frequently in reports regarding the violation of ratified labour standards are from Latin America and the Indian sub-continent. Among developed nations the UK is most frequently referred to. Chile in the 1970s, Nicaragua in the 1980s, Nigeria and Burma in the 1990s have all been singled out for particular concern. In 1996 a complaint was made against Burma for violation of Convention 29 on forced labour. However, major violations continue with these procedures having little affect largely because the ILO’s supervisory system relies on tripartism and reliance upon voluntary action by Member States. In addition the social dialogue model upon which the ILO procedures are based simply does not work if independent trade union or employers organizations at national level are weak or non-existent. This is exacerbated in developed countries by the decline in trade union strength in some sectors and where the main spokesperson for the workers are NGOs, which are not classed as representative organizations at the ILO even though the ILO draws some of its technical experts from NGOs.

The increasing internationalization of trade, the ILO’s inability to produce conventions that would challenge neo-liberal doctrine, the concessions made to neo-liberalism, the shift away from collective rights, the unwillingness or refusal of governments to implement and ratify conventions
and the sideling of the ILO by other international bodies by the mid-1990s put the ILO in an increasingly difficult position. This climate provided an opportunity for employer groups and countries favouring a more deregulated approach (such as the USA and UK) to question the ILO’s relevance in the new globalized economy, suggesting that the large number of conventions and recommendations that already existed was part of the problem (Alston, 2004).

The 1998 Declaration on Fundamental Principles and Rights at Work

The response by the ILO was a major overhaul of its approach to labour standards. It would now prioritize a ‘core’ of conventions over others and adopt a different approach to their implementations, in an initiative that looked more like the kind of social clause that protagonists had long wanted to see included in world trade agreements. In 1996 at the first ministerial meeting of the WTO in Singapore, the WTO made it clear that it would not accept any linkage between labour standards and trade, this arguably also gave further impetus for the ILO initiative that emerged (Voss, 2002). The new initiative was based on four core labour standards that covered eight core labour conventions in what became the 1998 Declaration on Fundamental Principles and Rights at Work. The eight core conventions are freedom of association (C.87) and collective bargaining (C.98), forced labour (C.29 and C.105), non-discrimination (C.100 and C.111), minimum employment age (C.138) and elimination of child labour (C.182). However, these conventions were now to be subsumed under four ‘principles’ and ‘rights’: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced and compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation. The principles would be pursued not by sanctions, but through technical assistance and development policies in addition they apply to all ILO members whether they have ratified the conventions or not (Hepple, 2005).

The focus on these eight particular conventions arguably came out of an OECD report in 1994 which suggested that improved enforcement of non-discrimination standards, the elimination of child and forced labour might raise economic efficiency and that the concerns of developing countries that freedom of association and the right to collective bargaining would negatively affect their performance was unfounded. However, the thinking behind this approach reflected the difficult situation that ILO found itself in by the 1990s. Before the Declaration was drafted for example, various employer groupings at the ILO made it clear that they wanted a focus on principles not rights, no new legal obligations, no new reporting obligations, no obligations on countries arising from existing conventions, no legal or technical matters included, no new complaints based bodies and no questions of links with trade (Alston, 2004).

A number of commentators, often those associated with the ILO itself, have argued that the Declaration is a positive step forward (Langille, 2005; Maupain, 2005) providing the ILO with a new tool for promoting the ratification and enforcement of core conventions through its follow-up reporting mechanism (Voss, 2002). The US administration and employer groups were also strong supporters of the Declaration. Others, however, have been much less positive about these developments. First, it has been argued that the Declaration has weakened the ILO by making (even the limited number of core) labour standards subject to monitoring by strictly promotional means and moving away from the idea of sanctions and, loosening the links to the ILO’s already weak supervisory mechanisms (Alston, 2004). Secondly, the hierarchical nature of adopting the eight core conventions could mean that other conventions become sidelined and neglected (Alston, 2004; DiMatteo et al., 2003). Thirdly, that the more decentralized system for implementation significantly reduces governmental responsibilities and encourages others (such as consumers and MNCs) to take the lead in enforcing standards through private voluntary corporate codes and corporate social responsibility. The United Nation’s Global Compact which followed in 1999 also typifies this
voluntaristic approach, it is supposed to bring together MNCs with UN agencies to support universal environmental and social principles (by March 2006, 2,300 MNCs had signed up) and has been criticised for allowing big corporations to ‘blue wash’ themselves with the UN flag without having to make any serious commitment to abide by such principles (TRAC, 2000; Stevis and Boswell, 2006). The Global Compact has recently been described as a ‘happy-go-luck club’ which is not delivering for workers, but allows companies to put the UN logo on their letterheads in what is a public relations victory for MNCs (Capdevila, 2007). Fourth, the more flexible form of the Declaration could divorce existing conventions from their legal context, soft law is now replacing binding law and was removing the transformative nature of international labour standards; undermining the existing system (Alston and Heenan, 2004). Finally, it gives the impression that the ILO is responding appropriately to the rapidly evolving international trade regime which although good for the ILO’s image raises serious questions about its effectiveness and focusing more on processes rather than results (Alston, 2004; Alston and Heenan, 2004).

Standing (2008) also suggests that it is doubtful whether the 1998 Declaration has any positive effect, but that it corresponded with the neo-liberal viewpoint strongly advocated by the Washington Consensus and the other global institutions, glossing over a crisis over the role of labour standards and trade and development and taking the focus away from the possibility of including social clauses in the WTO. It also gave the ILO a more legitimate role in global forums and brought millions of dollars into the ILO from the US administration. Alston (2004) also argues that the US government was very influential in shifting the ILO’s orientation towards promotional principles rather than legally binding conventions, with its dominance in international trade policy and the Washington Consensus (over which US MNCs in particular were able to exert considerable influence) as well as the US’s important financial role in supporting the ILO’s activities. The US government made it clear that ILO would need to make itself ‘relevant’ in the modern economy if it was to enjoy US support and the Chair of the Declaration Drafting Committee was a US employer’s delegate. When Juan Somavia became Director General of the ILO in 1998, one of his first acts was to hold a meeting in the USA with a leading advocate of neo-liberalism and the shock therapy that had so badly affected Russia and Eastern Europe; the anti-thesis of what the ILO was supposed to stand for.

The USA’s position regards ILO standards had always remained problematic and by the time of the 1998 Declaration, the US had ratified only one of the eight core ILO conventions and by 2004 had only ratified two (No.105 forced labour and No.182 on the worst forms of child labour). Despite the US’s claims to be the champion of internationally recognized worker’s rights, the US still not ratified the core conventions dealing with freedom of association, the right to collective bargaining, non-discrimination and child labour in general. Of the 177 member states of the ILO, the USA has the fifth worst record in ratification of fundamental conventions equalling Burma and Oman and only beaten to bottom place by the Republic of Timor-Leste, Vanuatu, the Solomon Isles and the Lao Democratic Republic (Alston, 2004; Blanpain et al., 2007). A briefing paper presented by the US council for international business (which coordinates the US employer delegation at the ILO), notes that convention no. 111 (non-discrimination and first adopted by the ILO in 1958) has been under review in the US since the 1990s, but that there is little likelihood of ratification in the near future and, that it is very unlikely that the US will ratify the other five core conventions as they are seen to directly conflict with US labour law (USCIB, 2007).

Alston (2004; 2005) argues that the US’s interpretation of the 1998 Declaration seems to suggest that Member states no longer have to ratify conventions to be in compliance with the principles of the Declaration, suggesting that the discipline of the conventions has now been escaped. It is now up to governments to decide what the ILO standards mean and what policies should be put in place. There is therefore no need for further political debate in the US or elsewhere, with the old
arguments now being transcended. Alston (2004) also argues that the US also has had a major self interest in moving the focus of ILO rights away from convention based approach towards a more malleable one and suggests that the new focus on ‘principles’ has probably come into use because the term was adopted in the NAFTA labour side agreement the North American Agreement of Labour Cooperation (NAALC). In establishing the NAALC the US needed a neutral term which had no real significance. NAALC specifically avoided references to international standards, so that there would be no implication that the national laws of the US, Mexico and Canada would have to be changed. The core standards represented a pragmatic selection of what was acceptable to the US government at the time and those seeking to retain something from what was seen as an unsustainably broad set of labour rights. There is general agreement amongst critics of the Declaration that the core list should (but does not) include the right to a safe and healthy workplace, some limits on working hours, reasonable rest periods, protection against abusive treatment in the workplace (Alston, 2004; Hepple, 2005) with others suggesting that it should also include the right to fair or a living wage and matters such as maternity, pensions and holidays (Compa, 2000).

Standing (2008) suggests that the 1998 Declaration represent a major shift in emphasis for the ILO which represented an ideological shift to a non-confrontational neo-liberal agenda. In 1999 for example, the ILO closed its industrial relations department and replaced it with the ‘social dialogue’ department, moving away from traditional collective bargaining and the ideas of equalizing bargaining power and promoting collective social rights, to a focus on merely encouraging dialogue. The new director of this department (who had no previous experience of the ILO) came from the US White House. The ILO also now formally embraced the soft labour law of private codes, corporate social responsibility and social labelling. Partly in recognition of the fact that traditional employment patterns no longer represented the typical work of many workers, the new Director General of the ILO Juan Somavia also introduced a new platform for action called Decent Work in 1999. It was supposed to shift the ILO’s attention towards people on the periphery of formal systems of employment, the unwaged and those in the informal economy. On the surface at least Decent Work was seen as an important shift in attempts to create more effective international labour standards for marginalized workers in the context of the voluntary private codes drawn up by MNCs and attempt to make international standards more coherent and integrated. (Voss, 2002; Hepple, 2005). Decent work was also supposed to broaden representation at the ILO to include NGOs, but both employer and union groups have opposed this.

The central dimensions in the decent work platform are vague, said to be culturally and regionally specific (Vosko, 2000; 2002). Alston (2004) argues that Decent Work is a means of covering some of the issues not covered in the core labour standards of the 1998 Declaration, but in a non-legal framework. It also appears to be an acceptance that rights have been downgraded to ‘goals’, with an apparent reluctance to cite the conventions when promoting the Declaration principles because the relationship between them is fudged. Standing (2008) argues in similar vein that Decent Work is vague and meaningless unless it is measurable and that the ILO has discouraged attempts to ‘measure’ what decent work really means in practice. It can be seen as an attempt to reassert the ILO’s relevance and connect with other debates at the United Nations on poverty and globalization, but there is no effort to evaluate labour and social policies (such as the global drift towards workfare) by Decent Work criteria and in this regard has now dropped its traditional reference to the requirement that employment should be freely chosen. Finally, Decent Work is portrayed as non-ideological with neo-liberalism as the only game in town, Standing (2008) suggests that the ILO have been adopting a less confrontational role that sidelines equality while espousing the vagueness of ‘decency’, ‘fairness’ and ‘social dialogue’. This kind of approach is also evident in the ILO’s recent adopted of the Declaration on Social Justice for a Fair Globalization, this Declaration is to be implemented through the Decent Work Agenda and its four strategic objectives (www.ilo.org), it seems unlikely that this will make any significant impact on labour standards, falling into the same
category of promotional soft law approaches and vague aspirational statements as *Decent Work*. Alston (2004) suggests that the legal relationship between the 1998 Declaration, other soft law such as the 1976 OECD Guidelines for Multinational Enterprises, the ILO’s 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises (both revised in 2000), the UN’s 1999 Global Compact (all three of which are based on a similar model to the 1998 Declaration) and ILO conventions is creating confusion and a reluctance to cite conventions, in case the reference to conventions will complicate the promotion of principles.

It is hard to avoid the conclusion that the overall result of the ILO’s shift in policy since the 1998 Declaration has been more complexity in competing and conflicting standards, principles and platforms, fewer ratifications and lower respect for international labour standards, a lower capacity to monitor, no capacity to enforce and, with a marked shift to less confrontational policies in the context of neo-liberalism and the USA becoming more, not less, influential in ILO policy through its targeted funding of ILO activities. For example the US had already contributed $20 million to support the follow-up mechanisms of the 1998 Declaration by 2000 (Brewster, 2000) and a lot more to the International Programme for the Elimination of Child Labour, which has arguably affected the balance of the ILO’s work (Alston, 2004; Hepple, 2005; Standing, 2008). In effect the ILO’s relevance as a standard setter has not been revived since the Declaration and despite the WTO making it clear that it is the ILO (not the WTO itself) which is the proper body for improving labour standards, the ILO is toothless and still does not even have observer status at the WTO. Nevertheless, despite the fact there is no work on labour standards in the WTO’s councils and committees, it is the connection between trade and labour standards that has increasingly become the focus of much debate in recent years.

**Labour standards, the WTO and trade agreements**

There are a number of existing social clauses, which *in theory* make trade and investment conditional upon the observance of labour rights. These are included in various forms of free trade agreements (FTAs) firstly, those which are generated *unilaterally* without the agreement of the states they are imposed upon. These can be imposed by individual countries such as the USA’s Generalized System of Preferences (GSP) or trading blocs such as the EU (which has its own GSP). Secondly, social clauses can be included in *bilateral* FTAs (between states for example the US-Cambodia Bilateral Textile Agreement, 1999) and regional or sub-regional agreements such as the North American Free Trade Agreement (NAFTA) and its labour side agreement NAALC (the *North American Agreement on Labor Co-operation*) which covers the USA, Canada and Mexico and the US-Central America Free trade Agreement (CAFTA). In addition to its own legislative process (which we briefly mention later) the EU also has its own external FTAs with other countries such as the 1994 Partnership Agreement with the Russian Federation and more recently the EU-India Free Trade Agreement.

There have also been a number of attempts to integrate labour rights into *multilateral* world trading and financial systems. The link between trade and labour issues at an international level was discussed in the early proposals for an International Trade Organization (ITO). The ITO was opposed by the USA and the outcome were a number of General Agreements on Tariffs and Trade (GATT) rounds which began in 1947. Articles XX and XXIII of GATT do make some reference to worker’s health and rights but in practice GATT has been predominantly focused on trade and this has not changed since GATT became the WTO. Labour standards and trade were the subject of heated debate at the WTO meeting in Singapore and Seattle in 1996 and 1999 respectively, but the failure to come to any agreement highlighted the considerable divisions over this issue suggesting that the World Bank, the IMF and the WTO have become less part of the solution and more the centre of the battleground (Brewster, 2000; Wedderburn, 2002). In practice Stiglitz (2002) argues
that the GATT rounds and now the WTO has made it easier for MNCs to be more mobile by reducing trade tariffs, and in effect promoted the neo-liberal climate under the auspices of the IMF, which has opened up foreign markets and often forced countries to privatize previously nationalized industries and exploit labour in poor countries, where labour and environmental protections are weaker (Stiglitz, 2002).

Arguments continue over the pros and cons of including labour standards in WTO agreements. The proponents argue that the WTO has a mechanism which could be used for enforcing trade sanctions on countries that violate ILO conventions and thirdly, that a social clause would make the WTO more socially responsible and thereby limit the negative effects of free trade on workers (Greenfield, 2001). The US labour movement argue that although any social clause in trade agreements must be made enforceable, the ILO has been unable to prevent even the most blatant violations of its core conventions and would not be able to enforce social clauses in trade agreements, so that the only solution would be for enforceable provisions to be included into the WTO’s rules. The AFL-CIO have also argued that in most cases it is the threat of sanctions (rather than sanction themselves) that will be enough to push nation states into improving their standards and that a fair transparent, equal and neutral multilateral dispute resolution system is probably the most effective way to avoid narrow domestic interests (AFL-CIO, 2002; Alston, 2004). However, this had no support from the Bush administration and also faces a number of other problems, not least of which is the fact that developing countries are strongly opposed, arguing such clauses are just another form of protectionism imposed by the rich nations against low-cost competition from the developing countries; with their competitive advantage often being based on low cost labour. In addition the unequal nature of power relations between the developed and the developing countries in the WTO, suggests that the countries most affected by social clauses may have the least influence over the structure created (Voss, 2002; Singh and Zamit, 2004).

Critics also argue that the WTO is not a democratic and open institution, there is an absence of transparency in the agencies that would be responsible for monitoring social clauses, complaints regards violations of social clauses could only be made by governments, not NGOs, unions or other worker’s representatives, governments often have other priorities, so that workers rights could easily become a bargaining tool for other agendas (Freeman, 1995; Langille, 1997; Hepple, 2005). Social clauses are also seen as a blunt instrument; sanctions do not target the companies responsible for committing labour violations, but the countries concerned, MNCs can move on, disputes can take a long time to settle and employment in the country may suffer unfairly because of the actions of some employers. Social clauses are also unlikely to be enough on their own to be an effective measure to improve working conditions, especially if there is a lack of will on the part of signatories to enforce such clauses, social clauses target nation states who are usually more interested in attracting global capital rather than restricting its activities, in which developed countries could use social clauses as window dressing making it easier to deregulate national labour markets allowing MNCs to escape controls (Voss, 2002).

Furthermore, the expertise of the judiciary in its dispute settlement mechanism; the essence of the WTO is trade, not labour or human rights. The WTOs’ raison d’être is that everything is a commodity, the exact opposite of the traditional stance of the ILO. Labour violations would be treated as any other trade dispute, meaning that violations will only be assessed on the basis of whether they constitute unfair trade practices and as ‘globalization from above’ setting standards that are selected and devised without consultation with workers and their unions so that the real meaning of universal workers rights would be lost (Tabb, 1999; Voss, 2002). In addition sanctions would not be limited to products under dispute, sanctions could be imposed for any exports, as it is up to the government concerned to decide which products deserve restriction or ban. Finally, social clauses are often limited in their scope and coverage, normally excluding workers producing goods
for domestic markets and workers in the informal economy where the worst forms of exploitation often take place and, they fail to address a sufficient range of workplace issues. All of this suggests that there are major problems with the notion of linking trade to labour standards and explains why bringing enforceable labour standards into the WTO is very problematic and even assuming that other problems could be surmounted the WTO would require a substantial reform which in itself would be difficult (Greenfield, 2001; Voss, 2002).

In this context it is not that surprising that attention has shifted to the inclusion of social clauses in bilateral and regional agreements (Alston, 2004; Franck, 2008). Those associated with the ILO appear to be more optimistic about the outcomes of social clauses in FTAs, claiming that some progress has been made in terms of compliance with and improvement of labour regulations in the countries in question. Whilst they admit that there has been a sharp rise in complaints submitted to the ILO’s supervisory mechanisms, in particular complaints to the Committee on Freedom of Association, they argue that the cooperation and monitoring systems built into FTAs may offer opportunities to strengthen the ILO’s supervisory work (Maupain, 2005) and are supportive of the EU’s attempts to raise standards through positive incentives (Doumbia-Henry and Gravel, 2006).

EU Law and EU Free Trade Agreements

While space does not permit us to adequately cover the issue of labour law and standards development within the EU, we make the following brief observations. First, probably the greatest progress in labour standards in the EU have been around the issues of equal treatment and non-discrimination, in other areas the EU has also tried to provide a basic floor rights with regards to worker’s information and consultation, working time, part-time and fixed term contracts, maternity, paternity rights and health and safety. However, many of the most significant aspects of labour standards such in particular collective bargaining, the right to strike and codetermination rights are left to member states under the principle of Subsidiarity, meaning that national law still dominates labour issue in the EU. Secondly, since the mid-1990s the EU has also moved away from a harmonisation of standards across the EU and has focused much more on social exclusion and job creation and has at present eschewed the need for a wide ranging programme of legislation for workers, instead the main emphasis is now on goal setting. The shift towards job creation has been criticized as being too much focused on numbers not quality of jobs, which could contradict the EU’s other goals of raising skills levels (Hepple, 2005). Thirdly, most of the new developments in EU standards are no supposed to come through soft law, social dialogue, benchmarking and the open method of coordination between the social partners (employers and workers representatives). However, the widening of the EU to 27 states makes this much more difficult, in the view of some commentators it is likely to lead to ‘regulatory minimalism’, in which social integration may lag further behind economic integration (Keller, 2003). Finally, there is a continuing tension between the EU’s economic and social agenda, where the free movement of capital and labour potentially conflict with the regulations on working conditions, collective agreements and fundamental rights. This came to the fore in the Laval and Viking cases in relation to the posted workers directive, in which the European Court of Justice (ECJ) although recognising the right to strike in EU law, adopted a protectionist view, subordinating the right to strike to the right of free movement of capital, raising questions not only about the ECJ’s competence in being able to make judgements about the notions of ‘proportionate’ and ‘justifiable’ action, suggesting that in the light of soft law approaches, there is a deep uncertainty about the role of the trade unions in protecting labour standards in the EU (Davies, 2008). Other employers have already used the use the rulings to undermine existing pay and conditions by employing foreign workers on lower terms and conditions and to tried to stop workers taking industrial action to protect their jobs and conditions as was the case with the British Airline Pilots Association and the open skies dispute (ETN, 2008) and
is behind the current dispute with the French-owned oil giant Total and its subcontractors in the UK (Milne, 2009).

The EU is strongly in favour of incorporating social clauses in trade agreements which it argues have allowed it to advance social standards around the world (European Community, 2006). Whereas the USA’s approach to FTAs is focused on the threat of sanctions, the EU’s approach is opposed to sanctions, offering the incentive of granting preferential access to European markets in exchange for effective compliance of core labour standards (Hepple, 2005). However, countries like India have consistently resisted social clauses in the multilateral process and India was opposed to similar clauses in its bilateral agreement with the EU. As Franck (2008) argues it is difficult to know how far trading blocs such as the EU will be willing to go to defend labour standards in FTAs with important export markets, if such countries do not implement agreed labour standards. Wedderburn (2002) argues that the EU has largely thrown away the bases of an international commercial policy integrating respect for fundamental worker’s rights, with the EU facing consistent hostility from Swedish employers’ groups in the idea of stronger social clauses and the whole idea of integrating international labour standards in trade agreements in an effective manner. It is also interesting to note that the issues of discrimination, wages, hours of work and occupational health and safety are missing from the EU’s GSP programme (Compa and Vogt, 2001). Nevertheless, some unionists citing the example of the EU’s trade agreement with Sri Lanka, argue that the EU’s incentives based on incentives can be used to put pressure on governments and improve working conditions in developing countries. However, the same authors argue that NAFTA which is based purely on sanctions and a poor level of enforcement has actually led to deterioration in labour standards in Mexico (Marcus and Reyes, 2009).

The USA and NAFTA

Alston (2004) argues that despite the EU’s and other countries’ initiatives in this area, it is the USA that has led the way internationally, and it is the US approach to unilateral, bilateral and regional agreements that remains by far the most important. Central to the US approach is that labour standards are best protected through a combination of the US Trade Representative (USTR), the ILO, unions and NGOs. However, the ILO’s detailed labour standards are utterly marginal in the overseas enforcement of US legislation, with the USA only rarely referring to ILO conventions and normally only to the two conventions it has ratified (such as No. 182 on child labour).

Although on paper the NAFTA/NAALC goes well beyond the core labour standards and recognizes a number of rights not recognized in the 1998 Declaration. Under NAALC each state is supposed to ensure that its own laws provide for high labour standards and should promote compliance with the law and enforce it, ensuring access to fair, equitable and transparent mechanisms (www.naalc.org; Alston, 2004). Some commentators remain optimistic that some good has come out of the NAALC, citing its modest successes in enforcing national labour law and improved cooperation between the Canada, the USA and Mexico (Hepple, 2005). However, others argue that instead of exploiting its potential, the NAFTA countries have ensured the accords ineffectiveness in protecting worker’s rights. A number of reports have concluded that NAALC has failed to protect worker’s rights, that there was little or no prospect of resolving petitioner’s complaints, this was said to be due to the limitations of the original agreement, a lack of political will to address problems and a refusal to include workers and their advocates in discussion to improve the situation (HRW, 2001; Delp, 2004; Alston, 2004). One report concluded that NAALC is flawed as an instrument for protecting the rights of women workers and has virtually been ignored by American women’s rights groups (Andrias, 2003). Even the Chair of the NAALC Advisory Committee concluded that (Weiss, 2003: 169):
... in terms of procedures and in terms of remedies, the NAALC seems designed to thwart effective enforcement.

Overall, there appears to be much more criticism of US mandated trade deals which many Latin American in countries in particular see as being based primarily on the US’s self-interest, making massive subsidies to its own agricultural industry and making access to US’s markets impractical for developing countries, while at the same time making no practical effect in terms of improving labour conditions and exacerbating social problems (Sanchez, 2009).

Unilateral and Bilateral Agreements

Alston (2004) argues that if NAFTA is achieving little for workers, unilateral agreements do even less, in that the US approach to incorporating labour rights in unilateral agreements is characterized by an idiosyncratic selection of standards almost entirely detached from international treaties and the unfettered authority of the US government to impose sanctions if it so decides, driven to a very significant extent by its own political and economic self-interest. As Compa and Vogt (2001: 235-7) put it the GSP labor rights law:

...is another example of aggressive unilateralism or global bullying...Geopolitics and foreign policy are the chief considerations in applying [the US] GSP labor rights clause, not the merits of a country’s compliance or non-compliance with the law...the most troubling aspect of this has been the inconsistent application of the law...all sensitive to the economic interests of US multinational organisations.

Bilateral agreements although hailed by some as a positive step in that all agreements since 1998 have included reference to the Declaration (Doumbia-Henry and gravel, 2006), however, we suggest that these are also of questionable value. The US-Jordan FTA concluded in 2001 for example, has become a recipe which other bilateral agreements have largely followed, it drew on some of the early criticism of the NAALC in that the social clause is not separate to the main trade agreement and a reference is made to international not national standards. However, Alston (2004; 2005) argues it is regressive compared to NAALC in that it refers to a smaller number of labour standards than NAALC and excludes the standards on discrimination, like NAALC it also makes no reference to any specific ILO conventions. The part of the social clause relating to dealing with the discrimination in employment and occupation was removed, after negotiation between the two governments, suggesting that labour concerns can become a bargaining tool negotiable depending on the political interest of the actors concerned (Franck, 2008). Others have concluded that the agreement was so weak that it would not improve labour standards (Freeman and Elliot, 2003). The main aim of US FTAs appears to be to avoid ILO conventions (except those ratified) and to focus on the soft law of the 1998 Declaration, while at the same time emphasizing the sovereignty of national laws and provide themselves with the imagery of labour standards defenders (Alston, 2004). Summing up the situation regarding recent US FTAs, Hiatt and Greenfield (2004) state that there are no enforceable commitments to respect core ILO standards, there is only a commitment to enforce domestic labour laws. In this light, the more optimistic conclusions regards the impact of FTAs on labour standards of those associated with the ILO and the move towards the soft law of the 1998 Declaration (Langille, 2005; Maupain, 2005; Doumbia-Henry and Gravel, 2006) do not look very convincing, This analysis suggest that while the rules protecting trade, capital flows and intellectual property have progressed, linking trade with labour standards would appear to be of questionable value for workers, or as Hepple (2005) puts it the reconciliation of global trade and labour rights will not come from relocating labour law within the sphere of unilateral, bilateral, regional or multilateral trade law, although he is more optimistic about the EU’s approach to trade agreements based on incentives than by the US approach.
Voluntary self-regulation, private corporate codes and corporate social responsibility

The notion of giving large corporations a ‘human face’ has a long history dating back to the beginning of the 20th century when the main concerns was focused around persuading customers that big corporations were socially responsible and benevolent institutions (Bakan, 2004). By the 1970s scandals involving MNCs in human rights abuses - such as ITT’s involvement in the overthrow of the democratically elected Allende government in Chile - increased pressure for the regulation of MNC activity, with some developing countries passing legislation to control MNC activity in their countries. However, the increasing internationalisation of trade, the growth of global supply chains in MNCs and a shift in the ideology of many governments towards neoliberalism in the 1980s, left national states and international agencies either unable or unwilling to regulate the activities of MNCs. By the 1980s many developing countries were becoming much more focused on attracting foreign investment rather than regulating MNC activity and began removing restrictive legislation. In this climate attempts to produce binding international regulation of MNCs became increasingly difficult and it also saw the establishment of a number of voluntary private corporate initiatives. US MNCs set this trend in the 1970s in response to the ITT scandal and other accusations about bribery and corruption and early codes reflected these issues. In the 1980s interest in such codes dwindled somewhat, but by the 1990s interest in corporate codes rose again, however, these were now more focused on labour and environmental issues (not corruption) with clothing manufacturers and retailers leading the way. The fashion for such codes spread to Europe and elsewhere and by the mid-1990s, MNCs (usually the leading corporations in their fields) were increasingly drafting their own non-binding principles, espousing high ethical standards not only in their own operations, but also in their supplier companies. The variety and range of these private sector initiatives has multiplied dramatically since the early 1990s, and probably reflects the explosion in capital flows and increase in offshoring since the collapse of the Soviet bloc, the opening up of China and more liberal trade policies in countries such as India (Jenkins, 2001). The growth of such codes also led to the establishment of a number of specialist firms offering services such as ‘compliance consulting’ and ‘corporate social responsibility monitoring’ (Frank, 2008).

By the mid to late 1990s as the early corporate codes failed to reduce growing concerns that voluntary codes were not the solution to environmental and labour violations (and in some cases they appeared to actually increased such concerns) rather than dropping their opposition to more binding forms of regulations, MNCs began to develop more advanced forms of code which were more substantial than statements of good intentions. Sometimes these were drafted with human rights groups or ethical investment specialists, some applying to individual factories or particular countries and some allowing for outside monitoring. They also renewed their lobbying activity with governments arguing that voluntary measures are a better approach than legally binding measures (Diller, 1999; Klein. 2001; Hepple, 2005). By the end of 1990s the situation was further confused by a number of MNCs (including those with very questionable track records such as Rio Tinto, Dow Chemicals, Unocal and Nestlé) rushing into partnership with human rights groups or signing up for the United Nations Global Compact and promising better communication and cooperation with humanitarian organisations; with human rights as the ‘third bottom line’. Some academics were also jumping on the bandwagon, declaring the dawn of a new age in which brand based activism was so successful that it had created (possibly with the McSpotlight webpage in mind) a ‘spotlight phenomenon’ in which there was no need for outside regulation, as it was now in the interests of MNCs to comply with labour standards (Klein, 2001); universities were also accepting substantial sums of money from tobacco MNCs to establish ethics and corporate social responsibility centres (Smith, 2001; Business Respect, 2002). The overall effect has been a massive proliferation of private codes resulting in a complex overlay of sometimes conflicting corporate
initiatives which now encompass everything from corporate codes of conduct, social labelling programmes, investor initiatives and corporate social responsibility (CSR); by 2004 no less than 85 per cent of FTSE 100 companies referred to corporate social responsibility in their annual reports and all of the companies in the US Fortune 500 now having private codes. However, many questions remain about the effectiveness of such codes. Primark, Asda and Tesco for example have all signed up to the Ethical Trading Initiative (a voluntary code that sets out basic rights for employees) yet as we point out above, all three companies were in violation of this code in 2007 and again in 2008 despite considerable media coverage and this was compounded in 2009 when it was also discovered that one of Primark’s UK suppliers were employing illegal immigrants on half the minimum wage for 12 hour days seven days per week (MacDougall, 2009).

Private codes of conduct and corporate social responsibility are based on the assumption that accurate information will be collected in factory audits and this will be used by NGOs or other third parties to put pressure on MNCs to reform their suppliers or change their suppliers to those who do observe labour standards. However, this approach raises various problems, for example, who will monitor the codes through all the layers of subcontracting, who will enforce them, what are the sanctions and penalties for non-compliance? Critics argue that private codes fail to produce generally accepted principles for their content or their implementation, have unreliable verification methods, are not enforceable, are not drafted in response to the needs and demands of employees, may discriminate against producers in developing countries, are actually designed not to protect labour rights or improve conditions, but instead limit the legal liability of global brands while improving their public reputation and displace government regulation and trade union intervention, (Diller, 1999; Klein, 2001; Esbenschade, 2004).

Those more positive about private codes and monitoring suggest that in some circumstances they are an appropriate and more flexible way to improve rights and conditions in global production networks especially in developing countries which may be less able or less willing to enforce their own labour laws or raise their standards (O’Rourke, 2003; Rodriguez-Garavito, 2005). Others argue that codes of conduct can be seen as one useful component in a larger integrated system for managing regulating and enforcing labour standards and improving conditions (Locke et al., 2007). However, the more positive analyses of corporate codes may be overly optimistic and are often based on case studies of well-known brands. In summing up a number of scandals involving Disney, Levis and Wal-Mart, Klein (2001: 430) states:

*Without exception they [codes of conduct] were drafted by public relations departments ...in the immediate aftermath of an embarrassing media investigation...their original purpose was not to reform but to muzzle the offshore watchdog groups.*

Frank (2008) suggests that after a number of high profile scandals (including child labour), Nike’s compliance and monitoring system is now one of the best and it is now seen as a leader in the field, pre-screening supplier factories, disclosing the names and addresses of all its suppliers and making much of its monitoring public. In their analysis of Nike’s operations, Locke et al. (2007) also state that Nike has gone a lot further than many other MNCs in putting considerable resources into monitoring compliance within their own suppliers, for example employing some eighty corporate social responsibility and compliance managers operating under a distinct department. However, despite all this they found that based on Nike’s own auditing system, there was considerable variation in the working conditions of Nike’s supplier plants, with a considerable number providing poor conditions and that 80 percent of suppliers had either remained the same or had worsened over time. They conclude that even if companies put resources into compliance and monitoring, without external pressures to commit to and enforce corporate codes, the effective enforcement of national law and the existence of independent trade unions or other means for workers to express their voice
in an effective manner, corporate codes will be questionable value. Another study commissioned by Nike in 2005 covered 569 Chinese supplier factories employing more than 300,000 workers, it found labour code violations in every single one, factories were hiding their real work practices by maintaining two or even three sets of books and by sub-contracting part of the work to unauthorized contractors (Roberts et al., 2006).

Klein (2001) points out that many commentators and existing studies on private codes have tended to focus on well-known branded MNCs with whom the public are well acquainted. If Nike is as good as it gets then what does that say about the effectiveness of corporate codes elsewhere? When the ‘spotlight’ of brand activism on MNCs is both ‘roving and random’, when one big name is targeted, other MNCs may be getting off the hook. MNCs like Reebok which has a slightly lower profile than Nike, have been able to capitalize on the abuses of the ‘bigger’ brands such as Nike, by presenting itself as squeaky clean despite the fact that it uses many of the same factories as Nike and has also committed labour and human rights abuses. Furthermore, the lesser known brands and MNCs with no brand image often receive little or no attention in the media, as Klein (2001) argues that the public and media only appear to be interested in ‘designer injustices’ in what is an ‘image obsessed’ world. For example, whilst most MNCs were withdrawing from Burma in the 1990s in the wake of its appalling use of forced and child labour and other human rights abuses, the ‘non-branded’ oil company Unocal (source of one of the largest foreign investments in Burma) remained apparently indifferent to protests, as Roger beach CEO of Unocal stated in June 1997 (Klein, 2001: 425): Let me say unequivocally that the only way we will leave is if we are forced to by the enactment of law. At the same time Unocal sold off its US retail sales division to reduce its public profile (Shaw, 2004). Just two weeks before Unocal was taken over by the well known Chevron/Texaco corporation in April 2005, it made a large out of court settlement to Burmese villagers (well over $15 million) in response to a law suit filed under the US Alien Tort Claims Act, regarding human rights and labour abuses associated with the construction of the Unocal pipeline. Despite continuing criticism, in May 2009 Chevron again made it clear it had no intention of withdrawing from Burma (Eviatar, 2005; Democracy for Burma, 2009).

In some cases activists have tried to get around the problem of the ‘low-profile’ MNC by secondary boycotts where branded MNCs is targeted to put pressure on the unbranded MNC supplier. For example, British supermarkets were successfully targeted with the ‘Frankenfoods’ campaign which largely stopped the sale of Monsanto’s genetically modified products in supermarkets. However, this suggests that labour rights are increasingly defined in terms of consumer choices and the market, in what Klein (2001) argues is a privatisation of employees and citizen’s political rights. Whether private voluntary initiatives are an effective mechanism for improving working conditions or not; they represent a power struggle to decide who will place controls on MNCs: citizens through their democratically elected representatives; or MNCs themselves. The proliferation and acceptance of such codes and the failure to introduce legally binding instruments on MNCs suggests that it is the MNCs that are winning this struggle; they have persuaded policy makers that MNCs and citizens share the same goals when it comes to deciding how to regulate against labour and human rights abuses. The danger is that branded activism becomes a means for stopping any serious discussion of binding labour regulation, with governments and MNCs both capturing the agenda for another round of voluntary non-binding measures.

Reporting his experience as a factory inspector, Frank (2008) points out that corporate codes are only as good as the intentions of those who wrote them, many MNCs are happy to be ‘tricked’ by their suppliers into ‘believing’ that good standards are being applied when in practice they are not, with false time cards, payroll records and employees trained to give false answers to questions are common problem. Inspectors themselves also make mistakes, in one inspection of a Thai factory he had found some wage violations, but did not discover until a following audit by someone else that
pregnant women were hiding on the roof and Burmese immigrants being paid criminally low wages. In other cases some monitoring firms are not reliable and have a cozy relationship supplier firm and client MNC that benefits everyone except workers, MNCs have only short term relationships with suppliers which means the abuses are repeated elsewhere, or supplier firms simply get better at concealing abuses (Roberts et al., 2006).

Despite all this some commentators have argued that MNCs in their role as the drivers of globalisation are crucial to a ratcheting-up of labour standards setting in train a process of continuous improvement in the treatment of labour (Sabel et al., 2000 see Wedderburn, 2002: 53.). However, after two decades of MNCs claiming that labour abuses can be resolved by private corporate codes and on-site monitoring has shown that voluntary approaches will not fundamentally change the nature of work and conditions in supplier firms. The continuous pressure for lower and lower production costs are only likely to lead in only one direction and there are already signs that MNCs are returning to the old default position in which anything other than making money is a luxury they cannot afford (Caulkin, 2009). Alliance Boots (originally British and now owned by the private equity firm KKR) recently announced that it was cancelling its commitment to the retail industry ethical trading initiative (ETI) despite a barrage of criticism from unions and campaigners, a spokesperson for the ETI stated (Mathiason, 2009: 37): They see business as a one-dimensional financial world, Boots denied that private equity ownership had affected their decision.

Conclusion

The financial crisis and the failure of the debt driven economy are so serious that even the super rich have found no safe haven; the number of the world’s billionaires fell in 2008 from 1125 to 793 (Queenan, 2009), high net worth individuals in general are estimated to have lost $8trillion (Wood, 2009). However, given the contrasting results of court decisions involving MNCs like Royal Dutch Shell – the large and quick punishments meted out to pacify Shell shareholders’ grievances and the long delayed outcome and modest fines paid out to the Ogoni nine in the Shell vs. Saro-Wiwa case - it seems difficult to avoid the conclusion that human and labour rights are still much lower down the pecking order than importance of shareholders, capital and trade.

This view is also borne out by the increasing gap between the richest and the poorest. The 2008-2009 Global Wage Report shows that in countries where GDP has grown, wages as a share of GDP have actually fallen since 1995 (ILO, 2009) and one fifth of the world’s population share just 2 per cent of global income (Jackson, 2009). In the UK inequality is at its widest since the 1960s and excessive executive pay has still not been addressed (Seager and Milner, 2006; Teather, 2008; Inman, 2009). The persistent and high levels of human and labour rights abuses look set to continue, with the ordinary worker who will suffer most. In the rich countries this will be focused around health and safety violations, more work intensification, job losses, more insecurity and pay cuts (Inman and Kollewe, 2009; Webb and Wearden, 2009). In the developing world, according to the World Bank and Oxfam, the consequences will be far worse, with massive job losses (especially affecting women), starvation and a rise in infant mortality (Sunderland, 2009).

What are the best means to address these issues? Our analysis suggests firstly that corporate codes of conduct cannot be relied upon to deliver significantly improved labour standards for workers, MNCs are the dominant players in the new global economy and far too much of the corporate social responsibility agenda reflects their interests rather than that of employees or local communities. Private initiatives are about improving public relations and winning the battle to stop binding regulation, in which MNCs have been largely successful. As Wedderburn (2002: 52) puts it there is no guarantee that corporate codes will be observed especially if MNCs ...come across less profitable times.
Secondly, although the ILO still plays a useful role in promoting labour standards, since the shift towards the soft law of the 1998 Declaration, the notion of ILO standards as ‘rights’ appear to have been downgraded to ‘goals’ and in this form are unlikely to have a significant effect on the continued erosion of labour standards. This shift to promotional principles and a preferential ‘core’ of labour standards arguably reflects the inability of the ILO to respond in an effective manner to the changing economic and political climate (Standing, 2008). The decision to promote the ‘core’ could also been seen as a pragmatic response to its declining influence and the persistent influence of US economic policy. The resulting shift to promotional principles potentially undermines the more binding nature the core conventions and many other important conventions, not least those on health and safety, protection against abuse in the workplace and adequate rest periods. The proliferation of various guidelines from the ILO, the OECD, the UN’s Global Compact, the 1998 principles as well as the conventions and voluntary private initiatives have also led to the complexity and confusion from which it could be argued MNCs have also benefited. These changes have neither improved ratification of conventions nor improved the enforcement of conventions. Despite the fact that the World Bank’s own report (Aidt and Tzannatos, 2002), concluded that unions in coordinated collective bargaining regimes tended to have positive affects for economies and (somewhat ironically) noted that such bargaining can be used as a method of providing insurance against global economic shocks, half of the world’s workers still do not enjoy protection under convention 87 (freedom of association) and 98 (collective bargaining), as Brazil, China, India, Mexico and the USA have still not ratified these conventions. Many others who have ratified still do not enforce them. Overall, the soft law approaches of the ILO, OECD and the UN global compact are largely ineffective.

Third, although linking labour standards to trade continues to be the subject of much debate, this issue is far from straightforward. Critics typically claim with some justification that social clauses in trade deals are just another form of protectionism and even the labour movement itself is split as to the efficacy of such an approach. It is also very unlikely that the IMF and the World Bank will support labour rights that are not ‘beneficial’ to economic efficiency. The WTO has consistently refused to include social clauses in its remit and as others have commented, it is probably not a suitable institution to oversee such clauses even if it did so. The WTO lacks the appropriate expertise, would tend to see labour disputes in terms of the effect on trade and is far from democratic or transparent in that only governments could submit complaints about labour violations, with all the associated conflict of interests between trade and labour rights. Bilateral and unilateral FTAs are also subject to similar if not worse problems, with US FTAs in particular being singled out for particular criticism. Some commentators see more possibilities with the EU’s approach to social clauses, due to its emphasis on incentives rather than sanctions. However, questions remain as to both the political will to enforce such social clauses in practice when important trade deals are at stake and the governments of developing countries often remain opposed in principle.

Fourth, some commentators have argued that regional treaties which safeguard social and labour rights such as the EU and NAFTA can be built upon to improve labour standards (Hepple, 2005). However, our analysis suggests that NAFTA will continue to have a very limited impact unless some its procedures are fundamentally altered. Recent rulings by the ECJ on the Laval and Viking cases highlight the continuing tension between competition rights and labour rights in the EU, suggesting that first, that market focused solution may be difficult to dislodge from the minds of EU policymakers, secondly that there is a continuing and deep uncertainty about the role of the trade unions in protecting labour standards in the EU (Davies, 2008). Nevertheless, the regional platforms like the EU can be seen as an important source of power for trade unions, in that most of the advances in cross-national bargaining have been located there. In addition workers may well be able
to organize and defeat management policies despite these ECJ rulings in some circumstances (Milne, 2009).

However, claims that new capitalism or ‘casino-capitalism’ is a thing of the past do not look very convincing at present. British banks are trying to repay government subsidies as quickly as possible in order to remove any government ‘interference’ and in a classic of the ‘reward for failure’ climate, already in 2009, bankers were awarding themselves big pay increases to make up for the loss of bonuses (Mathiason, 2009c). Even those moves now seemed to have been unnecessary in that bankers were soon celebrating the return of the mega-bonus (Roberts and Inman, 2009). In recent weeks the financial markets in search of higher returns have also been moving capital from government bonds to commodities such as oil, copper and aluminium, driving up the price of these commodities at a time when demand is at an all time low and risking a further down turn in the economy. However, neither the European Central Bank nor national central banks seem willing to intervene to change this situation, suggesting that the idea of ‘efficient’ markets still dominates their thinking (ETUC, 2009).

The current crisis should be an opportunity for a shift in priorities to strengthen the collective rights of workers. However, in all the recent outrage regards the complacent, greedy and sometimes criminal behaviour of the international banking sector, most of the remedies have focused around an unprecedented bank bail out and a better ‘regulation’ of the finance industry (although little significant has yet emerged). Nothing has been said about strengthening collective labour rights as a means of lowering inequality and reducing labour and human rights abuses despite the World Bank Report on this issue (Aidt and Tzannatos, 2002). There appears to be no real appetite for more legally binding forms of regulation and enforcement in the developed countries, in effect MNCs seem to have privatised the international regulation sphere as far as worker’s rights are concerned. For the moment, with the vacuum created by the increase in soft law and the voluntary action of MNCs and the questionable value of social clauses in free trade agreements, it will be once again down to unions, community groups, consumers and NGOs to try to bring MNCs to account by whatever means they have at their disposal (Bronfenbrenner, 2006). However, it seems unlikely that without more binding international labour standards or stronger national (collective) laws, such new alliances will not be enough by themselves to significantly change the status quo.

References


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