Università Commerciale Luigi Bocconi

Law School

Corso di Laurea Magistrale in Giurisprudenza

Integrated Master of Arts in Law (5-year program)

Promoting workers' rights along global supply chains: the role of private regulations

Supervisor:

Prof. Stefano LIEBMAN

Advisor:

Prof. Valerio DE STEFANO

Master Student:

Corrado PATERNO' CASTELLO

Academic Year 2014/2015

Act so that the effects of your action are compatible with the permanence of genuine human life

Hans Jonas

ABSTRACT

Under the impulse of globalization, transnational companies (TNCs) outsourced their activities to low-cost production sites – the so-called sweatshops – where domestic labor legislation had been traditionally ineffective and working conditions deplorable. However, as blatant violations hit the headlines, TNCs could no longer ignore the conditions borne by workers. Hence, pushed by consumers, international organizations, unions, non-governmental organization (NGOs) and other civil society groups, TNCs had to commit themselves to protect workers' rights along global supply chains. They thus turned such commitment to stone through the adoption of voluntary regulations, such as codes of conduct and international framework agreements (IFAs).

Within this framework, the work describes the leading actors playing a role in the supply chain - namely governments, TNCs and their suppliers, international organizations, unions, NGOs and workers - and focuses on their increasing efforts in promoting workers' rights. It also clarifies what is meant by workers' rights, illustrating core labor standards, their genesis and their incorporation in private regulations. Furthermore, it addresses the diverse avenues that have been explored to promote labor rights along global supply chains, with specific regard to matters such as the social clause debate, the emergence of codes of conduct and the innovative role of IFAs. Lastly, it deals with the key issue of the enforcement of private regulations and specifically addresses the traditional legal patterns and the private compliance initiatives that have been undertaken to concretely ensure the respect of workers' rights.

PROMOTING WORKERS' RIGHTS ALONG GLOBAL SUPPLY CHAINS: THE ROLE OF PRIVATE REGULATIONS

1. Introduction

Under the impulse of globalization, transnational companies (TNCs) have outsourced their activities to low-cost production sites – the so-called sweatshops - where domestic labor legislations have been traditionally ineffective and working conditions deplorable.

Indeed, governments of developing countries have been not interested in raising the level of labor conditions and promoting workers' rights among the suppliers located in their territory. Instead, they have found convenient to exploit the comparative advantage of a low-cost workforce in the attempt of fostering internal economy and attracting foreign investors.

However, as the blatant violations of workers' rights occurring at sweatshops finally hit the headlines, TNCs could no longer ignore the conditions borne by workers. Hence, pushed by consumers, international organizations, unions, non-governmental organization (NGOs) and other civil society groups, TNCs have started to commit themselves to protect workers' rights along global supply chains.

They have also turned such commitment to stone through the adoption of voluntary regulations, such as codes of conduct and international framework agreements (IFAs).

Such *soft law* approaches have flanked and complemented the traditional *hard law* sources, showing a potential innovative role in promoting the respect of workers' dignity along global supply chains.

More precisely, considering developing countries' passiveness in improving labor conditions, TNCs have unilaterally adopted codes of conduct - voluntary regulatory tools emerged under the aegis of the Corporate Social Responsibility movement - to pacify concerned consumers, spread the culture of the group along the supply chain and resolve the most

crucial issues occurring at workplace that could have jeopardized their reputation.

In this respect, scholars have criticized the unilateral nature of such documents, outlining the need for the involvement of other stakeholders, such as workers and NGOs. Under these circumstances, some TNCs have tried to reshape codes of conduct by adopting of a *multi-stakeholders* approach*,* namely by involving stakeholders both in the drafting and in the monitoring procedures.

Side by side with such development, new kinds of voluntary regulation have emerged and flanked codes of conduct in promoting workers' rights. Indeed, global union federations (GUFs) have started to negotiate IFAs as an alternative method to move beyond the weakness and unilateralism of codes of conduct.

Such initiatives could be considered the outcome of a continuous bargaining model of stakeholders' pressure, whereby unions' activities, consumers' boycotts and activists' campaigns push companies to involve workers in drafting and monitoring their voluntary regulations.

However, it has turned out to be particularly arduous to enforce codes of conduct and IFAs on the field and to effectively monitor labor conditions along the supply chain. In this respect, both traditional legal methods and private compliance initiatives have been undertaken to ensure the respect of private regulations.

Considering the intriguing and arduous challenges of regulating workers' rights across several countries, this work describes the leading actors that play a role in the supply chain - namely governments, TNCs and their suppliers, international organizations, unions, NGOs and workers - and shows their increasing efforts in promoting workers' rights. In particular, it focuses on the peculiar relation between a TNC and its supplier and the tangled interaction between unions and NGOs.

Furthermore, the work also clarifies what is meant by workers' rights, illustrating the core labor standards - fundamental labor rights to be respected regardless of the development, the culture and the customs of every country -, their genesis and their incorporation in private regulations.

Then, as mentioned, it addresses the diverse avenues that have been explored to promote labor rights along global supply chains. Firstly, it examines the social clause debate, namely the proposal of introducing a specific clause to trade agreements in order to respect workers' rights, sanctioning those states that would have maintained deplorable working conditions. Secondly, it considers the emergence of codes of conduct and the innovative role of IFAs.

Finally, the work deals with the key issue of the enforcement of voluntary regulations, in particular addressing the traditional legal patterns and the private compliance initiatives that have been undertaken to concretely ensure the respect of workers' rights along global supply chains.

2. The actors influencing working conditions along global supply chains

2.1 Actors' role and identification

The industrial relations scenario is currently changing. As a matter of fact, the arenas in which industrial relations are enacted have broadened their borders, now comprehending the transnational production sites. Moreover, as the landscape is wider and different, new actors have emerged and each actor's influence in the industrial relations system has changed.

Precisely, one of the most significant phenomena deals with multinational companies. With globalization, they operate transnationally, outsourcing the production to supplier companies located in developing countries. There, indeed, governments are striving to attract foreign investors by ensuring particularly favorable labor costs and by providing a weak labor law framework[1].
Advantaged by these favorable conditions, transnational enterprises have gained even greater importance and have occupied a central role in the economy of the entire supply chain.
In particular, considering that in transnational supply chains are employed innumerable workers, multinational enterprises have also become the most influent actor that deals with labor conditions, especially considering the states' reticence in regulating workers' issues and enforcing labor laws.

Companies, however, do not operate alone. They are surrounded by numerous actors that make pressures, influence, bargain, cooperate and interact with them. The scenario of the supply chains is, indeed, very

[1] PERULLI A., *Diritto del lavoro e globalizzazione*, Introduction, Milano, 1999, p. XX

chaotic and dynamic: new actors - like NGOs - have emerged, while old ones - like unions and international organizations - have reshaped their role and functioning, and others concerned about working conditions - such as consumers and civil society groups - have occupied an innovating role, raising claims and exercising increasing pressure on the *less responsible* enterprises.

Scholars have paid attention on how to describe the actors of such an interesting landscape. They started by analyzing those stakeholders that interact with multinational enterprises - the nerve center of the supply chain - defining them as ''any group or individual who can affect or is affected by the achievement of the organization's objectives''[2] and by identify them on the ground of their *power*, *legitimacy*, and *urgency*[3]. In particular, *power* means the ability to have an influence on enterprises' business choices, *legitimacy* is the authority to make claims on a firm or to exercise moral rights, *urgency* is the degree of attention attributed to the requests addressed by a particular actor.
By combining these three factors, it is possible to analyze the importance and the role of each stakeholder in influencing companies' decisions along a transnational supply chain.

For example, governments exercise power on companies by regulating them and by providing the essential infrastructures for their functioning. However, as seen, in developing countries - where usually suppliers are located - governments do not exercise a strong influence on TNCs. In these countries, indeed, the predominant ideology is *neo-liberalism,* a *laissez-faire* approach in economy prevails, labor law is often not enforced

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[2] FREEMAN R., *Strategic Management: A Stakeholder Approach*, Pitman Publishing, Marshfield, MA, 1984, p. 46

[3] MITCHELL R., AGLE B. AND WOOD D., *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts*, in *Academy of Management Review*, vol. 22, n. 4, 1997, p. 873

and unionism is not granted. Predictably, under these circumstances, local governments' influence shrinks in front of companies' power.

Moving on to workers, it is possible to notice that they have little power alone in influencing other actors' decisions. However, workers' voice could be amplified by local unions and employees' representatives, which are the natural counterparts of enterprise's managers and - on paper - are the best channel to raise claims, exercise power and influence company's decision bodies. However, as mentioned, in countries where suppliers are located there is often no room for unionism and participation.

Furthermore, with regard to the drafting of companies' voluntary tools, workers often have "urgent and legitimate claims, but no power to influence the formulation and implementation of codes of conduct"[4]. In this respect, as it will be shown, global union federations (GUFs) can help workers to satisfy their legitimate claims by pressing companies to consider workers, and the important issue of participation, in the drafting of international framework agreements.

A final example deals with social responsible investors, consumers and civil society groups: stakeholders that have an increasing influence on enterprises' decisions. The first ones can exercise power by selling their stocks or by voting, the second have the power to choose the products at marketplace and the third are able to direct the public attention to unfair companies' behaviors.

The following paragraphs illustrate more in depth the features and the role of each stakeholder in the current scenario of global supply chains. The actors examined are governments, transnational companies, unions, international organizations, NGOs and workers. Furthermore, particular consideration has been dedicated to the interesting relation between a

[4] YU X., *From passive beneficiary to active stakeholder: workers' participation in CSR movement against labor abuses*, in *Journal of Business Ethics*, vol. 87, issue 1, 2009, p. 238

transnational company and its suppliers and to the tangled interaction between unions and NGOs.

2.2 Governments

As mentioned, governments are currently finding several hurdles in guaranteeing an effective protection to workers. Globalization caused, indeed, "a profound shift in economic structures, institutional arrangements and the organization of work"[5].
In the 1980s and the 1990s, European and American transnational companies started to offshore much of their activity to developing countries, in order to reduce production costs. The setting of production then changed from the Western arena - where, traditionally, the respect of labor rights is considered a matter of primary importance - to the Asiatic one. As a consequence, "the dominant actors, such as national European and US governments, have lost influence. In contrast, the national settings of predominantly Asian developing countries have increased in importance"[6].

In developing countries, a race to laxity, namely a destructive competition in lowering working standards, has deeply influenced states' commitment in guaranteeing a fair level of protection to workers. Governments, indeed, prefer low labor costs in order to have a competitive advantage and attract foreign investors. And, although many of these countries, such as China and Vietnam, recently started to reform their labor laws - at least on paper -, there is still a large gap between what labor regulations provide and what companies do.

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[5] EGELS-ZANDÉN N., *Transnational governance of workers' rights: outlining a research agenda*, in *Journal of Business Ethics*, vol. 87, n. 2, 2009, p. 170

[6] *Ibidem*, p. 170

Furthermore, it should be noticed that, due to the fragmentation of the production chain along several host countries, the connection between the internal states' jurisdiction and the companies' production sites have fallen into crisis. As the national legal sources turned out to be inadequate in protecting labor rights, a transformation in the way norms are generated had occurred. Consequently to the gradual appearance of an extremely fragmented and decentralized body of norms, our traditional state-based understanding of law making turned to be not sufficient to comprehend the modern labor regulatory framework. Nowadays, the officially recognized national sources of law are indeed part of a wider landscape crowded by a myriad of legal sources (national, foreign and transnational), including *soft law* provisions.

In this respect, the term *soft law* is generic and covers different legal tools, with different natures and scopes. It represents "a radical challenge to the state-based concept of law making that began to emerge in the nineteenth century"[7]. According to scholars, soft norms can be defined as "normative provisions contained in non-binding texts"[8]. Principles, recommendations, standards, ethical rules, best practices that pretend to move beyond the limits of traditional sources, standing out as innovative paths to regulate workers' rights along the transnational supply chains.

In particular, under the umbrella of soft law, codes of conduct and international framework agreements emerge as two important voluntary initiatives to protect workers' rights. Two tools that should be considered together with national and supranational regulations in order to comprehend the full spectrum of labor sources regulating working conditions along transnational supply chains.

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[7] ZUMBANSEN P., *The parallel worlds of corporate governance and labor law*, in *Indiana Journal of Global Legal Studies,* vol. 13, issue 1, article 9, 2006, p. 290

[8] SHELTON D., *Commitment and compliance: the role of non-binding norms in the international legal system*, Oxford University Press, Oxford, 2000, p. 292

2.3 Transnational companies (TNCs)

While governments' role is retreating, transnational corporations' influence on labor conditions is increasing.

Born under the aegis of economic liberalism, TNCs are huge organizations producing or selling goods or services, operating in various countries.

Suffice it to say that drawing up a ranking of the first 100 world powers for GDP (for states) and sales volume (for TNCs), 43 of them turned out to be multinational enterprises[9]. Therefore, defined as "*gargantuan multinationals* whose power exceeds that of most nation states"[10], these companies often have much more power than local governments and are able to deeply influence workers' rights protection along international supply chains.

Under these circumstances, the current guardianship of employees' conditions depends unavoidably on the concrete commitment of these multinational enterprises.

Initially, TNCs simply took economic advantages by outsourcing their production to foreign developing countries, skyrocketing their profits without ensuring fair conditions to workers located in low-cost production sites.

However, as time passed, a series of scandals regarding child labor abuse and workers' conditions in Asiatic subsidiaries bobbed up and were reported by the international media.

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[9] As shown by CENTRO NUOVO MODELLO DI SVILUPPO, Report *Top 200 La crescita del potere delle multinazionali*, 4th edition, 2014. Available at http://www.cnms.it/attachments/article/163/Top200%202014.pdf (30/05/2015)

[10] BRANSON D., *The very uncertain prospect of global convergence in corporate governance*, in *Cornell International Law Journal*, vol. 34, issue 2, Article 2, 2001, p. 326

Several journalists and anti-sweatshop organizations - a *sweatshop* is a workplace where the working conditions are ethically and socially unacceptable - reported the violations perpetrated along the supply chains. Frequently, suppliers did not respect fundamental labor rights: in particular, most of the accusations concerned low wages, forced overtime and long working hours, hazardous and unhealthy working conditions, child labor, sexual harassment, intimidation and repression of labor unions[11].

In the 1990s, many civil society groups - especially in USA, Europe, Canada and Australia - started social campaigns, to make consumers aware about the real situation faced by workers in developing countries, and undertook concrete actions to foster their labor conditions.

A brilliant example of these movements is the Clean Clothes Campaign (CCC). Since 1989, by coordinating the efforts of governments, unions and NGOs, the CCC has worked to "help ensure that the fundamental rights of workers are respected, educate and mobilize consumers, lobby companies and governments, and offer direct solidarity support to workers as they fight for their rights and demand better working conditions"[12].

Exposed to intense pressures, TNCs were forced to readapt their behavior to consumers' expectations otherwise they would have jeopardized their profits. Thus, in part pushed by the public opinion and scared of damaging their image, in part driven by philanthropic and ethical motivations, multinational enterprises started adopting new approaches to protect workers' rights.

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[11] YU X., 2009, *op. cit.*, p. 234

[12] CLEAN CLOTHES CAMPAIGN website, http://www.cleanclothes.org/ (30/05/2015)

In particular, brands ordered their suppliers "to comply with a corporate code of conduct, promising to protect workers' basic health and safety"[13].
To take the example of the footwear sector, in 1992 Nike adopted a document called *Code of Conduct and Memorandum of Understanding* and Reebok drafted the *Human Rights Production Standards*. One year later, Puma published the document *Human Rights Understanding to Observe Universal Standards*. Then, in the following years, several brands like Asics, Fila, New Balance, Umbro, Lotto, Kappa, adopted their own codes of conduct. Their aim was to establish a floor of protection for workers' along the entire supply chain, paying particular attention to the conditions granted by the suppliers.
However, the internal monitoring systems of these new soft law regulations often appeared seriously patchy and ineffective. Hence, unavoidably, complex questions were raised about the TNCs' future role in promoting employees' rights along global supply chains.

As seen, in the 1990s TNCs started to reconsider their business strategies and to adopt socially responsible approaches, especially in terms of environmental and workers issues. Exploring the rationales of TNCs' movement towards more sustainable ways of doing business, it is possible to notice that the global tendency towards Corporate Social Responsibility had in this respect a powerful influence.
According to scholars[14], *moral obligation*, *sustainability*, *license to operate* and *reputation* were the four arguments at the basis of the movement towards CSR undertaken by several multinational enterprises.
Precisely, companies were called to comply with the *moral obligation* of respecting people, communities and environment while making profit.

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[13] SEIDMAN G. W., *Regulation at work: globalization, labor rights, and development,* in *Social Research*, vol. 79, n. 4, p. 1027

[14] PORTER, M., KRAMER M., *Strategy and society: the link between competitive advantage and corporate social responsibility*, in PORTER M., *On Competition, updated and expanded edition*, Harvard Business Press, 2008

Then, they were called to act in a *sustainable* way "that secures long-term economic performance by avoiding short-term behavior that is socially detrimental or environmentally wasteful"[15]. Moreover, since companies do operate under the *license* of the other stakeholders, like governments and local communities, they were supposed to respect these actors' expectations while pursuing profit.

Finally, the last driving factor outlined by scholars[16] was companies' *reputation.* Indeed, as already mentioned, TNCs have been the target of intense pressures coming from mass media, stakeholders, consumers and governments. Moreover, with the innovation of instant communications, companies could no longer find places where to hide, as "international media will expose inconsistency and irresponsibility in corporate behavior, and vigilant consumers will respond"[17].

Consequently, multinational enterprises started to pay particular attention to working conditions across the supply chain and struggled to recover credibility in front of the international community, to obtain a *halo effect*[18] that would have shown their new commitment to consumers.

Pressures have come also from the political class. According to Cesare Damiano, former Italian Labor Minister, "transnational companies should respect social rules along the entire value chain, guaranteeing the compliance of the fundamental labor rights by their business partners in

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[15] *Ibidem*, p. 484

[16] *Ibidem*, p. 484

[17] NICHOLS M., *Third-world families at work: child labor or child care?*, in *Harvard Business Review*, vol. 71, n. 1, 1993, p. 16

[18] GRISERI P., *Ethical codes of conduct: developing an ethical framework for corporate governance*, in SHEIKH S., *Corporate governance & corporate control*, London, 1995, p. 278

the world countries, where the respect of social standards is low or neither exists"[19].
It seems to be a formal declaration of the inefficiency of state-based actions to promote working conditions: since governments turn out to be no longer able to implement an effective harmonization of workers' conditions along global supply chains, they should pass the buck to TNCs, which are supposed to commit themselves to intense responsibilities and new social tasks. Becoming the new driving force of welfare policies.

Undoubtedly, this array of new responsibilities put into crisis the traditional scope of companies: pursuing profit. Responsible ways of doing business, ethic commitment, attention to workers conditions, respect of human rights become indeed unavoidable prerogatives of the actions of a modern transnational enterprise.

2.3.1 The relation between a TNC and its suppliers

Better working conditions depend on the commitment of all the components of a supply chain and not just on that of the hub company.
The suppliers are, indeed, the direct employers and, passively or actively, they are core actors of the socially responsible actions undertaken by TNCs.

In this respect, in order to understand in depth the modern industrial scenario, it is worthy to describe the steps that brought TNCs to build production networks across different countries.
Considered the globalization of the economy, TNCs had to preserve their

[19] DAMIANO C., *Responsabilità sociale e politiche del lavoro*, in VV. AA., *L'impresa responsabile, diritti sociali e corporate social responsibility*, Macerata, 2007, p. 20

competitiveness even at the cost of restructuring their production strategies. In the attempt to reduce employment costs and business risks, companies shifted their perspective of what should be produced and what could be bought from other companies. Consequently, several TNCs outsourced all the non-strategic activities to supplier companies.
Subcontracting entails significant advantages[20]: TNCs can easily adjust the levels of production with flexibility, without the limits of a stable workforce, they can transfer on subcontractors the uncertainty of the modern volatile marketplace, they can avoid the liability for health and safety issues and for accidents at the workplace[21].

It is clear that TNCs craftily opted to use a mobilized workforce instead of directly signing permanent employment contracts. To do so, they replaced the old "employment contracts by commercial law contracts, thus avoiding the constraints imposed by labour law"[22], usually stipulating subcontracting or franchising contracts or commissioning part of the production to other companies. Namely, to suppliers located in countries where protective labor laws - if existing - are not enforced and where effective monitoring procedures are scantily carried out.
In this way, TNCs established convenient forms of "hybrid relations within the framework of networks of companies"[23].

On a legal perspective, the two signing parties - TNC and supplier - are considered at the same level, whereas under an employment contract

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[20] VAN LEIMT G., *Codes of conduct and international subcontracting: a "private" road towards ensuring minimum labour standards in export industries*, in ROGER BLANPAIN (ed.), *Multinational enterprises and the social challenges of the XXI century*, London, 2000, p. 177 et seq.

[21] *Ibidem*, p. 178

[22] SOBCZAK A., *Codes of conduct in subcontracting networks: a labour law perspective,* in *Journal of Business Ethics*, vol. 44, 2003, p. 226

[23] *Ibidem*, p. 226

between a TNC and its employees, labor laws traditionally have a special consideration for the worker part, considering the economic imbalance upon it[24].

Of course, at the supplier level, labor laws - when existing - do provide fair conditions to the employees of subcontractors, however this protection is frequently much less effective than that granted to the employees of a TNC. This is due to the fact that subcontractors have often no interest in maintaining a high reputation in front of consumers and to the fact that only weak controls are conducted over working conditions at the suppliers' sites.

A convenient situation for *less responsible* TNCs that, adjusting their organizational structure from *hierarchy* to *network*[25], manage to "maintain economic control over the global supply chain without being, from a legal point of view, liable for its social and environmental impact"[26]. Since the legal liable part is the subcontractor and not the TNC that manages and controls the entire supply chain.

Furthermore, the networking relations running between a TNC and its suppliers are peculiar and difficult to be categorized: "more durable than market links, but less constrictive than the hierarchical links between a parent company and a subsidiary"[27]. According to scholars the principle of legal independence of member companies is such that "the employees of one company in a network cannot engage the legal liability of the network's hub company"[28].

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[24] *Ibidem*, p. 226

[25] SOBCZAK A., *Are codes of conduct in global supply chains really voluntary? From soft law regulation of labor relations to consumer law*, in *Business Ethics Quarterly*, vol. 16, issue 2, 2006, p. 168

[26] *Ibidem*, p. 168

[27] MUCCHIELLI J. L., *Multinationales et mondialisation*, Le Seuil, Paris, 1998, p. 108

[28] SOBCZAK A., 2003, *op. cit.*, p. 227

Such circumstance represents a great challenge for legislators. Ensuring legal protection to employees located in different countries and trapped inside network of companies turns out to be extremely arduous and, thus, traditional regulative approaches seem to be no more sufficient to protect workers' rights along global supply chains.

Under these circumstances, civil society groups, consumers, unions, NGOs and other concerned stakeholders "found that it could be more effective to target companies than to pressure governments, particularly those of the autocratic-repressive type"[29]. Therefore, they pushed TNCs - the only actors able to control and foster working conditions along transnational supply chains - to act responsibly.
They advocated for new, intense, responsibilities that should induce companies to go beyond the mere pursuing of profit and to surpass the borders of the different enterprises, in order to finally protect workers' rights. Moreover, their pressures often concretely helped to raise the public awareness about working conditions in subcontracting firms and to make companies formally commit themselves through the adoption of a code of conduct.

The consequence is a new social commitment that makes the economic control of the hub company coincide with the responsibility for the activities performed across the entire supply chain[30]. Nowadays, TNCs have to accept a deeper degree of responsibility for working conditions in subcontractors "with which they do not have an equity link"[31]. They need indeed to maintain a high ethic profile in front of the consumers, as they fear to be associated with products made in sites characterized by the use of child and forced labor or by deplorable working conditions in general.

[29] VAN LEIMT G., 2000, *op. cit.*, p. 168

[30] *Ibidem*, p. 168

[31] *Ibidem*, p. 190

In order to maintain reputation high, TNCs should also pay attention to select "partners whose practices are compatible with their aspirational and ethical values"[32] and to commit themselves to protect workers even beyond the barriers of commercial contracts, such as subcontracting agreements. Suppliers selection becomes then the first step for a *responsible* TNC, as selecting contractors according to their respect of labor rights means preventing future problems[33] and simplifying future monitoring.

Under these circumstances, driven by stakeholders and public opinion, TNCs often have turned such commitment to stone by adopting codes of conduct and international framework agreements. Voluntary legal tools that could complement the traditional legal sources in protecting labor rights, but also useful governance tools that could bind subcontractors to respect the relevant rules provided by the hub company.

As seen, TNCs finally started to commit themselves to improve labor conditions along the supply chains, however their actions often have turned out to be ineffective.

As their main scope clearly remains profit and not social progress, several companies have found shortcuts to pass the buck of their social responsibilities to suppliers and to maintain low employment costs.

In this respect, an interesting case study[34] carried out in China shows how Reebok, the hub company, interacted with a supplier, called anonymously Fortune Sports (FS) by the article, managing to *outsource* its CSR policy and its ethic duties.

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[32] COMPA L. A., HINCHLIFFE-DARRICARRÈRE T., *Enforcing international labor rights through corporate codes of conduct*, in *Columbia Journal of Transnational Law*, vol. 33, 1995, p. 676

[33] BENATTI F., *Codici etici e di condotta come vincolo giuridico nei rapporti interni ed esterni alla società*, in VV.AA. *Impresa e forced labour*, 2015, in press

[34] YU X., *Impacts of corporate code of conduct on labor standards: a case study of Reebok's athletic footwear supplier factory in China*, in *Journal of Business Ethics*, vol. 81, issue 3, 2008, p. 513 et seq.

Reebok committed itself - in front of the international community and its stakeholders - to improve working conditions along the supply chain. The conditions borne by the suppliers' employees were, indeed, deplorable: long and insufficiently compensated overtime working, occupational safety and health problems, weak union representation, arbitrary punishments and abuses, difficulties in resigning[35].

Reebok, first ordered the supplier to respect *Reebok Human Rights Production Standards*, then hired a local staff to monitor the effective compliance.

For FS, respecting the rules meant increasing costs and thus having less profit. Thus, the supplier responded reluctantly to the TNC's pressures. Reebok, in its turn, was unwilling to share the costs for the improvement of labor conditions and imposed its new standards through a *punishment-oriented* method rather by promoting incentives and bonuses. Reebok indeed preferred to use "its buying power to force suppliers to comply with its labor-related codes rather than offering higher unit price to sharing financial costs for improving labor standards with its suppliers"[36].

From the case it is possible to infer that when a TNC pledges to act responsibly, often it also finds a way to pass the consequent burden to the supplier. Indeed, in this particular kind of business relations, TNCs usually have a strong purchasing power - as they would easily find other local companies to work with - while suppliers have not enough power to negotiate.

Under these circumstances, FS management had to find a solution to comply with Reebok Standards without losing profits. Hence, it formally changed its wage system, introducing the requested minimum wage and a fair overtime pay, but in truth it maintained the old convenient piece-

[35] *Ibidem*, p. 514

[36] *Ibidem*, p. 520

rate based wage structure. In practice, FS used to double track the wages in secret, hiding from workers' eyes the information about daily output and pay rate for each piecework, and showing just the "good" balance sheets to monitors.

At the end, as predictable, Reebok campaign was ineffective. The main reason dealt with the fact that Reebok was not truly committed to the goal of fostering labor conditions. As pointed out, "Reebok had committed to neither sharing cost for code implementation with FS nor amending its sourcing policy to make improvement labor standards more financially manageable to FS"[37].
Reebok indeed wished to appear responsible and to obtain better working conditions by compelling its supplier to respect the *Standards*, but had not spent any concrete efforts to achieve this goal. Rather, thanks to its bargaining power, it was able to "outsource" its responsible policies to the supplier, which on its turn unfairly dumped the costs to its employees, by double-tracking the wages[38]. Finally, workers borne the costs of TNC's responsible policies and did not benefit of any improvement, neither in terms of higher wages nor of better working conditions.

Such experience shows how important is the truly commitment of the TNC in order to achieve concrete improvements in labor conditions. TNCs have huge profit margins and they can easily share the costs of their labor policies with suppliers and guarantee better labor conditions. However, they often refuse to share such burden using their authoritative power on suppliers. Clearly, under these circumstances, an improvement in terms of working conditions is difficultly achievable.

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[37] *Ibidem*, p. 523

[38] *Ibidem*, p. 523

In this respect, a more interdependent and closer cooperation between TNCs and suppliers seems to be necessary to ensure the effectiveness of the new corporate labor policies.

On the field, a TNC has many ways to share the costs of its labor policies, thus raising the chances of fostering labor conditions along supply chains. For example, it can introduce favorable clauses in its contractual agreements with the suppliers, committing itself to purchase suppliers' products for a long period of time. In this way, the TNC enables the supplier to respect the duties imposed. Moreover, such positive approach gives to the TNC the opportunity to build stronger business relationships.

In contrast, a TNC that imposes its CSR policy but does not share the relative cost, accepts the high risk that its supplier would try to elude the responsibility in order to maintain profitability. Such negligent approach could also deceive those consumers who believe in TNC's commitment to improve labor conditions. Accordingly, being responsible means not just imposing fair standards, but also be concerned about making standards costs tolerable for suppliers.

2.4 International Organizations

International organizations occupy an extremely significant position in the supply chain scenario. Their efforts are fundamental in order to harmonize labor conditions across numerous countries. With particular regard to the regulatory field, many international organizations have tried to influence governments and other actors, like NGOs and unions, with conventions and declarations. The leitmotif of these regulatory documents has been the attempt to establish a fair floor of labor standards that could ensure basilar protection and fair labor conditions to workers living in developing countries.

However, international organizations' role is often constrained by the prerogatives of other actors. For example, their influence is frequently limited by local governments, which refuse to endorse certain commitments and whose choices are often driven by economic reasons rather than humanitarian and social interests.

Analyzing the main organizations dealing with labor conditions along supply chains, the International Labour Organization (ILO) clearly stands out as the most representative. ILO promotes job creation and sustainable livelihoods, aims at the recognition and the respect of workers' rights, fosters work safety and anti-discrimination policies, drafts guidelines for companies and, given its tripartite composition of workers, employers and governments, spends efforts to promote a social dialogue between them.

In 1977, ILO Governing Body adopted the *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (also called *MNE Declaration*). The Declaration provides TNCs, employers, unions and governments with principles and guidelines regarding employment, working and living conditions and industrial relations[39].

Furthermore, in 1998, through the *Declaration of Fundamental Principles and Rights at Work*, ILO selected eight core conventions whose compliance was considered mandatory for member states, even if they had not ratified them.

Namely, the Conventions n. 87 and 98 on freedom of association, protection of the right to organize and collectively bargaining, the Conventions n. 29 and 105 on the abolition of forced labor, the Conventions n. 138 and 182 on child labor and minimum age to work, the Conventions n. 100 and 111 on discrimination at work.

[39] Over time, the principles outlined in the Declaration have been reinforced by further Conventions and Recommendations adopted by ILO.

In this respect, ILO constantly monitors member states compliance with the core conventions, produces global reports on the respect of core standards and pushes the less responsible governments to reform their local laws.

The Organization for Economic Co-operation and Development (OECD) is an international organization aimed at stimulating economic progress, development and world trading.
In 1976, OECD drafted the first version of the *Guidelines for Multinational Enterprises* - whose fifth version was published in 2011 - which is one of the four instruments of the OECD *Declaration on International Investment and Multinational Enterprises*.
The Guidelines aims at fostering a transparent and sustainable environment for international investment and at encouraging TNCs to promote social progress and development also in terms of working conditions.
The fifth section named "Employment and industrial relations" outlines enterprises duties in respecting labor standards with particular regard to freedom of association, abolition of child and forced labor and prohibition of discrimination. The Guidelines also exhort TNCs to promote an open social dialogue with workers representatives and to protect workers' rights in developing countries where working conditions are deplorable. Companies are, indeed, called to "provide the best possible wages, benefits and conditions of work (…) at least adequate to satisfy the basic needs of the workers and their families".

Another influential organization is the European Union (EU). It aims at harmonizing transnational labor regulations and practices by providing regulatory patterns for governments and detailed guidelines for companies and stakeholders.

A remarkable example is the 2001 Green Paper *Promoting a European framework for corporate social responsibility*. The document identifies CSR as an essential instrument for sustainable development and establishes good practices for companies that operate transnationally. At point 2.2.3, it expressly stresses the importance of the respect of human rights across global supply chains. Moreover, it makes reference to ILO and OECD efforts in improving labor conditions worldwide and affirms that "European Union itself has an obligation in the framework of its cooperation policy to ensure the respect of labour standards".

The document also deals with complex issues, such as the implementation and the enforcement of labor standards, and highlights the innovative role of TNCs in protecting workers rights, with particular regard to their codes of conduct. These last voluntary legal tools are seen as important instruments for promoting international labor standards, even if - as affirmed - their effectiveness "depends on proper implementation and verification". In this respect, the Paper draws also attention to the importance of monitoring, namely a procedure "which should involve stakeholders such as public authorities, trade unions and NGOs" in order to effectively "secure the credibility of codes of conduct".

Finally, also the role of certification agencies is nowadays extremely significant. They provide instruments to efficiently evaluate industrial performances in terms of social responsibility, including the respect of workers' rights.

An example is the *SA 8000*, an ethical certification created in 1997 by CEPAA (Council of Economical Priorities Accreditation Agency) and periodically reviewed by Social Accountability International (SAI). It expressly makes references to several ILO Conventions - going even beyond the mere respect of the eight fundamental conventions - and encourages companies and organizations to adopt respectful and sustainable practices at the workplace.

2.5 Workers

Conceptually, workers are "dependent stakeholders", who have "urgent and legitimate claims, but no power to influence the formulation and implementation of codes of conduct"[40]. Workers claims, indeed, depend on the attention and consideration of other stakeholders (shareholders, NGOs, consumers, governments, etc.).

Consequently, some scholars pointed out that workers should not be considered as real stakeholders[41], but as just passive beneficiaries. Indeed, they often have no clue neither of the contents of codes of conduct nor of local labor law, they barely and passively participate to companies' decisions and in general, as outlined, they have modest influence over "the trajectory of the CSR movement"[42].

However it should be considered that - at least potentially - workers are not just the final beneficiaries of social labor policies, but also relevant actors in fostering working conditions along global supply chains.

More precisely, workers can play a role in unions, where combining their forces can influence employers' decisions. Furthermore, they may have important functions also individually, as they could provide useful information about their working condition to NGOs and unions and watch over companies' compliance with codes of conduct and international agreements. Nevertheless, by informing their colleagues about workers' rights and fair labor conditions, workers can raise the level of awareness of the workforce operating in a certain production site.

A demonstration of workers' importance can be also deducted from the attention that other stakeholders direct to them. For instance, the *less*

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[40] YU X., 2009, *op. cit.*, p. 235

[41] *Ibidem*, p. 238

[42] *Ibidem*, p. 233

responsible TNCs are extremely careful in selecting the most docile employees, avoiding those suspected to promote unionism and workers cooperation, or even firing those who are already employed. Just to report an example of an extremely common company's behavior, as told by a TNC's worker from Bangladesh, "if the management see any activity related to any union, you can be sure that you would be terminated within few days"[43].

Obviously many TNCs fear educated and coordinated workers "that are able to monitor working conditions and protect their own rights"[44]. Such attention towards employees' potential subversive activities shows that workers do influence management, even without undertaking any concrete action. Even through their particular and passive influence, workers do affect the achievement of the organization's objectives and do condition companies' strategies, since TNCs are concerned by workers potential power and do make choices in order to control them.

2.6 Unions

Traditional leading actors of the industrial relations landscape, unions are nowadays undergoing major changes.

Their role is seriously undermined by several transformations, which find their least common denominator in the globalization phenomenon. First, the "trend towards TNC-centered industrial relations rather than state-

[43] AMRF BANGLADESH AND CCC THE NETHERLANDS, *Study on a living wage in the export-oriented garment sector in Bangladesh*, 2009, 45. Available at http://www.schonekleren.nl/informatie/archief/kleren-schoon-leefbaar-loon/study-on-living-wage-in-bangladesh-anonymised.pdf

[44] EGELS-ZANDÉN N., MERK J., *Private regulation and trade union rights: why codes of conduct have limited impact on trade union rights,* in *Journal of Business Ethics*, Vol. 123, No. 3, 2013, p. 462

centered national governance poses a considerable challenge to unions"[45], whose political influence is deeply weakened at a company level. Secondly, a relevant factor is the declining membership in Western countries and the low membership in developing countries[46], probably due to the fact that "the collectivist ideology of unions has become outdated as work has become individualized"[47]. Moreover, the spreading in Western countries of *neo-liberal* tendencies has led to a lowering of unions' influence in political issues. Last but not least, it is possible to notice a fundamental contradiction between the unions' national roots and the TNCs' tendency of outsourcing the production across several developing countries.

Under these circumstances, unions started to undertake cross-border programs in order to tackle the *race to laxity* phenomenon in terms of decreasing labor conditions along global supply chains.

To do so, unions adopted long and medium term strategies and attempted to reorganize their structures in order to be better prepared for tackling modern labor challenges. First, they tried to connect unions of different countries in order to share information and plan common projects. Secondly, they started to cooperate with NGOs and civil society groups in order to foster and monitor working conditions along the supply chain.

Paralleling to the expansion of their scope from a national to a transnational one, unions started reshaping their role and functioning. In particular, seen that multinational enterprises occupy an increasing role in the industrial relations system and considered their powerful position in

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[45] EGELS-ZANDÉN N., *Transnational governance of workers' rights: outlining a research agenda,* 2009, *op. cit.*, p. 171

[46] WILLS J., *Uprooting tradition: rethinking the place and space of labour organization,* in *European Planning Studies*, vol. 6 n. 1, 1998, p. 31 et seq.

[47] EGELS-ZANDÉN N., *Transnational governance of workers' rights: outlining a research agenda,* 2009, *op. cit.*, p. 171; M. ALLVIN, SVERKE M., *Do new generations imply the end of solidarity? Swedish unionism in the era of individualization,* in *Economic and Industrial Democracy*, vol. 21, n. 1, 2000, p. 71 et seq.

connecting workers to the enterprise's management, unions started to decentralize their bargaining systems at an enterprise level[48], where - potentially - they may assume a pivotal role in monitoring the respect of workers' rights and in assisting employees dispersed along the supply chain.

A further significant issue deals with unions' skepticism towards the new tendency of Corporate Social Responsibility. CSR was often considered as a shortcut to bypass the traditional collective bargaining, namely a management system used to weaken unions, and a way to equate unions' role with that of other stakeholders.
In this respect, some unionists deemed that attributing a "stakeholder status" to unions implies "a separate and subsidiary role, alongside the local community and others", which is something different "than recognizing unions as equal partners in the business enterprise"[49]. According to their opinion, labor unions are not ordinary stakeholders, but do occupy a more significant and powerful role in the industrial relations scenario.
In any case, the movement towards CSR could turn to be a unique opportunity to foster labor conditions, to promote freedom of association and to monitor the compliance with labor regulations. A positive approach, farsightedly adopted by some unionists, could lead to the adoption of new soft law methods that - side by side with unions' traditional bargaining systems - can assist unions in tackling global labor issues.

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[48] BOERI T., BRUGIAVINI A., CALMFORS L., *The role of the unions in the twentieth century*, Oxford, 2001, p. 14 et seq.

[49] Such opinions are reported by DAWKING C., *Beyond wages and working conditions: a conceptualization of labor union social responsibility*, in *Journal of Business Ethics*, vol. 95, issue 1, 2010, p. 129

One of these regulatory tools is the international framework agreement (IFA). It is a contract between a global union federation (GUF) and a TNC, aiming at guaranteeing the respect of labor standards along the supply chain, at promoting unionism and at fostering workers' conditions.
IFA's contents usually deals with several issues such as the incorporation of ILO core labor standards, the formal recognition of unions as counterparts, the "institutionalization of a viable collective conflict resolution mechanism"[50], the fostering of transnational solidarity and the "creation of organizing spaces"[51] for worker representation. Consequently, along with its regulatory function, an IFA could also represent a useful channel to foster cross-border cooperation between unions and to promote the creation of local unions at the suppliers' workplaces.

2.7 NGOs

NGOs' importance in the field of human and workers' rights is currently increasing.
Since TNCs have outsourced a great part of their production to developing countries, NGOs have directed their efforts to foster the working conditions in offshore sites.
Historically, NGOs have spent their efforts on lobbying "governmental rather than corporate counterparts regarding human and workers' rights"[52]. They have usually shown skepticism towards non-governmental

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[50] FICHTER M., HELFEN M., SYDOW J., *Regulating labor relations in global production networks. Insights on International Framework Agreements*, in *Internationale Politik und Gesellschaft*, vol. 2, 2011, p. 76

[51] WILLS J., *Bargaining for the Space to Organize in the Global Economy: A Review of the ACCOR-IUF Trade Union Rights Agreement*, in *Review of International Political Economy*, vol. 9, n.4, 2002, p. 685

[52] EGELS-ZANDÉN N., *Transnational governance of workers' rights: outlining a research agenda,* 2009*, op. cit.*, p. 172

regulations and they have feared a weakening of governments' role in tackling labor issues.
However, in the attempt to give a response to the current global challenges, they started to consider new solutions to promote fair labor conditions and to ensure the compliance with national regulations. Influential NGOs "are thus advancing market-oriented, nongovernmental standards and monitoring systems as a supplement to state regulation"[53], especially in countries where the national laws are ineffective or barely respected.

Under these circumstances, NGOs shifted their attention also to TNCs' activities, perceiving their importance in the global scenario. And, due to the inefficiency of national legislations in protecting workers' rights, they realized to have enough room for maneuver.
NGOs' activities are particularly useful to ensure that TNCs and their suppliers are respecting labor rights and to monitor the implementation of fair wages and fair working conditions along transnational supply chains.
With particular regard to the issue of fair wages, NGOs have shown marked attention to the different wage *dimensions*[54]. For instance they continue to struggle for guaranteeing to workers a living wage and not just a minimum one. These efforts are the demonstration of the potential role that NGOs could have in fostering labor conditions, especially when they manage to cooperate with other actors such as governments and unions.

Furthermore, it is important to notice that NGOs have more flexible structures in comparison with those of unions and international

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[53] O'ROURKE D., *Multi-stakeholder regulation: privatizing or socializing global labor standards?*, in *World Development*, vol. 34, n.5, 2006, p. 5

[54] The *dimensions* of a *fair* wage are described by Vaughan-Whitehead D., *Fair wages. Strengthening corporate social responsibility*, Edward Elgar Publishing Limited, Cheltenham, 2010

organizations, they have a well established international network and, usually, enough experience to operate in developing countries. Therefore, they potentially stand out as fundamental actors for the transnational improvement of working conditions along global supply chains.

2.7.1 The tangled relation between NGOs and unions

The relation between trade unions and NGOs has been surprisingly thorny. The reasons of this tension are various and the consequences are significant, especially with regard to fundamental issues such as the monitoring of suppliers compliance with corporate private regulations.
As shown, NGOs were initially not involved in the protection of workers' rights along supply chains: the main actors were indeed unions and TNCs, engaged in a two-sided bargaining system[55]. However, as unions were declining in terms of relevance and density, NGOs started occupying a more intense role in representing the voice of a globally dispersed workforce.
On their turn, after the emergence of NGOs interest in labor issues, unions had to reshape their functioning in order to deal with new actors in a multi-faced bargaining system[56]. Moreover, although it may seem that NGOs and unions struggle for the same goals and share the same scopes, they have frequently disagreed on the way to achieve them. In this respect, they have been defined as "wary allies"[57] and their relation have repeatedly oscillated from cooperation to competition.
Scholars pointed out that there are several grounds explaining this

[55] BRAUN R., GEARHART J., *Who should code your conduct? Trade union and NGO differences in the fight for workers' rights*, in *Development in Practice*, vol. 14, n. 1-2, 2005, p. 187

[56] *Ibidem*, p. 187

[57] Definition provided by COMPA L., *Wary Allies: trade unions, NGOs, and corporate codes of conduct*, in *The American Prospect*, vol. 12, n. 12, 2001

conflict, such as gender-related and class differences or the preference towards different voluntary regulatory tools[58]. Nevertheless, the most significant and debated topic deals with the divergent organizing models respectively adopted by unions and NGOs.

In this respect, a remarkable study[59] pointed out that NGOs and unions are characterized by fundamental differences based on *teleological, structural* and *operational* grounds.

The first difference - the *teleological* one - deals with scopes: trade unions are motivated by peculiar interests, whereas NGOs are motivated by ideals.

In particular, focusing on the union side, it is worthy to notice that according to some academic voices[60] companies and unions share the same goal: preserving the company and fostering its welfare. They both have property rights, as TNC controls capital while union represents the property rights of their members in terms of the workforce employed, and they both aim at maximizing company's profit (in terms of returns, better wages and working conditions).

Moreover, unions struggle to obtain more and more control over the company and to influence its decisional processes. A peculiar interest, which is overlapping but opposite to that of management and shareholders: holding control over resources. Thus, trade unions and

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[58] Class differences have been addressed by COMPA L., *Trade unions, NGOs, and corporate codes of conduct*, in *Development in Practice,* vol. 14, n. 1–2, 2004, p. 210 et seq.
Gender-related differences have been addressed by HUYER S., *Challenging relations: a labour-NGO coalition to oppose the Canada-US and North American Free Trade Agreement, 1985–1993*, in *Development in Practice*, vol. 14, n. 1–2, 2004, p. 48 et seq.
The issue of NGOs' preference for codes of conduct versus unions' preference for international framework agreements has been addressed by EGELS-ZANDÉN N., HYLLMAN P., *Evaluating strategies for negotiating workers' rights in transnational corporations: the effects of codes of conduct and global agreements on workplace democracy*, in *Journal of Business Ethics*, vol. 76, n. 2, 2007, p. 207 et seq.

[59] BRAUN R., GEARHART J., 2005, *op. cit.*, p. 183

[60] *Ibidem*, p. 183

management appear as "appropriate negotiation partners, because they speak the same interest-oriented language."[61]
NGOs, on the contrary, seem to be not characterized by the pursuing of peculiar interests, instead they appear to be driven by mere ideals, such as fostering labor conditions in supply chains. This feature lets them free from the chains of short-term interests and, ideally, makes them suitable to "support norms for the sake of their content rather than their return"[62].
In this respect, as NGOs pursue ideals and not specific business-related interests, unions fear that "NGOs will import many heterogeneous issues that are not altogether related to labor questions"[63].

The second difference deals with *structure*. Unions have members, who expect them to undertake certain activities and to support them in the bargaining process with the company's management, while NGOs have supporters and volunteers, but are exempted from the duty of representing workers.
The structural difference introduces the *operational* one: the power of representing workers makes trade unions very close to politics, whereas NGOs avoid as much as possible political influences over their activity. They, indeed, aim at influencing policy makers by lobbying but they do not want to get directly involved in politics and to accept funding from governments and parties. Only in this way, NGOs could indeed obtain credibility and stand out as independent and legitimate actors.

Nevertheless, further voices coming from the academic community[64] have

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[61] *Ibidem*, p. 188

[62] *Ibidem*, p. 188

[63] ZUMBANSEN P., 2006, *op. cit.*, p. 289

[64] EGELS-ZANDÉN N., HYLLMAN P., *Differences in organizing between unions and NGOs: conflict and cooperation among Swedish unions and NGOs*, in *Labor Studies Journal*, vol. 101, issue 2, 2011, p. 251

made objections to these three fundamental grounds outlined. Accordingly, considering the *teleological* divergence, on the one hand it seems difficult to affirm that unions are driven by mere interests and not by the ideal of protecting human and workers' rights, on the other also NGOs appear to harbor economic interests since they need material resources[65].

With regard to *structure*, critics have pointed out that the difference outlined seems too vague as many NGOs do have members. Finally, in terms of *operational* differences, several NGOs are not considered only "outsiders" of politics since they actively cooperate with governments and politicians.

In any case, the differences between unions and NGOs could represent obstacles to a successful cooperation aimed at protecting workers' rights along supply chains. For this reason, scholars considered important to study more in depth their relationship and such rooted divergences, even beyond the teleological-structural-operational grounds outlined above.

In this respect, a remarkable study[66] re-elaborated unions-NGOs relations introducing four new dimensions of comparison between the structures of the two actors.

The *governance* dimension deals with the tension between *democracy* and *efficiency* ideals: the first is the degree of democratization of decisional processes inside unions and NGOs, the second represents their ability to rapidly achieve goals. Due to their democratic structure, unions emerge as more legitimate organization than NGOs, but weaker in terms of efficiency in comparison to them.

Researches showed that "difference between organizing for democracy or for efficiency affects union–NGO relationships"[67], which means that unions

[65] *Ibidem*, p. 251

[66] *Ibidem*, p. 252

[67] *Ibidem*, p. 256

and NGOs find difficulties in comprehending the respecting scopes and in cooperating because of their different governance nature.

The *identity* dimension compares *policy* to *enterprise* as two different organizing styles in terms of the traditional tripartite industrial relations system. Under the first style, an organization reflects the union-company-government tripartite system, instead under the second it represents only the peculiar structure of the enterprise in which it operates.
In this respect, the outcome of the research is particularly interesting. According to their representatives, unions are the only adequate actor to represent workers, thus they adhere to the *policy* organizing model, while NGOs are perceived as "outsiders" and "disconnected from the tripartite policy system"[68].
On the contrary, NGOs representatives do consider unions as the most legitimate actor in advocating workers' rights, but do not exclude a partial *policy*-oriented activity for NGOs. According to them, there is a difference between the two entities but it lies just on the *degree* of legitimacy and, thus, there could be enough room also for NGOs for promoting labor rights and raising workers' claims[69].
On the field, differences in the identity dimension entail difficulties in cooperating. The two actors perceive differently their respective roles and, consequently, have difficulties in coordinating their activities and projects on the field.
Even more strongly, they show disagreement on the voluntary legal instruments to be drafted to improve labor conditions. NGOs prefer codes of conduct, while unions choose IFAs as the preferred tool. This difference shows also the deeper divergence between an "enterprise" organizing model (adopted by NGOs with their preference towards codes of conduct) and a "policy" tool (the international framework agreement) that,

[68] *Ibidem*, p. 254

[69] *Ibidem*, p. 254

according to unions, should enable workers' participation in the drafting and implementation of labor policies along supply chains. Furthermore, it is worth noticing that some unionists fear companies' control over regulatory processes: they often believe that companies are "coopting NGOs by changing them from *watchdogs* to *partners* and undermining strong local laws and unions"[70].

The *geographic* dimension simply entails the difference in terms of global or local organization of NGOs and unions. Theoretically, unions seem to be rooted on a local organizational system, while NGOs appear to be globally organized. However, researches[71] showed that both of them are actually organized locally, hence demonstrating that the geographic dimension is not a strong cause of tension.

Finally, the *resource* dimension deals with NGOs and unions differences in funding. They indeed use different channels to fund their activities, as unions have members who constantly provide them with fees, while NGOs struggle to find sponsors to finance their programs. Such discrepancy entails different time horizons, as unions can work slowly to promote workers' rights along supply chains, while NGOs have less time to achieve their goals and have to proceed at a faster rhythm[72].
Different time horizons in part explain while, in challenging sweatshops, NGOs are more inclined to postpone the promotion of freedom of association in order to achieve other goals.
More precisely, both the mentioned studies show differences in terms of actors' priorities in terms of labor rights to be promoted in front of

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[70] O'ROURKE D., *Outsourcing regulation: analyzing nongovernmental systems of labor standards and monitoring*, in *The Policy Studies Journal*, vol. 31, n. 1, 2003, p. 22

[71] EGELS-ZANDÉN N., HYLLMAN P., 2011, *op. cit.*, p. 256

[72] *Ibidem*, p. 257

company's managers. Predictably, trade unions consider workers participation as a fundamental right that cannot be postponed to any other. They deem that freedom of association provides workers with a basilar organizing space, which constitutes the springboard for all the other claims.

On the contrary, NGOs consider freedom of association at the same level of other labor rights. For instance, when they struggle for better working conditions in countries where freedom of association is particularly problematic, they are able to postpone the achievement of this right to concentrate on other, more achievable, goals.

Further issues emerge with regard to the monitoring procedures. Trade unions believe that they are the only legitimate actor at the shop floor, where the monitoring takes place. Firstly because they recognize themselves as the exclusive workers' representatives, secondly because they believe that no other organizations could have their competence and know-how in monitoring working conditions.

Their position leans also on the justifiable idea that NGOs and governmental inspectors could be influenced, or worse corrupted, by enterprises' management.

However, NGOs on their turn affirm that there are inaccessible sweatshops where unions are absent and workers have no protection. In such borderline cases their activity turns to be essential.

Furthermore, commentators have affirmed that when NGOs control the monitoring procedures, unionization is at risk. In this respect, a study conducted in Central America[73] showed that NGOs seem to supplant "the unions' role as worker representatives by discussing wages and working conditions with factory managers"[74]. This is exactly what unions fear,

[73] O'ROURKE D., 2003, *op. cit.*, p. 22

[74] *Ibidem*, p. 23

namely the empowerment of companies that "avoid union organizing, enforceable collective agreements, and government regulation"[75].

In conclusion, it is undisputed among scholars that a profitable cooperation between NGOs unions is essential for a concrete improvement of working conditions along supply chains.
Their collaboration serves to counterbalance TNCs' power in drafting private regulatory tools but also in monitoring working conditions at suppliers, especially where worker representation is prohibited or constrained. In many cases, if they fail to cooperate, they can considerably jeopardize the protection of workers' rights.
In this respect, an in depth analysis of unions and NGOs' fundamental differences in organizing, finding resources, cooperating with other actors, representing workers and pursuing their own scopes, could be useful to make them aware of their respective divergences[76]. A knowledge that could pave the way to a deeper level of cooperation.

[75] *Ibidem*, p. 23

[76] EGELS-ZANDÉN N., *Transnational governance of workers' rights: outlining a research agenda,* 2009*, op. cit.*, p. 181

3. The function of core labor standards in harmonizing working conditions

3.1 The adoption of core labor standards: advantages and disadvantages

The improvement of working conditions along global supply chains entails a shared commitment of many stakeholders, such as international organizations, governments, NGOs, unions, TNCs.
In order to effectively cooperate and understand each other, these actors should be able to speak the same language in terms of workers' rights.
In this respect, core labor standards (CLS) are extremely useful. They are fundamental rights to be respected regardless of the development, the culture, the customs of every country. Such rights are indeed considered human rights and undeniable prerogatives of human dignity. Furthermore, CLS are also considered "preliminary conditions"[77] of free trade and means to achieve an upward harmonization of working conditions along global supply chains.
On a legal perspective, companies are internationally bound to respect CLS according to a shared *opinio iuris*[78], as they have the common belief to be legally bound to act in a way that respects labor standards.

ILO turned these rights to stone in 1998 with the *Declaration on Fundamental Principles and Rights at Work*. Officially adopted within the International Labour Conference, the Declaration "represents a departure from the traditional method of elaborating standards in ILO legally binding

[77] PERULLI A., *Diritto del lavoro e globalizzazione*, Milano, 1999, p. 47

[78] *Ibidem*, p. 47

conventions"[79]. The conventions containing core labor standards indeed do not have to be ratified, as they are automatically binding on the member countries on the basis of their membership within ILO.
The Declaration affirms explicitly that all the ILO members "have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;
(b) the elimination of all forms of forced or compulsory labour;
(c) the effective abolition of child labour;
(d) the elimination of discrimination in respect of employment and occupation"

Analyzing the core labor standards, it appears that their fundamental scopes overlap those of human rights. Scholars indeed pointed out that "the need for international labour standards is the same as the need for international human rights standards"[80], since human beings are universally entitled to a certain minimum standard of treatment.
The label of "human rights" entails significant consequences. For example, as these rights are universal and inalienable, they should be respected transnationally, regardless of the lower level of protection granted by national regulations worldwide.
However, some scholars do not consider labor rights as human rights,

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[79] LEARY, V., *"Form follows function": formulations of International Labor Standards - Treaties, Codes, Soft Law, Trade Agreements*, in FLANAGAN R., GOULD IV W., *International labor standards. Globalization, trade and public policy*, Stanford University Press, 2004 p. 186

[80] CLEVELAND S., *Why International Labor Standards*, in FLANAGAN R., GOULD IV W., *International labor standards. Globalization, trade and public policy*, Stanford University Press, 2004,, p. 137

because of the lack of certain fundamental characteristics, namely moral urgency, universality, immediate application. But, still, there are two fundamental reasons that lead other scholars to favorably consider core labor standards as human rights. First many labor rights are included in documents dealing with human rights; secondly, some rights do not have all the formal features requested by scholars, nevertheless they are broadly accepted as human rights.

With regard to the first point, as a matter of fact, many documents - even if aimed at protecting human rights - do comprehend labor rights. For instance, the 1919 *Treaty of Versailles* considers also issues such as equal rights for migrant workers, for men and women, freedom of association, fair wages, reasonable working time. The 1948 *Universal Declaration of Human Rights* considers the prohibition of slavery, the freedom of association and unionism, the right to work and to be paid fairly, the protection of human dignity through adequate standards of living. The 1966 *International Covenant on Civil and Political Rights* (ICCPR) includes the prohibition of slavery, forced labor, discrimination and the protection of freedom of association. Also the 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR) considers certain labor issues such as safe and healthy working conditions, freedom of association, the right to join trade unions, the right to adequate living standards. Finally, the 1989 *Convention on the Rights of the Child* prohibits the exploitation and abuse of children also in terms of child labor.

Beyond the positions of those scholars who consider core labor rights as human rights, there is still another significant ground that has to be appreciated: human dignity. As mentioned, human beings are universally entitled to a certain minimum standard of treatment and both laws protecting labor rights and laws protecting human rights are functional to ensure the protection of this untouchable individual sphere of dignity.

In practice, workers' dignity can be impinged in a number of ways, the main risks come from the exercise of employers authority through orders, directives and control. Of course, the employers' prerogatives have to be limited and circumscribed by local legislators, however several developing countries do not provide a strong legislation in this sense or when they do, the relative monitoring and compliance initiatives are not sufficient to protect workers' dignity in practice. Then, under these circumstances, CLS stand out as important tools to harmonize working conditions in developing countries hosting the supply chains.

In this respect, ILO undertook a historical initiative, identifying the labor standards to be considered fundamental and thus to be protected worldwide. These rights have become a floor of rights that cannot be derogated, a benchmark for legislators and policy makers and a reference for human treaties and conventions.

The advantages of an untouchable floor of labor standards are numerous on the field.

Considered the downward spiral of labor conditions since developing countries compete to lower labor costs and attract foreign investors, CLS "can counterbalance these pressures on domestic working conditions by removing certain intolerable labor conditions from the labor rights/ production costs calculus"[81]. Consequently, they can establish a floor below which competition is not allowed.

Harmonized standards are also extremely useful in creating an international benchmark for compliance and enforcement: global and local actors are enabled to speak the same language when dealing with labor conditions. Indeed, standards facilitate negotiations between governments, companies, unions, NGOs and other actors, as they provide parties with a tool to measure the respective level of compliance.

Moreover, standards are useful for international organizations to

[81] CLEVELAND S., 2004, *op. cit.*, p. 141

communicate and effectively coordinate their efforts in protecting workers' rights along global production chains. For example, they give the opportunity to the World Bank and the International Monetary Fund to compare the impingement of their investment programs in terms of labor conditions.

On a legal perspective, CLS make possible the "use of transnational public litigation to hold both domestic and foreign corporations accountable for labor rights violations"[82] and have also a significant function in the drafting of voluntary legal tools. Indeed, in codes of conduct and international framework agreements, a shared definition of labor standards is essential. Differently, each actor could refer to a different meaning for the working conditions it aims to regulate.

As shown, the harmonization of labor standards entails numerous advantages, however several voices have also highlighted negative consequences to their adoption.

Malaysian Prime Minister and Indian Commerce and Industry Minister[83] - India and Malaysia are two locations where frequently TNCs outsource their production - outlined that standards would raise labor cost, one of the few competitive advantage of developing countries. According to them, the developed countries want to deprive developing countries of such advantage in order to undermine their competitiveness.

Beyond their stance, scholars[84] recognized the *stage-of-development* argument, meaning that for developing countries is not alarming to have lower labor conditions (and labor costs) as they are at an early stage of their development.

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[82] *Ibidem*, p. 146

[83] FIELDS G., *International Labor Standards and decent work: perspectives from the developing world*, in FLANAGAN R., GOULD IV W., *International labor standards. Globalization, trade and public policy*, Stanford University Press, 2004, p. 68

[84] *Ibidem*., p. 68

Moreover, opponents to labor standards pointed out also the unfairness of linking trade and labor standards. An interesting attempt to spread core labor standards was indeed the imposition of sanctions for those countries that had not adopted or respected them.
Opponents claimed that free access to markets cannot be jeopardized by sanctions linked to trade, considering that many developing countries could not afford such expenses. According to their position, sanctions would just delay improvement, as better working conditions would automatically and naturally come with the growth of the economy.

3.2 The core labor standards in detail

Before analyzing the private regulations adopted by TNCs incorporating CLS, it is important to outline the historical roots of these fundamental rights. As shown, CLS deal with essential aspects of the human being and with the respect of human dignity. They are at the center of workers' rights protection along the global supply chain and they constitute a fundamental basis for building a constructive social dialogue.
For these reasons, CLS have been included in many international legal instruments, such as agreements, treaties and conventions. And, over time, such floor of fundamental principles has also become an inspiration for the legal tools adopted by private actors to formalize their social commitment.

3.2.1 Prohibition of forced and compulsory labor

According to ILO, 20.9 million people are victims of forced labor, coerced or deceived in jobs that they cannot leave. The 2014 ILO Report *Profits and Poverty: the economics of forced labour* outlines that forced labor

generates 150 billion of US dollars in illegal profits per year. Such evidences show the urgent need for stronger measures of prevention and protection, as well as for a more effective enforcement of labor norms.
Intense efforts in eradicating such a long-standing labor plague were traditionally spent by international organizations and governments. These actors attempted to harmonize national regulations through international legal instruments, such as treaties and conventions and to coordinate their strategies through transnational programs of action.
However, as often states have found hurdles in implementing the regulations along transnational supply chains, also several multinational enterprises were called to participate and play their part. TNCs' commitment was also due to the stronger pressures of consumers and civil society groups, which - informed on the deplorable conditions of forced workers - could no more accept such a fierce exploitation of workers.

At an international level, the prohibition of forced and compulsory labor recurs in several conventions and international legal tools. The norms that prohibit this form of exploitation are "basic rights of the human person"[85] and are considered *jus cogens*[86], namely fundamental, overriding principles of international law, from which no derogation is ever permitted.
Historically, the first formal abolition of slavery occurred in XIX century, when the 1814 *Treaty of Paris* ruled the abolition of slave trade and the 1885 *General Act of the Berlin Conference on West Africa,* aiming at "suppressing slavery, and especially the slave trade", affirmed that "trading in slaves is forbidden in conformity with the principles of international law".

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[85] BARCELONA TRACTION, LIGHT AND POWER COMPANY LIMITED, I.C.J. Reports, Judgment, 1970. Available at http://www.icj-cij.org/docket/files/50/5387.pdf

[86] PERULLI A., 1999, *op. cit.*, p. 57

Later on, created under the auspices of the League of Nations, the 1926 *Convention to Suppress the Slave Trade* represented the first international treaty that formally prohibits slavery in a binding manner. Signed by 99 parties, the Convention was extremely useful to define a shared concept of slavery and to establish concrete rules for its suppression. Precisely, slavery was defined at article 1 as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". Whereas, at article 5, parties committed themselves to impose concrete sanctions for slave trading, slaveholding, and enslavement, recognizing that "recourse to compulsory or forced labour may have grave consequences" and to undertake all the necessary measures "to prevent compulsory or forced labour from developing into conditions analogous to slavery".

In 1929, the International Labour Office (ILO) published a report on forced labor worldwide, outlining the grounds underneath this deplorable practice. In particular, the work pointed out that forced workforce was used for general scopes like agriculture, for specific public purposes like cleaning the city streets or the building of public edifices, and finally for serving private employers. One year later, in 1930, during the 14° session of the ILO Conference, the Convention n. 29 on forced labor was adopted. Currently ratified by 177 states, the Convention defined forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". It is a very precise definition that considers two innovative aspects: the menace of a penalty and the voluntary basis of the working performance. The document then, at article 2, strictly described those cases that do not fall under the prohibition of forced labor.

After the World War II, UN and ILO cooperated and unified their efforts in a temporary committee to report the current scenario of forced labor worldwide. In 1953, the committee published a report describing two

forms of forced labor: in one case, workers were exploited to obtain economic goals, in another labor force was used as method of politic coercion. Both the cases were considered as blatant violation of human rights prohibited by international documents[87], such as the Universal Declaration on Human Rights.

Later on, influent international organizations pushed for a new commitment to abolish forced labor worldwide.

ILO, accordingly, adopted the Convention n. 105 on the abolition of forced labor. Article 1 defined the concept of forced and compulsory labor "(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilizing and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination". Furthermore, article 2 of the same document called governments to undertake a definitive shift from such deplorable practice, affirming that "each Member of the International Labour Organization which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour".

In 1956, the *United Nations Supplementary Convention on the Abolition of Slavery* defined the concept of slavery even more precisely, including practices such as debt bondage, serfdom, the selling of women by relatives for marriage, the situation of parents or guardians delivering a child to another person with the view to the exploitation of his labor.

It is interesting to notice that such enlarged list shows the difficulties encountered by international organizations in finding a common definition that includes all the aspects of slavery. In this respect, ILO often uses the

[87] *Ibidem*, p. 58

term *modern slavery* to include closer related concepts as forced labor, human trafficking and slavery[88].

Moreover, the already mentioned *Universal Declaration of Human Rights* affirmed, at article 4, that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms" and, at article 23, that "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment". In this respect, it is possible to notice that *free choice of employment* is a very generic term[89] that entails the abolition of forced labor but also the coercive assignation of labor from national authorities.

In 1950, the *European Convention on Human Rights* stated the prohibition of slavery and forced labor at article 4, affirming that "no one shall be held in slavery or servitude" and "no one shall be required to perform forced or compulsory labour". Then it provided strict exceptions whereby performances do not fall under the prohibition, namely work required to be done in the ordinary course of detention, service of a military character or exacted instead of compulsory military service, service exacted in case of an emergency or calamity, work or service which forms part of normal civic obligations.

The definition of forced or compulsory labor was then enhanced by the European Court of Human Rights case n. 1468 of 1962 (*Iversen v. Norway*). In this sense, The Court firstly required that the work or service was "performed by the worker against his will" and, secondly, that such work or service was "unjust or oppressive" or that involved an "avoidable

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[88] ILO, *Data Initiative on Modern Slavery*, April 2015. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_364025.pdf (30/05/2015)

[89] PERULLI A., 1999, *op. cit.*, p. 59

hardship".

Few years later, the 1966 *International Covenant on Civil and Political Rights* explicitly dealt with forced labor. Article 8 paragraph 3 (a) stated that "no one shall be required to perform forced or compulsory labour", while paragraph 3 (b) made several exceptions to this prohibition.
The same document recalled article 4 of the *Universal Declaration of Human Rights* but it provided an interesting distinction of the two terms slavery and servitude[90]. The former was to be considered a narrow concept entailing the dejection of legal status, the latter the more general idea of any form of domination of one person to another.

Recently, in 2014, ILO published the *Protocol to the Forced Labour Convention*, a legally binding instrument that required States to take measures regarding prevention, protection and remedy in giving effect to the Convention's obligation to suppress forced labor.
At article 1 paragraph 3, the document affirmed that "the definition of forced or compulsory labour contained in the Convention [of 1930] is reaffirmed", thus including also trafficking in persons for the purposes of forced or compulsory labor.
According to the Protocol, after several years forced labor is still to be considered a scourge that affects a huge number of countries and persons. A subject "of growing international concern" that requires "urgent action for its effective elimination".
In this respect, ILO - through its Recommendation n. 203 - also called its member states to collect statistics and to report violations occurred in their territory.

[90] *Ibidem*, p. 59

3.2.2 Abolition of child labor

Child labor is considered one of the most significant issues in the discussion on labor rights, as it is directly linked to the respect of fundamental ethical values. Public opinion is indeed particularly sensitive to the protection of children and the improvement of their conditions.
For this reason, governments, international organizations and multinational companies have been paying particular attention on labor child related issues during the last decades.

According to the 2013 ILO *Marking progress against child labour* Report, 168 million children worldwide are in child labor, accounting for almost 11 percent of the child population as a whole. The most important sector where child are exploited is agriculture (98 million), but the numbers are huge also in service (54 million) and industry sectors (12 million).
Interestingly, the number has declined by one third since 2000, when it amounted to 246 million. This positive trend was due a strong global movement that involved several actors at different levels, but with a particularly intense commitment of national governments. Indeed they ratified ILO Conventions regarding child labor, made solid policy choices and built strong legislative frameworks. However, according to ILO Report, even if significant progress has been made, "ending the scourge of child labor in the foreseeable future is going to require a substantial acceleration of efforts at all levels".

As shown, governments and international organizations consider child labor as a matter of primary concern. Undoubtedly, the persuasive actions of ILO and UN have been particularly helpful in contrasting violations. First, ILO tried to pressure states to harmonize their internal legislations regarding child labor by publishing the Convention n. 138 on minimum age. As stated by the first article of the Convention, the main aim was "to

ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons".

Later on, in 1989 the UN adopted the *Convention on the Rights of the Child,* which represented one of the most significative documents on child protection. A comprehensive treaty outlining the fundamental civil, political, economic, social, health and cultural rights of children. In particular, article 32 affirmed the right of the child "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". Furthermore, signatory states were called to set a minimum age for admission to employment, to establish appropriate regulation of the hours and conditions of employment and to provide for appropriate penalties or other kind of sanctions.

Nevertheless, aspects such as the education and the development of the child were considered extremely important. Indeed, in order to develop their full potential, children do need "health care, nutritious food, education that nurtures their minds and equips them with useful knowledge and skills, freedom from violence and exploitation, and the time and space to play"[91]. In this respect, child labor also impinges children by depriving them of the time and the conditions to play, to have an education and to grow up peacefully.

In 1998, during the 86th session of the International Labour Conference, two reports were submitted to the attention of the member states. The first, Report VI-1, asked opinions for the possible contents of the new international standards, while the second, Report VI-2, provided members

[91] UNICEF REPORT *The state of the world's children 2014, every child counts: revealing disparities and advancing children's rights.* Available at UNICEF website, http://www.unicef.org/gambia/SOWC_report_2014.pdf (30/05/2015)

with a set of proposals inspired to the answers given to the first questionnaire.

The year after, on the basis of such work, ILO adopted the Convention n. 182 on the worst forms of child labor. The Convention called governments to finally eradicate the most deplorable expressions of child labor, namely:

"(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".

In this respect, scholars[92] pointed out that two are the different forms of child exploitation to be considered. The first - at letter (d) - deals with children psychophysical development, the second - at letter (a) (b) and (c) - constitutes a blatant violation of fundamental human rights, whose prohibition goes under the *jus cogens* category.

Furthermore, scholars also outlined that child labor needs to be distinguished from child work[93]. The former is a deplorable and unacceptable form of forced labor, which entails a condition comparable to slavery, including unhealthy conditions and hard working time. The latter is a lighter form of labor, which can be accepted by the international community but only under certain favorable conditions.

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[92] PERULLI A., 1999, *op. cit.*, p. 69

[93] *Ibidem*, p. 67

In conclusion, an interesting perspective considers children's one as a voice to be contemplated while discussing the improvement and the monitoring of their conditions. Children are indeed the best experts of their own lives and they need to be heard. Their opinion turns out to be surprisingly important in order to understand which conditions should be repudiate, modified and improved. According to the UNICEF Report *The state of the world's children 2014*[94], children can "contribute valuable knowledge to validate and enrich the evidence base", as nowadays "innovations in data collection are opening new avenues for children's participation". As brilliantly predicted by Giovanni Micali, former UNICEF Italian President, "children participation is fundamental: without their involvement and commitment no concrete project for improving their conditions could work and be effective. Up to the present, the world has not done enough for its sons: now it is time to hear them"[95].

3.2.3 Prohibition of discrimination

The international community has traditionally paid a lot of attention on the eradication of discrimination practices. Several acts, agreements and conventions have dealt with the principle of equal treatment in labor relations. Examples of their contents are the protection of certain groups of workers, which have been discriminated according to their ethnic origin, religion, culture or sexual orientation and the promotion of equal treatment for female and male workers.

As in the other cases, also discrimination issues are particularly difficult to be eradicated in practice. In developing countries, the enforcement of law

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[94] UNICEF REPORT *The state of the world's children 2014, op. cit.*

[95] Official Presentation to the foreign press of the UNICEF Report *The state of the world's children 2003*, Rome, Italy

provisions is indeed often lacking and the monitoring is particularly complex as the violations are arduous to be discovered and then proved.

The international legislative framework regulating the prohibition of discrimination is abundant. According to article 1 of the *UN Charter*, the principle of non-discrimination is collocated at the core of the international humanitarian and economic action. One of the purpose of the UN is indeed to "achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

Also the *Universal Declaration of Human Rights* emphasized the importance of the principle of equal treatment. Article 2 affirmed indeed that every person is entitled to all the rights and freedoms set forth in the Declaration, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

More explicitly, the 1966 *International Covenant on Economic, Social and Cultural Rights* dealt directly with labor issues, affirming at its article 7 the principle of "fair wages and equal remuneration for work of equal value without distinction of any kind" and the right to "equal opportunity for everyone to be promoted in his employment to an appropriate higher level".

The precise concept of discrimination at workplace started to take shape with the *International Convention on the Elimination of All Forms of Racial Discrimination.* Entered into force in 1969, the document considered at its article 5 "the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration" and "the

right to form and join trade unions" as fundamental rights of the human being.

Furthermore, the *Convention on the Elimination of All Forms of Discrimination against Women*, entered into force in 1981, provided a powerful definition of women discrimination. Article 2 prohibited "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

With particular regard to the workplace relations, the Convention affirmed, at article 11, that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights". Moreover, it is possible to notice that a marked attention was paid to certain rights, such as the right to work (considered "an inalienable right of all human beings"), the right to have the same employment opportunities, to free choose profession and employment, to promotion, job security and all benefits; but also the right to equal remuneration, to social security and to health and safety at the workplace.

Later on, the 1995 *Copenhagen Declaration on Social Development,* at the 3th Chapter of its *Programme of Action*, asked both to the public and the private actors to commit themselves in order to ensure an equal treatment to workers. It affirmed that "particular efforts by the public and private sectors are required in all spheres of employment policy to ensure gender equality, equal opportunity and non-discrimination on the basis of race/ethnic group, religion, age, health and disability, and with full respect for applicable international instruments". This represented a turning point: TNCs started to be considered essential actors for the improvement of labor conditions, since they operate side by side with workers and - at

least on paper - they could be able to successfully implement equal treatment policies at workplace.
Moreover, the *Programme of Action* of the Declaration affirmed that "special attention must also be paid to the needs of groups who face particular disadvantages in their access to the labour market", including indeed marginalized categories such as immigrate and disable workers.

Moving on to ILO, it is important to outline that scholars considered its efforts to ensure equal treatment of workers during the first part of the XX century not sufficient. According to commentators, ILO had provided a fragmented regulation, that "dealt with the diverse aspects of the prohibition of discrimination, struggling to formulate a precise definition of the principle"[96].
The turning point came with the Convention n. 111 of 1958, which at article 1 (a) provided a comprehensive definition of discrimination. The term included "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Then, the Convention left space to a social dialogue between each member state and its internal organizations representing employers and workers to find any other particular dimension of discrimination in terms of employment and occupation.
The forms whereby discrimination could take place were indeed considered various and numerous. For this reason, over time, other expressions of discrimination had been pointed out by numerous ILO Conventions. For example, Convention n. 140 of 1974 affirmed that paid educational leave shall not be denied to workers on the ground of their race, color, sex, religion, political opinion, national extraction or social origin. Convention n. 156 of 1981 aimed at creating effective equality of

[96] PERULLI A., 1999, *op. cit.*, p. 73

opportunity and treatment for men and women workers. Or for instance, Convention n. 169 of 1989 stated that indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without any hindrance or form of discrimination.

3.2.4 Freedom of association

The right of freedom of association and that of organizing and bargaining collectively are included in several international legal documents promoting human rights. They are also an essential part of private instrument of commitment, such as codes of conduct and international framework agreements. Especially with regard to IFAs, freedom of association emerges a matter of primary concern since one of the signatories of this kind of agreement is a commonly a global union federation (GUF).
This right has the fundamental function of giving voice to workers and to build a valuable counterpart to the employer, thus mitigating its power. This function is particularly important in "low-skill, high employment economies, where the most workers are fungible and have no individual leverage with their employers"[97], especially when they try to bargain better working conditions.

Freedom of association is clearly extremely important for ILO. It turns to be not just a fundamental right to be promoted and defended, but also a *conditio sine qua non* of ILO's functioning[98] due to its tripartite structure composed by workers, employers and governments.

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[97] CLEVELAND S., 2004, *op. cit.*, p. 155

[98] PERULLI A., 1999, *op. cit.*, p. 51

It is not surprising that ILO was indeed the first international organization that explicitly regulated freedom of association in its Constitution of 1919. Few years later, in 1921, the Convention n. 11 on right of association in agriculture was published. Article 1 promoted the commitment ILO members to ratify the Convention and to secure to "all those engaged in agriculture the same rights of association and combination as to industrial workers".

Clearly, the scope was not as broad as that of Convention n. 84 of 1947, whereby the right to associate for all lawful purposes was granted to all the employers and the employed.

Then, in 1948, ILO adopted the Convention n. 87 on freedom of association and protection of the right to organize, which resulted a fundamental tool for promoting freedom of association among ILO members. At article 2, it affirmed that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation".

In this respect, as pointed out by scholars[99], this right is established without any distinction, thus comprehending both workers engaged in the public sector and those in the private one. Furthermore, by providing that workers have the right to be part of the representative organization they prefer, the provision tackled those governments imposing a unique union for all the employees in order to control unionism phenomena in an authoritarian manner.

Then, article 3 outlined all the activities that workers should be authorized to carry out, affirming that "workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom". Finally, article 5 gave workers the opportunity to establish and to join union federations and confederations, which can be connected internationally. This provision opened an array of

[99] *Ibidem*, p. 53

opportunities for those unions that were struggling to undertake cross-border actions. For instance, modern voluntary tools, such IFAs, are signed by global union federation, representing workers hosted by numerous countries along the supply chain.
Later on, in 1949, ILO adopted the Convention n. 98 on the right to organize and collective bargaining. The difference in comparison to the former Convention is that this last one considered unionism within the relations between private actors. For example, it dealt with internal industrial aspects such as anti-union discrimination.

In conclusion, the 1948 *Universal Declaration of Human Rights* included freedom of association amongst the fundamental political rights to be promoted and protected. Precisely, The Declaration affirmed at article 20 that "everyone has the right to freedom of peaceful assembly and association" and at article 23 paragraph 4 that "everyone has the right to form and to join trade unions for the protection of his interests".

3.3 The core labor standards within codes of conduct and international framework agreements

Core labor standards are on the top list of codes of conduct's contents. Considered the inefficiency of transnational social policies and the workforce dispersion along several countries, TNCs resulted one of the few actors to have enough power to influence the entire supply chain to respect labor standards.
In this respect, CLS are incredibly useful because they provide a shared floor of rights to be implemented and respected. This means that private regulations contain the same core provisions protecting labor rights, just with few secondary differences. Nevertheless, standards also represent a useful benchmark for evaluating suppliers' performance.

For instance, Nike Inc. Code of Conduct of August 2010[100] explicitly affirms Nike's commitment in building "a leaner, greener, more empowered and equitable supply chain", by clarifying the expectations on suppliers' behaviors and by binding them to respect certain fundamental rights.

In this respect, the first article of the code deals with CLS: stating that "employment is voluntary" it outlines the prohibition of forced or compulsory labor, "including prison labor, indentured labor, bonded labor or other forms".

Interestingly, the document also specifies that "the contractor is responsible for employment eligibility fees of foreign workers, including recruitment fees". Such provision tackles the annoying practice performed by many recruiters of paying the fees on behalf of foreign workers and then bind them to work at deplorable conditions for an extremely long period of time in order to return the amount of money, in a way that recalls ancient debt bondage practices.

Then, the Nike Code affirms that "employees are age 16 or older", a formal prohibition of child labor, and it states that "contractor does not discriminate" and "freedom of association and collective bargaining are respected", two of the core labor standards included by ILO in its 1998 *Declaration on Fundamental Principles and Rights at Work*.

Furthermore, the document also outlines other elements that could foster labor conditions, such as the prohibition of harassment and abuse, the fairness of working hours, the right to be regularly employed and to be compensated in time, the right to a healthy and safe workplace.

At the end, it fixes strict conditions for contractors in terms of

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[100] NIKE INC., *Code of Conduct*, 2010. Available at Nike website, www.nikeresponsibility.com/report/uploads/files/Nike_Code_of_Conduct.pdf (30/05/2015)

implementation, verification, monitoring, public diffusion of the provisions among workers and control over sub-contractors compliance.

Standing out as an innovative legal instrument, international framework agreements (IFAs) are voluntary tools whereby TNCs, in cooperation with unions, could commit themselves to improve working conditions.
IFAs are often the output of a continuous bargaining pressure exercised by unions on transnational companies.
Core labor standards are one of the fundamental aspects to be included in such agreements. Within IFAs, CLS occupy indeed a primary position. For instance, in the 2013 *Global Framework Agreement*[101] agreed upon by the Renault Group, the Renault Group Works' Council and IndustriALL Global Union, CLS are included in the first chapter. The agreement makes express reference to the 1998 ILO Declaration, outlining the four core standards and the relative ILO Conventions. Nevertheless, it adheres to OECD Guidelines for multinational enterprises and to the UN Global Compact.
In this respect, it is worthy to notice that it is extremely common for IFAs to make explicitly reference to international agreements and conventions.

In conclusion, as mentioned before, CLS have often resulted a very useful tool for establishing a floor of fundamental rights to be respected in any case, in any part of the world. CLS are so widely spread that they constitute a useful starting point for negotiations, for these reason they have been frequently included in many private regulations, such as codes of conduct and IFAs.
In this respect, it is important to notice that through private regulations

[101] RENAULT GROUP, RENAULT GROUP WORKS' COUNCIL, INDUSTRIALL GLOBAL UNION, Global framework agreement on social, societal and environmental responsibility between the Renault Group, the Renault Group Works' Council and IndustriALL Global Union. Available at Renault website, www.group.renault.com/wp-content/uploads/2014/07/global-framework-agreement-july-2013.pdf (30/05/2015)

TNCs have gone beyond the old traditional regulatory approaches. Under the pressure of consumers, unions, NGOs and stakeholders, companies have understood that the mere national regulations were not enough and therefore they have decided to include labor standards in specific agreements and codes of ethics to bind suppliers and promote fair labor conditions, regardless of local legislations.

However, the enforcement of labor standards remains a difficult goal to be achieved. In this respect, it is possible to understand to what extend TNCs are committed to improve labor conditions and to make the promotion of workers' rights a fundamental aspect of their corporate culture. Compliance needs indeed to be ensured through widespread and detailed controls over suppliers, along the entire supply chain. A difficult activity that only strongly committed TNCs are able to carry out.

3.3.1 Voluntary regulations and freedom of association

Nowadays, freedom of association is no more a principle circumscribed to the political arena, instead it involves a wider spectrum of expressions of democracy. Including the active participation in transnational companies "of which the workers must be citizens"[102].
In many cases, workers, through their representatives, are called to participate to companies' decisions. They are able to ask for information, to influence management decisions and to bargain collectively. Furthermore, in some cases, their involvement is particularly strong as in the case of German co-determination.
Freedom of association is also one of the main conversion factors to obtain better conditions at the workplace. When freedom of association is

[102] SOBCZAK A., 2003, *op. cit.*, p. 229

ensured, workers benefit of the proper environment for the improvement of working conditions. Associated workers have indeed a more powerful voice for negotiating better conditions with the employer, in comparison to dispersed workers.

With the emergence of codes of conduct, participation goes even beyond, comprehending workers' contribution in drafting codes and controlling over their implementation. Furthermore, if freedom of association is granted, workers could also be able to sanction the code's breaches by organizing collective counteractions.

Freedom of association comes then in closer connection with due-diligence procedures across global supply chains. Indeed, within supply chains workers could act as a useful bottom-based monitoring mechanism: when they discover a violation they could trigger inspections and undertake actions in response, together with other stakeholders.

This innovative approach, on the one hand, could produce more precise and higher-quality assessments with regard to specific situations that workers' representative could bring to light. On the other, thanks to workers' competence and knowledge of the production site, a worker-based monitoring could shed a new light on the causes of the negative compliance, consequently raising the chances of finding proper solutions for a better implementation of the code's provisions.

As commented, "the focus of an enterprise's due diligence would then shift from the seemingly impossible task of monitoring suppliers for all risks, to focusing on targeted assessments and risk remediation"[103].

In this sense, TNCs could find significant advantages in involving workers in the assessment procedures and in dialoguing with them to undertake responsible actions. In this respect, companies should be able to arrange

[103] OECD INSIGHTS BLOG, *Rethinking due diligence practices in the apparel supply chain*, 24 April 2015. Available at OECD INSIGHT website, www.oecdinsights.org/2015/04/24/rethinking-due-diligence-practices-in-the-apparel-supply-chain (30/05/2015)

the proper conditions for workers' participation, providing them with mechanisms to request inspections. Moreover, at a plant based level, they should coordinate the procedures for conducting the relative assessments and, then, they should foster a profitable cooperation with other actors, such as suppliers and NGOs, in order to find shared solutions for an effective compliance.

With regard to workers' participation, an intriguing case study[104] analyzed Reebok's worker-related policies applied to a garment supplier in China.
The supplier, called FS, hosted a trade union but several workers did not even know about its existence. The union was indeed controlled by the All China Federation of Trade Unions (ACFTU), the unique controlled legal trade union of China, and all its influent members were selected among the managerial staff.
In the 1990s, Reebok adopted its code of conduct and its innovative worker empowerment and participation policy. The approach comprehended three levels of workers' involvement: a training program aimed at educating workers about their rights; the introduction of a communication system whereby workers could submit their grievance, acting like workplace monitors of the code compliance; and, finally, the launch of initiatives to promote workers' representation and participation.

The study demonstrated that Reebok's communication system had mediocre success. Indeed, it permitted managers to deal with grievances without involving workers, which on their turn lost trust on the effectiveness of the procedure.
In any case, Reebok spent much more of its effort on workers' representation initiatives, trying to convince ACFTU that workers involvement could have brought several business advantages. Astutely, the brand talked about employees' involvement, participation or

[104] YU X., 2009, *op. cit.*, p. 241

empowerment, avoiding any formal promotion of unionism that could have raised suspects.

Reebok's aim was indeed not to promote independent trade unionism, rather to have a useful union, elected by workers, that could cooperate with the management in order to obtain a more efficient production, a deeper compliance with the code's provisions and better monitoring performances.

Once Reebok adopted its new strategy, FS had to implement it at the workplace. Actually, the supplier found itself involved in Reebok's initiatives without being truly committed to its policy. The managers were indeed not convinced to have a meddling participation of workers that could have influenced their decisions. For this reason, they "used various techniques to co-opt the union into a managerial tool, representing more interests of the company than that of employees"[105].

Consequently, the new local union was not just subjected to the influences of Reebok staff and ACFTU but also to that of the FS management. The result was a peculiar twist of industrial relations, which demonstrates how arduous the implementation of responsible policies across a supply chain can be.

In conclusion, to analyze the outcome of Reebok's strategy, it is appropriate to evaluate workers' participation according to two different levels[106]: their individual participation as workplace monitors and their collective participation through the new local union.

In the first case, the strategy did not achieve good results, as "workers' participative roles as workplace monitors were restricted to communication, not being empowered to deal with the noncompliance cases with consultative and determinative functions"[107].

[105] *Ibidem*, p. 243

[106] Distinction pointed out by YU X., 2009, *op. cit.*, p. 245

[107] *Ibidem*, p. 245

In the second case, workers' role was a little bit more intense as they advised management regarding working conditions issues such as health and safety, working time, child and forced labor. Workers' contribution entailed positive consequences also for the other stakeholders: Reebok enhanced its public reputation in dealing with working conditions, FS obtained advantages since it faced the less expensive "evil" among the labor conditions related issues and ACFTU, on its turn, was not worried of this kind of "soft" participation.
Employees, indeed, have not exercised a strong advisory role on issues related to management, such as harassment and abuses, and were excluded at all from discussions related to business and profit issues.

In this respect, the case clearly showed that the pure governance scope comes first in company's hierarchy. Freedom of association, collective bargaining and participation should never put at risk companies' commercial interests in supply chains.
However, there are fields where companies cannot abstain from intervene. For example fundamental working conditions - such as child and forced labor - are crucial issues, as their violation could expose the hub company to consumers' critics. In this sense, it is incredibly useful for companies to show themselves active in promoting labor rights through the adoption of private regulations and in involving workers in the relative implementation procedures.

However, it seems that the time for a full-spectrum participation has not come yet: management turns out to be reluctant to dialogue with workers and to accept their "intrusion" especially in fields related to profit, governance and business choices.
Furthermore, a restrictive *lex loci* - as in the case of China - could turn to be another hindrance to the rise of independent trade unionism. In this respect, TNCs would difficultly violate domestic rules exposing their

business to the risk of conflicts with local authorities. Also for this reason they are often particularly recalcitrant to adopt innovative initiatives regarding workers' participation.

4. How to promote labor standards along the supply chain: the emergence of private regulations

4.1 Introduction

The current paragraph firstly addresses the so called "social clause debate", namely the discussion on states and international organizations' strategies for tackling the *race to the bottom* in terms of labor conditions by linking labor standards to trade regulations.
Secondly, as the *social clause* had limited impact on the improvement of labor conditions, the paragraph examines the emergence of innovative voluntary approaches aimed at promoting the respect of labor rights along transnational supply chains.
In this respect, side by side with the tendency towards Corporate Social Responsibility, new methods regulating working conditions - such as codes of conduct and international framework agreements - have made their appearance in the regulatory framework. As it will be shown through a comparison between a code of conduct and an IFA of the same firm, these modern forms of private regulation are different in their rationales and contents. The first is often a way to spread the *culture of the group* along the supply chain, to control the suppliers and to enhance the reputation of the firm in front of consumers. The second is an agreement between a TNC and a global union federation (GUF): the outcome of a long-standing bargaining pressure on a transnational company exercised by unions. It mainly contains provisions regarding workers and it promotes, as a matter of primary concern, freedom of association and the right to collective bargaining.
Furthermore, particular attention is dedicated to the interaction between these modern regulatory methods and the traditional legal sources.

4.2 Race to laxity and first attempts to guarantee labor standards: the "social clause debate"

As a consequence of globalization, the importance of the connection between the transnational promotion of working conditions and the development of the global market had increased.

As abundantly explained by scholars, globalization produced "a worldwide deterioration of labor conditions" as developing countries tried to "compete in international markets by reducing labor costs in an effort to sell more exports or attract more FDI [foreign direct investments]"[108]. Indeed, in a free market system, "capital naturally flows to states with lower labour costs and cheaper labour protection"[109]. This happens because transnational companies, driven by capitalistic *animal spirits*[110], naturally choose to employ a low-cost workforce and to move their production to low-wage countries, in order to increase their profitability.

In other words, developing countries undercut their welfare systems in order to maintain an underpaid workforce able to product goods at low prices, thus gaining a competitive advantage in the international trade market[111]. Such negative tendency was defined as *social dumping* and was considered an element of distortion of competition, that impedes "the optimal allocation of resources on a global scale, conducting countries to a *race to the bottom* that involves both the North and the South of the world"[112].

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[108] FLANAGAN R., GOULD IV W., *International labor standards. Globalization, trade and public policy*, Introduction, Stanford University Press, 2004, p. 3

[109] CLEVELAND S., 2004, *op. cit.,* p. 140

[110] LIEBMAN S., *Impresa al plurale e diritto del lavoro: riflessioni a margine del dibattito sulla Corporate Social Responsibility*, in L. MONTUSCHI, *Un diritto in evoluzione, Studi in onore di Yasuo Suwa*, Giuffrè Milano, 2008

[111] PERULLI A., 1999, *op. cit.*, p. 15

[112] *Ibidem*, p. XX

The unavoidable consequence of such a fierce cost competition has been the lowering - or in other cases the missed improvement - of working conditions, as developing countries have been absolutely "unwilling to raise their level of labour protection for fear of discouraging foreign investment" and developed countries have undertaken just "modest legislative reform for fear of losing capital to state with lower costs"[113].

Under these circumstances, the only way out from the morass was considered a deep cooperation at the transnational level between Northern and Southern countries. Indeed, several governments and international organizations deemed that a legislative regulation of global trade could have remedied to the social negative effects of such competition.

A proposal concerned the introduction of a social clause attached to the transnational agreements on international trade, such as to General Agreements on Tariffs and Trade[114]. The clause should have promoted the respect of core labor standards among developing countries, in change of taking advantage of the liberalization of international trade[115].

Furthermore, the enforcement of a social clause was ensured by a connected sanction: an extremely strong tool to make companies respect those workers' rights that were incorporated in the clause. In practice, the members of the World Trade Organization (WTO) were authorized to interrupt commercial relations with those countries not ensuring the respect of certain working conditions within their territory. Normally, such

[113] *Ibidem*, p. XX

[114] *Ibidem*, p. 24

[115] *Ibidem*, p. 25

reaction would indeed not be possible, due to the prohibition of discriminatory practices among WTO trading-partner states[116].

On a legal perspective, the legal grounds of social clauses included in bilateral o multilateral agreements on international trade traced those of international law principles, such as *rebus sic stantibus* and *inadimplenti non est adimplendum*[117]*.* In particular, in this latter case, one party has the opportunity to avoid the fulfillment of its obligation if the other party has not respected the agreement in its turn.

However, for certain aspects, the social clause implementation mechanism differed from that of traditional international instruments adopted under international law[118]. The clause's enforceability was in line with those modern tendencies providing economic sanctions for *less responsible* countries and benefits for the more conscientious. On the field, the enforcement mechanism should have provided those governments respecting labor standards with benefits in terms of tax break. On the contrary, it should have penalized the less responsible ones by refusing benefits, imposing commercial sanctions or restricting imports.

Moving on to the historical perspective, the idea of connecting the protection of standards to transnational trade was discussed in several formal occasions.

For instance, during the *Conference of Trade and Employment* (1946-1948), organized under the aegis of the United Nations, a provision regarding labor conditions was about to be included in the *Havana Charter.* It was article 7, affirming:

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[116] RAJU K. D., *Social clause in WTO and core ILO Labour Standards: concerns of India and other developing countries,* 2008, p. 2. Available at SSRN: http:// ssrn.com/abstract=1195305

[117] PERULLI A., 1999, *op. cit.*, p.24

[118] For instance, according to PERULLI A., 1999, *op. cit.*, p. 25, the rights stemming from the *International Covenant on Economic, Social, and Cultural Rights* are just *programmatic* and *non-justiciable.*

> "The members recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity and thus in the improvement of wages and working conditions as productivity in the production for export, create difficulties in international trade and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory"

However, United States did not ratify the Havana Charter, scared of endorsing a new international organization, the International Trade Organization (ITO), of too stronger powers in the field of foreign economic politics. Without the US support to the Havana Charter, predictably, also the proposal of a social clause was set aside.

Later on, in 1994, 123 nations signed the *Marrakech Agreement*, constituting the World Trade Organization from 1st January 1995. Such international organization substituted the former body aimed at implementing the General Agreement on Tariffs and Trade (GATT), signed in 1947. The GATT, however, did not include any provision that could be assimilated to a social clause, except article XX letter (e), which permitted governments to prohibit the importation of goods produced by workers under prison labor. Such circumstance demonstrated once more the reticence of states in agreeing upon a social clause protecting labor rights.

However, the discussion emerged again in 1996, when the WTO organized in Singapore the first meeting of its Ministerial Conference, the most influent WTO authority. Members were not unanimous in discussing the possible introduction of a social clause. In particular, US, France and several developed countries - a part from UK - were favorable to put the issue on the agenda, in contrast to a consistent number of developing

countries[119]. Predictably, tension arose when Michel Hansenne, the Director General of ILO, was invited to officially participate to the meeting.
The outcome of this tension was a conclusive Ministerial Declaration[120], affirming:

> "We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organisation (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration"

The wording seemed very diplomatic and, thus, very ambiguous. On the one hand, it was considered a "breakthrough for those promoting a link since labour standards are finally mentioned in an official WTO document"[121], which could mean that a member of WTO was supposed to promote labor standards regardless of its membership within ILO. Moreover, according to scholars[122] the mere fact that a WTO document

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[119] LEARY V., *The WTO and the social clause: Post-Singapore*, in *European Journal of International Law*, vol. 8, n. 1, 1997, p. 119

[120] WORLD TRADE ORGANIZATION, *Singapore Ministerial Declaration*, paragraph 4, WT/MIN(96)/DEC/W, 13 December 1996. Available at https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm (30/05/2015)

[121] LEARY V., 1997, *op. cit.*, p. 119

[122] *Ibidem*, p. 120

reported the concept of linking standards to trade was extremely significant.

Opposing countries demonstrated indeed to be not able to completely set aside the issue from the discussion field, also due to the strong position of some promoter countries, such as United States, which affirmed that they would have not accepted to sign the Declaration if labor standards would have not been included in it.

However, on the other hand, the statement did not affirm explicitly that WTO members were authorized to ban imports from a country not respecting labor standards. In fact, it considered ILO as "the competent body to set and deal with these standards", not WTO, and it stated that the use of labor standards for protectionist purposes should have been rejected, since "the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question".

In this respect, the words of Yeo C. Tong, the Chairman of the Conference, were emblematic:

> "Some delegates had expressed the concern that this text may lead the WTO to acquire a competence to undertake further work in the relationship between trade and core labour standards. I want to assure these delegations that this text will not permit such a development"[123]

Several countries, especially the Asiatic, were indeed drastically in contrast with the introduction of a social clause to trade issues. At the point that "over no other issue had the Association of Southeast Asian Nations (ASEAN) been as united"[124]. The debate arrived to a such extent

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[123] Statement reported by LEARY V., 1997, *op. cit.*, p. 119

[124] CHAN A., ROSS R., *Racing to the bottom: international trade without a social clause*, in *Third World Quarterly*, vol. 24, n. 6, 2003, p. 1012

that the expression *social clause* "has become such a loaded pejorative term among so many governments"[125] to be replaced by a more neutral term, namely *social dimension,* when discussing on the implementation of core labor rights in developing countries[126]. A term excluding any reference to a link between labor standards and trade.

Under these circumstances, scholars have wondered why some governments were so resolute in contrasting the introduction of a social clause. And why, on the contrary, several developed countries were favorable.

The social clause supporters considered the positive consequences of a linkage between trade and labor standards. According to them, a country that reaps the benefits of participating in the world trading system has the "obligation to guarantee at least a minimal acceptable level of labour standards to the workers in its territory"[127]. Other arguments have flanked this ethical obligation: first, as the cost of production would be reduced, also the export prices would be lower, entailing an economic threat to those countries guaranteeing a higher level of workers' protection. Secondly, developed countries feared that companies could have moved their production *en masse* to countries with lower workers' protection, to bear lower costs, abandoning the territories of developed countries.

Under these circumstances, a coordinated state intervention in the linkage zone between trade and labor rights seemed to be necessary to stop a *spirale descendant*[128]*,* which could have seriously undermined workers' conditions along global production chains. According to the social clause

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[125] *Ibidem*, p. 1012

[126] *Ibidem*, p. 1012

[127] BLOCK R., ROBERTS K., OZEKI C., ROOMKIN M., *Models of international labour standards,* in *Industrial Relations*, vol. 40, n. 2, 2001, p. 260

[128] PERULLI A., 1999, *op. cit.*

supporters, a government action was indeed considered essential to protect workers' rights in the social economic development scenario, "even at the cost of some economic inefficiency arising from this sort of regulation"[129].

According to such opinions, the imposition of a floor of labor standards in developing countries through the menace of banning imports would have drastically raised local governments attention to implement favorable working conditions and to impede companies' abuses. Such attention would not have protected just the developed countries' economy but, over time, would have also raised up the living standards of the developing countries' workers, causing an upward harmonization of labor standards.

In stark contrast, the opponents to the introduction of a social clause affirmed that there was no justification for imposing the adoption of labor standards through trade instruments.

Their position leant on neoclassical economic theories, which considered the market liberalization as a natural impulse towards the fostering of wellness, growth and labor conditions[130].

Precisely, according to their opinion, trade restrictions such as social clauses would protect workers but would also reduce market flexibility and prevent developing countries from exploiting their comparative business advantage, as it is a low-cost workforce.

Whereas, a *laissez-faire* approach would maximize welfare "in both the importing and exporting country, since each country, over the long run, and allowing for transitions and adjustments, will be better off than otherwise"[131]. Accordingly, if free trade mechanisms are not obstructed, with the passing of time, prices of goods and production factors will level off.

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[129] BLOCK R., ROBERTS K., OZEKI C., ROOMKIN M., 2001, *op. cit.*, p. 261

[130] *Ibidem*, p. 263

[131] *Ibidem*, p. 263

Other opponents believed that the link between trade and standards was "a reflection of protectionist tendencies and was aimed at limiting the comparative advantages of developing countries"[132]. Even more strongly, some defined the introduction of a social clause as "a ploy used by the *rich* nations to protect jobs and dominate markets, pitting the higher income countries and workers of the global North against the interests of lower income, less industrialised countries and their workers in the global South"[133].

Analyzed the positions of favorable and opponents to the introduction of a link between trade and standards, and thus a social clause, the overall impression is the presence of a deep dichotomy between the *North*, composed by industrialized countries that do not want to jeopardize their business supremacy, and the *South*, composed by developing countries that struggle to maintain their competitive advantage in terms of low cost workforce.

However, scholars have demonstrated that such distinction is too drastic and general. The debate has been, indeed, enriched by the opinion of other actors beyond states, like unions and NGOs, which, together with governments, composed those that had been defined *strange alliances*[134]*.*

Focusing on the voices of these other important actors, it is possible to notice that the International Confederation of Free Trade Unions (ICFTU) - the widest trade union confederation worldwide - took the stance of promoting the transnational implementation of the social clause. Furthermore, it also pointed out that at least other several unions located in developing countries, especially the African ones, were favorable to

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[132] LEARY V., 1997, *op. cit.*, p. 119

[133] CHAN A., ROSS R., 2003, *op. cit.*, p. 1011

[134] *Ibidem*, p. 1014

linking labor standards to WTO agreements[135]. This demonstrates that there was not always an irreconcilable division of opinions between the actors of developed countries and those of developing ones.

On the contrary, Asiatic trade unions were almost completely unanimous in rejecting the idea of a social clause. Some of them, rejected "the WTO altogether and, by extension, the social clause", as they viewed "the WTO as an institution set up by capitalist countries to perpetuate the concentration of wealth in the global North"[136]. While, other unions dissented on the specific issue of linking labor standards to trade.

Another voice, coming from the World Federation of Trade Unions (WFTU), affirmed that ILO should conduct global efforts to foster the compliance with labor standards, but at the same time it rejected the idea of adopting a social clause.

Finally, an interesting position was the one hold by All China Federation of Trade Unions (ACFTU), namely the Asian union with the highest number of members. It criticized the social clause and silenced the critics on labor rights violation along the Chinese supply chain. However, according to scholars[137], ACFTU did not reject all the labor standards, but just freedom of association and right to collectively bargain. As seen, in the Reebok case at Chapter 3, Paragraph 3.3.1, ACFTU was very suspicious with regard to mechanism of workers involvement and participation. ACFTU is, indeed, the "only government-sanctioned union organization in China and independent unions or other types of worker organizations are illegal"[138].

These considerations demonstrate that is too simplistic to consider a dichotomy between North/South, or developed/developing countries, with

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[135] INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU), *Building workers' human rights into the global trading system,* Brussels*,* 1999, p. 39

[136] CHAN A., ROSS R., 2003, *op. cit.*, p. 1013

[137] *Ibidem*, p. 1013

[138] YU X., 2008, *op. cit.*, p. 518

regard to the introduction of a social clause to WTO. The scenario is, indeed, composed by other actors, such local unions and global union federations, that hold diverse opinions on the issue, often detached by those of their country of origin.

Not just unions but also other actors have taken a different stance in comparison with that of their respective country; for example "Western bankers, multinationals and employers aligned with Southern governments in favor of unrestricted trade without labor conditionality"[139]. They were clearly attracted by the advantages granted by a free trade system.

The result was a complex entanglement of opinions, alliances and proposals that led WTO to exclude the discussion over the introduction of a social clause from its agenda, due to the difficulties in finding a unanimous agreement between members.

Rejected the inclusion of the social clause within trade agreements, labor issues "have nevertheless been entering tangentially into the work of the WTO"[140]. An interesting example[141] that shows WTO influence on labor conditions issues was that of the *Asbestos case* between Canada and the European Communities[142]. In such case, a WTO panel decided that France could have banned the import of certain types of Canadian asbestos because of the associated risk on health, on the legal basis of article XX (b) of the General Agreement on Tariffs and Trade. As health risks also regarded workers that could be exposed to asbestos, the panel made reference in its decision to ILO Convention n. 162 concerning safety in the

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[139] CHAN A., ROSS R., *op. cit.*, p. 1014

[140] LEARY V., 2004, *op. cit.*, p. 190

[141] *Ibidem*, p. 190

[142] ASBESTOS CASE, EUROPEAN COMMUNITIES – MEASURES AFFECTING ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS, WTO Dispute Settlement Body, case n. DS135, 2000. Available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds135_e.htm (30/05/2015)

use of asbestos.
In this respect, the case demonstrated that WTO continued to be strongly involved in labor issues even if the social clause debate was over[143]. Consumers, unions, activists targeted WTO with their claims, "believing that the reciprocity dispute settlement procedures at the WTO are more effective than the efforts of other international organizations"[144].

Obviously, even if the idea of a social clause was set aside, several labor issues still required a solution. The negative *social dumping* undertaken by many developing countries and the consequent downward harmonization in terms of labor conditions were still problems to be tackled by the international community. In this respect, scholars pointed out the importance of making developing countries conscious of the destructive competition undertaken. Accordingly, "one way out of the race to bottom requires that the governments, trade unions and labor advocates of the global South face the reality that they are competing among themselves as much or more than they are competing with the North"[145].
Furthermore, other academic voices contrasted the position of those believing that if free trade mechanisms would not be obstructed, over time the prices of goods and then the cost of workforce would level off worldwide. In this respect, studies[146] showed that in a free market system the price of production factors - such as workforce - does not rise in the developing countries, rather it sinks in the developed ones, causing a downward leveling of labor standards.

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[143] LEARY V., 2004, *op. cit.*, p. 190

[144] *Ibidem*, p. 192

[145] CHAN A., ROSS R., 2003, *op. cit.*, p. 1023

[146] PERULLI A., 1999, *op. cit.*, p. 34

Moreover, multinational companies themselves started to pay attention on labor issues. As mentioned, they were the target of intense pressures coming from civil society groups, NGOs, unions, consumers and many other actors. Pressures that required a deeper commitment in ensuring fair working conditions even in those countries where suppliers were located. Under these circumstances, companies could no more set aside ethical and responsible actions from their agenda, otherwise they would have jeopardized their business.

In this respect, such assumption of responsibility brought transnational companies to complement developing countries' initiatives in promoting labor standards. TNCs, thus, helped to move beyond the sterile debate on the introduction of a social clause. The lack of collaboration between governments, the inefficiency in terms of the enforcement of local laws and the ineptitude of international organizations in pacifying actors' positions, were conducting the global improvement of workers condition down to a blind alley.

TNCs, on their turn, explored new solutions and adopted innovative legal tools - such as codes of conduct and international framework agreements - to promote fair working conditions along transnational supply chains, tackling the deplorable conditions suffered by workers of developing countries. Innovative instruments that have demonstrated a decent level of effectiveness and that - in contrast with the previous state-centered approaches like that of the social clause - have stemmed from the voluntary commitment of companies and from their cooperation with other actors, such as unions and NGOs.

4.3 The rise of voluntary regulations

In the 1990s, "the limited success of campaigns linking workers' rights and trade", prompted promoters of workers' rights "to explore alternative

options”[147]. Interestingly, in the same period, the Corporate Social Responsibility tendency was spreading in the business arena. For the term *CSR* scholars meant “the firm’s consideration of, and response to, issues beyond the narrow economic, technical, and legal requirements of the firm”. It was considered “the firm’s obligation to evaluate the effects of its decision on the external social system in a manner that will accomplish social benefits along with the traditional economic gains”[148].
In this respect, firms were the target of intense pressures and were called to operate in more compatible way to consumers’ ethical expectations. Among these ethical values, the respect for workers’ rights was one of the most significant.
The overlapping of the CSR tendency with the demand for a deeper corporate commitment in ensuring fair working conditions, led to the adoption of innovative corporate-based instruments of regulation in the field of workers’ rights.

The emergence non-governmental regulation could be explained on the basis of several circumstances.
Firstly, states encountered significant hurdles in regulating workers’ rights in a wide and uncontrollable global market, due to factors like “globalization, neoliberal movements to shrink the state, or simply the failure of state bureaucracies”[149]. In this respect, statutory law showed serious limits in fostering labor conditions at the workplace also due to the lack of resources employed in the monitoring of violations. States, indeed, encountered several problems in enforcing labor laws, since the

[147] EGELS-ZANDÉN N., *Transnational governance of workers’ rights: outlining a research agenda*, 2009, *op. cit.*, p. 172

[148] BONDY K., MATTEN D., MOON J., *Multinational corporation codes of conduct: governance tools for corporate social responsibility?*, in *Corporate Governance*, vol. 16, n. 4, 2008, p. 295

[149] O’ROURKE D., 2003, *op. cit.*, p. 4

responsible bodies were negatively affected by diminishing budgets and shrinking staff.
Under these circumstances, voluntary approaches started to be considered as a potential valid alternative. The authors of such new regulatory strategies tried, indeed, to complement activities that "were previously the sole purview of state and international regulatory bodies"[150], filling the gaps - and thus the failures - of the traditional legislators.
Secondly, the power of transnational enterprises was becoming more and more significant. Huge companies were controlling an increasing number of suppliers dispersed along transnational supply chains, gaining a predominant role in the international scenario. They seemed to be the only actors that could have transnationally influenced the conditions of workers.

However, these considerations have not explained why transnational companies should have committed to social responsibilities and regulatory tasks. Social welfare has always concerned governments and international organizations, not companies. Entities aimed at pursuit profit.
As mentioned, firms were spending their efforts to improve labor conditions along the supply chain, "because of significant new pressures to improve their labor, environmental, and social performance"[151]. Such social efforts were included in a broader strategy to reduce the risks in terms of reputation: indeed, "one bad supplier" could significantly damage a "firm's reputation and, in turn, its sales and stock value" and "firms with suppliers in countries with weak enforcement systems or a poor track record on child labor are viewed with suspicion by informed stakeholders"[152]. In this regard, concerned consumers and anti-sweatshop

[150] *Ibidem*, p. 2

[151] *Ibidem*, p. 4

[152] *Ibidem*, p. 4

groups demanded brands to "undertake social responsibility in respecting and protecting workers' basic human rights. In response, all leading brands adopted codes of conduct to regulate labor practices of their overseas suppliers"[153]. As remarkably pointed out, a corporation that operates on the global stage cannot persist with an attitude of indifference towards the social requests coming from the civil society. Otherwise it would jeopardize its business[154].

Avoiding risks to their reputation was not the only driving factor, indeed TNCs considered to adopt new regulatory instruments also to prevent possible and inconvenient national regulations and to play a stronger role than unions and governments.
Accordingly, these voluntary efforts could also be considered as smart governance tools to gain power and to control more vigorously suppliers' productivity.

On a legal perspective, these "nongovernmental regulatory strategies" have a different field of application in comparison to that of traditional national legal sources, as they "seek to function along the lines of outsourced production: regulating firms across their supply chains"[155]. Such private regulations have indeed broader effects, not limited within countries' territory but extended to the entire supply chain, entailing an increasing tension between "the place of the business operation and the locally applied norms (place), and the decentered reality of the corporation and the norms that are emerging to address this delocalized phenomenon of corporate activity (space)"[156]. These voluntary tools

[153] YU X., 2008, *op. cit.*, p. 234

[154] PERULLI A., *La responsabilità sociale dell'impresa: idee e prassi*, Bologna, 2013, p. 74

[155] O'ROURKE D., 2003, *op. cit.*, p. 2

[156] ZUMBANSEN P., 2006, *op. cit.*, p. 265

involve all the actors operating in dispersed production sites, connecting them through a framework of rules to be respected.

As brilliantly pointed out, the critical shift in this process is "the move from factory-centered, *state* regulation focusing on individual sites of production, to supply-chain and *brand* regulation, focusing on multiple actors in a production chain"[157].

Moreover, diverse strategies of regulation and a broader field of application entail also the use of different sanctions to ensure the compliance with the relative provisions. In particular, voluntary regulatory tools draw upon market sanctions rather than traditional state-based sanctions. For instance, a TNC that discovers a violation operated by one of its suppliers, would reduce the amount of products to purchase or would terminate the business relation with that supplier.

Such phenomenon entails also new levels of cooperation between actors - for example between NGOs, unions and transnational companies - and new roles for the traditional central authorities. Moreover, the new climate also makes possible "to identify overlapping interests between employers and workers and thereby cooperation through negotiated voluntary initiatives"[158].

In concrete, the tools that workers' rights promoters have persuaded firms to adopt are both codes of conduct and international framework agreements. The first are sets of rules outlining responsibilities, duties and good practices establishing a floor of protective labor standards; the second are alternative models of transnational labor regulation that involve workers in their design and implementation[159].

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[157] O'ROURKE D., 2003, *op. cit.*, p. 6

[158] RIISGARD L., *International framework agreements: a new model for securing workers rights?,* in *Industrial Relations*, vol. 44, n. 4, 2005, p. 716

[159] THOMAS M. P., *Global industrial relations? Framework agreements and the regulation of international labour standards,* in *Labor Studies Journal*, vol. 36, n. 2, 2011, p. 273

After the emergence of such voluntary methods, according to some scholars, the industrial relation system has moved to a *governance without government*[160]*.* According to their opinion, the supremacy of states in regulating workers' rights has arrived at the end of its course, as companies have started to regulate their own responsibilities and duties with the participation of actors such NGOs, international organizations, unions and other promoters of human rights.

However, it would be inaccurate to consider the movement from a traditional legislative approach to a voluntary one as a definitive shift. More precisely, the labor regulatory framework has undergone a hybridization, becoming an "intricate mixture of hard and soft law, of statutory norms, and of self-regulatory regimes"[161].

As the legal framework has become more complex and fragmented, it turns clear that states are "no more the sole authors of laws and binding norms, as domestic statutory and case law (especially in the field of labor law) was complemented by a proliferation of *soft law,* such as corporate governance codes, codes of conduct, best practice guidelines, and standards"[162]. These last legal sources should not be considered as singular entities totally disconnected the one from the other but more as a complex landscape of regulation composed also by local labor laws and international legal sources such as treaties and conventions.

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[160] EGELS-ZANDÉN N., *Transnational governance of workers' rights: outlining a research agenda*, 2009, *op. cit.*, p. 172; the issue of a move from *regulation* to *governance* is also discussed by NIFOROU C., *International framework agreements and industrial relations governance: global rhetoric versus local realities*, in *British Journal of Industrial Relations*, vol. 50, issue 2, 2012, p. 355; furthermore, LIEBMAN S., 2008, op. cit., argues that such fluid regulatory framework "has inevitably contributed to leaving corporation and, more particularly, management sole masters of the ground, left, right and center. As a result the notion of Corporate Social Responsibility has narrowed down to a mere issue of corporate governance".

[161] ZUMBANSEN P., 2006, *op. cit.*, p. 267

[162] *Ibidem,* p. 266

As private regulations operate within a system composed by different countries, laws, customs and cultures, how these alternative forms of regulation interact "differs tremendously across nations with different levels and styles of regulatory enforcement"[163].

On the field just an overall consideration of the above mentioned legal sources could make the enforcement of labor standards possible. For this reason, some scholars pointed out that "a mixture of public and private regulation is necessary to enforce labour and environmental standards within global supply chains"[164], affirming that these new regulatory strategies could "supplement and even support government regulation". However, other academic voices argued that "nongovernmental regulation implicitly challenges the legitimacy and efficacy of state regulation"[165].

Furthermore it has been outlined that, since these voluntary regulatory efforts are coordinated by companies themselves, unions' role and workers' associationism could be jeopardized as companies could try to exclude workers from the decisional processes. Indeed, according to some scholars "where self-regulation has the effect of placing workers at the mercy of management without the availability of institutional safeguards, this form of private ordering remains deficient"[166]. Others, on the contrary, believe that the new voluntary tools could empower workers' participation at the workplace.

Clearly, the topic of workers' participation is extremely important for unions: for this reason, many workers' representative expressed their preference for those legal tools - such as IFAs - that consider freedom of association as a matter of primary concern, in contrast to other

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[163] LOCKE R. M., RISSING B. A., PAL T., *Complements or substitutes? Private codes, state regulation and the enforcement of labour standards in global supply chains,* in *British Journal of Industrial Relations*, vol. 51, issue 3, 2013, p. 543

[164] *Ibidem*, p. 543

[165] O'ROURKE D., 2003, *op. cit.*, p. 3

[166] ZUMBANSEN P., 2006, *op. cit.*, p. 310

instruments - such as codes of conduct - that represents governance tools to regulate and control the actors of the supply chain.

Focusing on the compliance of suppliers with these new regulatory methods, their strength and effectiveness highly depend on the pressure - and consequently the monitoring - applied by consumers and investors on certain sectors or companies. Indeed, as pointed out, when the compliance with labor standards is particularly expensive and the pressure is disorganized or too weak, voluntary methods are likely to be ineffective[167].

In particular, the monitoring of non-governmental regulations is undermined by several obstacles and issues, exactly as the traditional government monitoring, including "coverage, corruption, incentives of monitors, training and capacity of inspectors"[168]. Furthermore, the tangled network composed by the hub company and the suppliers could make the identification of the liable actor for workers' rights violation a very difficult task. In this respect, scholars outlined the importance of penetrating and effective monitoring procedures, affirming that "corporate codes of conduct will not enable workers to develop a sustainable regime of protected rights if they are not embedded in a sensitive and adequately responsive system of monitoring and revision"[169].

In conclusion, attention has been paid also on the renovated role that workers may occupy in ensuring the compliance of these new forms of regulation, since they are located at the best level to detect labor rights violations perpetrated at the workplace. In this respect, the function of freedom of association becomes crucial, since unionized workers can react together to the abuses and negotiate fair conditions much more effectively than alone.

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[167] BLOCK R., ROBERTS K., OZEKI C., ROOMKIN M., 2001, *op. cit.*, p. 281

[168] O'ROURKE D., 2003, *op. cit.,* p. 21

[169] ZUMBANSEN P., 2006, *op. cit.*, p. 303

4.4 Codes of conduct

Among the various voluntary methods aimed at regulating TNCs activities, codes of conduct stand out as tools of primary importance in the industrial relations scenario.
As mentioned, the need for alternative forms of regulation has encountered the movement towards CSR. The consequence is the use of a typical CSR tool regulating companies' behaviors - the code of conduct - also to protect workers' rights and establish a floor of fair labor standards.

According to scholars, codes of conduct can be classified as a modern species of business regulation[170]. They may be directed at enterprises' employees, they can address working conditions at suppliers and subcontractors and they can also regulate TNCs' responsible actions in the country where they operate[171]. Codes can have an internal or external origin[172]: the internal one occurs when the code is drafted by companies themselves, on the contrary, the external when it is developed by other subjects.
With regard to the second, scholars[173] distinguished two kinds of external codes, one developed in a multilateral government setting and one created by governments or non-governmental organizations like NGOs and then offered to TNCs for acceptance. Both are frequently identified as *soft law* sources[174], aimed at encouraging national companies to adopt certain behaviors along their supply chain and providing relevant guidelines and instructions to properly draft internal codes of conduct.

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[170] PERULLI A., 1999, *op. cit*., p. 304

[171] VAN LEIMT G., 2000, *op. cit.*, p. 170

[172] COMPA L. A., HINCHLIFFE-DARRICARRÈRE T., 1995, *op. cit.*, p. 663 et seq.; PERULLI A., 2013, *op. cit.*, p. 56

[173] *Ibidem*, p. 669

[174] MARRELLA F., 2007, *op. cit.,* p. 44

Examples of external codes adopted in multilateral government setting are: the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (scholars referred to it as *ILO Code*[175]), which is the outcome of a dialogue between social parties and governments to promote good practices and workers' rights. The OECD *Guidelines for Multinational Enterprises* (also known as *OECD code*[176]), containing exhortations and recommendations for TNCs, especially with regard to the right to organize, to bargain collectively and to be informed about companies' activities. The EU *Green Paper Promoting a European framework for Corporate Social Responsibility*, which encourages TNCs to respect the international obligations and to adopt an internal code of conduct. The United Nations C*ode of Conduct for Transnational Corporations* (*UN Code*[177]), which was drafted in the 1970s, but never adopted, exhorting companies to promote fair working conditions, affirming in particular that "transnational corporations shall respect human rights and fundamental freedoms in the countries in which they operate".

These legal tools have common features: they are characterized by a top-down approach and usually do not bind TNCs directly. For these reasons, scholars pointed out that they may have just a *pedagogical function*[178] and may be a source of inspiration for companies in drafting their own codes.

Moving on to the codes of conduct that are privately drafted by governments or non-governmental organizations and then offered to

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[175] COMPA L. A., HINCHLIFFE-DARRICARRÈRE T., 1995, *op. cit.*, p. 671

[176] *Ibidem*, p. 671

[177] *Ibidem*, p. 671

[178] MARRELLA F., 2007, *op. cit.,* p. 48

companies for acceptance, relevant examples[179] are: the *Sullivan Principles*, a set of six principles regarding racial equality that were proposed by Reverend Sullivan to US companies operating in South Africa[180]. The *MacBride Code*, created in 1984 by Sean MacBride, an Irish politician which aimed at regulating companies from United States that operated in Northern Ireland. The *Slepak Principles* and the *Miller Principles*, which were adopted respectively in Soviet Union and China, dealing with forced labor and military issues. The *Maquiladora Code*, which was issued by the AFL-CIO together with religious and environmental civil groups in order to influence US enterprises operating in Mexico. The *Rugmark Campaign*, a marketing strategy to convince carpet retailers to buy certified products not made through child labor.
Finally, the *1995 Model Business Principles*, drafted by the Clinton administration, which are considered an example of a soft law instrument with a national origin, consisting of programmatic statements encouraging the respect of a safe and healthy workplace, the avoidance of discrimination and the exploit of child labor, but without imposing any direct duty on TNCs.

With regard to the private voluntary tools internally drafted by companies, corporate codes of conduct could be defined as a form of self-regulation whereby an enterprise binds itself to achieve certain targets, to interiorize standards and procedures and to act in a responsible way in front of the community of stakeholders. In this respect, scholars noticed that codes of conduct mainly contain traditional business issues such as "ensuring compliance with laws and regulations, improving the corporation's reputation, and guiding employees in terms of expected workplace

[179] COMPA L. A., HINCHLIFFE-DARRICARRÈRE T., 1995, *op. cit.*, p. 671

[180] More precisely, according to VAN LEIMT G., *op. cit.*, p. 170, the principles dealt with equal and fair employment practices, equal pay, improvement of labor conditions, nonsegregation.

behavior"[181]. Furthermore, their contents often reproduce national and international provisions and fundamental social rights included in conventions and guidelines of international organizations[182]. With respect to the stakeholders' community, according to the International Federation of Accountants[183], a code of conduct contains "principles, values, standards, or rules of behavior that guide the decisions, procedures and systems of an organization in a way that contributes to the welfare of its key stakeholders and respects the rights of all constituents affected by its operations"[184].

A first example of internal code of conduct was the *Business Partner Terms of Engagement and Guidelines for Country Selection*, formulated in 1991 by Levi Strauss & Co. At that time, the company was conducted privately and the owner managed to proceed more quickly in the responsibility field than other enterprises. The document reported company's commitment in guaranteeing a safe and productive workplace, in ensuring a fair treatment to workers and in selecting partners whose practices were "compatible with our aspirational and ethical values"[185]. In particular, in the "employment practices" section, it addressed six labor issues, namely child labor, wages and benefits, working hours, forced labor, discrimination, corporal punishment and other forms of mental or

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[181] BONDY K., MATTEN D., MOON J., 2008, *op. cit.*, p. 302

[182] According to M. WRIGHT, A. LEHR, *Business recognition of human rights global patterns, regional and sectoral variations*, Harvard University working paper, n. 31, 2006, the main fundamental labor rights reproduced in companies' codes of conduct are: non discrimination, safe work environment, freedom of association and collective bargaining, abolition of forced and child labor, minimum wage and maternity leaves.

[183] INTERNATIONAL FEDERATION OF ACCOUNTANTS, *Defining and developing an effective code of conduct for organizations*, 2007, p. 6. Available at http://www.ifac.org/sites/default/files/publications/files/Defining-and-Developing-an-Effective-Code-of-Conduct-for-Orgs_0.pdf (30/05/2015)

[184] *Ibidem*

[185] COMPA L. A., HINCHLIFFE-DARRICARRÈRE T., *op. cit.,* p. 676

physical coercion. Scholars, however, highlighted that the code omitted to regulate freedom of association and the right to bargain collectively[186].

Interestingly, Levi's Code went beyond the mere hortatory effect of many external codes of conduct[187]. Indeed, it provided an internal system to monitor the enforcement of code's provision along the supply chain and it established intense auditing procedures. Consequently to such controls, when the supplier turned out to be particularly unruly, the company could have terminated the relative business relationship; when the respect of labor rights was lacking, it could have undertaken initiatives to foster working conditions; or, finally, when the supplier was in line with the code's provisions but it could have done more, Levi's could have developed a deeper cooperation to make it a model contractor[188].

A further example of internal code of conduct was the *Reebok Human Rights Production Standards*. Adopted in 1992, the document affirmed that "Reebok's devotion to human rights worldwide is a hallmark of our corporate culture" and, consequently, that the company "will not be indifferent to the standards of our business partners around the world".

The code dealt with the following issues: the prohibition of discrimination, working hours, forced and compulsory labor, fair wages, child labor, safe and healthy workplace and, going beyond the contents of Levi Strauss Code, also freedom of association. The company, indeed, recognized the right of workers to organize, join unions and bargain collectively.

With regard to monitoring, Reebok undertook three levels of controls: it created teams to supervise working conditions at the plant-workplaces, it periodically sent internal audit teams from the headquarter to the

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[186] *Ibidem,* p. 677

[187] *Ibidem*, p. 677

[188] *Ibidem*, p. 678

suppliers and, finally, it hired independent auditing firms to control payrolls, interview employees and undertake training programs[189].

Mentioned few examples of corporate codes of conduct, it is now possible to focus on their contents. As shown, they often reproduced the ILO core labor standards. In particular, child labor, forced or compulsory labor and anti-discrimination were commonly inserted in codes. Health and safety issues were also frequently included, like provisions regarding harassment and other kind of management abuses. Less spread was the incorporation of provisions regarding freedom of association, right to collectively bargain and fair wages.

With regard to freedom of association, such differences were in part due to "companies' practical concerns for their ability to ensure compliance when producing in countries such as China or Vietnam"[190]. In those countries freedom of association and right to collective bargain were harshly limited. Moreover, companies would have difficulty jeopardized their businesses in such countries by antagonizing local authorities.

Considering the issue of wages, companies encountered several hurdles in finding a consensus on the mechanism to determine a fair floor for wages. Furthermore, in many countries the minimum wages were below the subsistence level and companies simply decided to require compliance with the local labor laws, without raising the wage level. These examples show that some of the contents of codes of conduct may vary from enterprise to enterprise and also from country to country.

In a general perspective, as mentioned, codes of conduct are defined as *voluntary* tools drafted and adopted by transnational companies. Some scholars, however, in contrast to the common academic opinion, pointed

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[189] *Ibidem*, p. 678

[190] POSNER M., NOLAN J., *Can codes of conduct play a role in promoting workers' rights?*, in FLANAGAN R., GOULD IV W., *International labor standards. Globalization, trade and public policy*, Stanford University Press, 2004, p. 207

out that "from an economic point of view, codes of conduct can not seriously be considered as a form of voluntary regulation"[191]. Their position leant on the consideration that codes could be considered the outcome of a long-standing pressure operated by consumers, NGOs, social society groups, concerned investors and stakeholders in general, and not the result of a pure voluntary commitment of companies.
However, it is necessary to consider also other circumstances. Beyond such formal ethic commitment in front of the community of stakeholders, TNCs adopted internal codes of conduct also as innovative *tools for governance* and not just as instruments for protecting labor rights and pacifying concerned consumers. This means that, since codes of conduct are consciously adopted also for governance reasons, they should be considered *voluntary tools*.
An enterprise finds, indeed, significant advantages in regulating the industrial environment, instructing its employees and binding its suppliers to respect certain provisions. Moreover, by adopting a code of conduct, it mollifies those actors exercising pressures for the promotion of fair labor conditions.

More precisely, there are numerous business grounds that justify this form of companies' commitment. First, TNCs acquire a *halo effect*[192]*,* that is an enhancement of the firm's public figure in terms of responsibility and credibility. Indeed, according to scholars, the adoption of a code of conduct "represent a way to restore and/or improve corporate legitimacy/ trust/reputation/image/brand"[193].
Secondly, brands have been pushed by the public opinion to take the

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[191] SOBCZAK A., 2006, *op. cit.*, p. 168

[192] GRISERI P., 1995, *op. cit.*, p. 278

[193] EGELS-ZANDÉN N., *TNC Motives for signing international framework agreements: a continuous bargaining model of stakeholder pressure,* in *Journal of Business Ethics*, vol. 84, n. 4, 2009, p. 532

responsibility for the labor conditions borne by workers along the supply chains: NGOs, civil society groups have exercised a long-standing pressure on companies while the media have often reported the deplorable conditions suffered by workers enabling consumers to be informed about the dramatic situation occurring in developing countries.

Thirdly, through codes, TNCs could regulate industrial relations with suppliers and subsidiaries, spreading the *culture of the group*[194] along the international production chain.

Then, in a business perspective, when a TNC drafts a code, it could gain competitive advantages, such as a reduction in the insurance premiums and the maintenance of a certain level of production standards along the supply chain[195] or can ease recruitment problems and foster staff morale[196]; while, on a legal perspective, a TNC may also take advantages by passing the buck of business responsibilities to suppliers' managers and employees[197].

Moreover, enterprises might adopt a code of conduct in order to avoid further intrusions of governments and unions.

Finally, exposed to a peer pressure[198], companies' managers were also influenced by other colleagues that had undertaken innovative responsible initiatives.

Of course, in a positive perspective, companies may also truly commit themselves to certain ethical duties, driven by a philanthropic approach "for the sake of ethical action as an end in itself"[199], or - following recent

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[194] PERULLI A., 1999, *op. cit.,* p. 303

[195] EGELS-ZANDÉN N., *TNC Motives for signing international framework agreements: a continuous bargaining model of stakeholder pressure*, 2009, *op. cit.*, p. 532

[196] VAN LEIMT G., 2000, *op. cit.*, p. 173

[197] MARRELLA F., 2007, *op. cit.,* p. 50

[198] VAN LEIMT G., 2000, *op. cit.*, p. 173

[199] WEAVER G. R., *Corporate Codes of Ethics: Purpose, Process and Content Issues,* in *Business & Society*, vol. 32 n. 1, 1993, p. 48

tendencies - might adopt a code to take a *work-centric orientation*[200], fostering a concrete participation of stakeholders.

In general, what emerges by an overall consideration of codes of conduct is that these tools seem to be characterized by an excessive unilateralist approach. Defined as "social accountability contracts"[201], they have been considered by some scholars as a mere governance strategy for employers to conveniently deal with suppliers: a smart play to pacify concerned consumers, without any commitment to concretely promote actions for worker engagement[202].
In this respect, codes of conduct are rarely the outcome of negotiations with workers, rather they do "remain in the sole discretion of the corporation"[203]. TNCs deal indeed with the conditions of workers at the workplace through the adoption of codes of conduct, but usually they do not involve unions and workers' representatives in the relative drafting. This means that frequently codes are not "in the hands of those they are purportedly meant to protect but in the hands of their corporate authors alone"[204]. In this respect, critics pointed out that codes of ethics are often "given rather than negotiated" and have a "top-down structure of implementation"[205].

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[200] RINALDI F., TESTA S., *L'impresa moda responsabile: integrare etica ed estetica nella filiera*, Milano, 2013, p. 36

[201] ESBENSHADE J., *The social accountability contract: Private monitoring from Los Angeles to the global apparel industry,* in *Labor Studies Journal*, vol. 26, n. 1, 2001, p. 98

[202] THOMAS M. P., 2011, *op. cit.*, p. 272

[203] ZUMBANSEN P., 2006, *op. cit.*, p. 298

[204] *Ibidem*, p. 303

[205] HILL R. P., JUSTINE M. R., *Codes of Ethical Conduct: A Bottom-Up Approach*, in *Journal of Business Ethics*, vol. 123, 2014, p. 622

Under these circumstances, some TNCs have tried to reshape this form of voluntary regulation, through a *multi-stakeholders approach*[206]*.* They followed the opinion of several voices from the academic community affirming that "the development of a code of ethical conduct should create dialog that values contributions of all involved parties and recognizes the overlapping and competing interests and actions that lead to inevitable conflicts over resource allocations"[207]. Therefore, they have involved workers representatives, NGOs and unions in the drafting procedures, moving "from unilateral codes of conduct towards increasingly more complex and ambitious multistakeholder approaches to corporate social responsibility"[208]. Furthermore, they have started to include specific provisions on monitoring, enforcement and transparency within codes, trying to enhance their efficiency by involving local actors, unions and NGOs in a plant-based monitoring. Such innovative approach allows the differences in "cultures, legal systems, dominant religious beliefs, and population diversity" to have an influence "on the development of the moral fabric of an organization"[209].

Described the various features of codes, it is intriguing to examine on a legal perspective two aspects of the interaction between codes of conduct and national legal systems in the fields of interpretation and enforcement. With regard to the first aspect, it emerges that the adoption of codes of conduct may enable judges "to interpret vague normative standards"[210]. In particular, codes' provision could be interpreted as "*implied* terms on

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[206] COMPA L., *Corporate social responsibility and workers' rights*, in *Comparative Labor Law and Policy Journal*, vol. 30, n. 1, 2008, p. 5

[207] HILL R. P., JUSTINE M. R., 2014, *op. cit.*, p. 622

[208] STEVIS D., *International framework agreements and global social dialogue : parameters and prospects*, International Labour Office, Employment Working Paper n. 47, 2010, p. 2

[209] *Ibidem*, p. 628

[210] SOBCZAK A., 2006, *op. cit.*, p. 168

which to ground an unlawful dismissal suit, standards of *reasonableness* to define the duty of care owned to injured workers, evidence of what constituted due diligence by corporate directors who are sued for failing to prevent workplace harassment"[211]. As a consequence, it appears that codes of conduct and national regulations are not alternatives that exclude each other and not even that the codes of conduct simply retrace domestic legal provisions. The two systems seem to be more in a "state of symbiosis": through a judicial interpretation, they turn out to integrate each other, ensuring a deeper effectiveness of labor provisions.

With regard to the second aspect, scholars considered that those codes of conduct with precise and circumscribed contents, that are addressed to the public, could be enforced due to the application of national law institutions[212]. For example it is possible to notice an interesting application of a typical consumer law institution, namely the deceptive advertising[213]. In this respect an intriguing case was *Kasky v. Nike[214].* The claim dealt with the advertisements made by Nike against the criticisms regarding working conditions in its suppliers that could have been considered as false advertising practices.

At the end, the case was settled before a final decision of the Court, but it was widely considered as a milestone case and a springboard for innovative initiatives to enforce TNCs' private regulations. Furthermore, concerned by the case, TNCs had "an incentive to expose their manufacturing processes to the public eye because the risk of damage to

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[211] ARTHURS H., *Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation*, in CONAGHAN J., FISCHL R. M., KLARE K., *Labour Law in an era of globalization: trasformative practices & possibilities,* Oxford University Press, 2002, p. 484

[212] SOBCZAK A., 2006, *op. cit.*, p. 168

[213] *Ibidem*, p. 168

[214] KASKY V. NIKE, INC., Supreme Court of California*,* n. S087859, May 2002. Available at http://law.justia.com/cases/california/supreme-court/4th/27/939.html (30/05/2015)

branded reputation is greater than the risks of exposing poor labor conditions"[215].

From the case examined, it emerges that an interaction between codes of conduct and national laws is often necessary to enact a concrete enforcement of the codes' provision. In this case, the application of an institution of national consumer law seems to be a little bit strained, but generally speaking scholars have frequently considered the opportunity of enforcing codes of conduct's provisions through the application of national legal sources[216].

In conclusion, undoubtedly a challenging issue with regard to the adoption of codes of conduct is ensuring the relative compliance.

Frequently codes of conduct have resulted lacking in terms of effectiveness due to difficulties in carrying out proper monitoring procedures and due to the continuous violations perpetrated by supplier.

In this respect, many voices from the academic community have shown their concern, affirming that codes "will not enable workers to develop a sustainable regime of protected rights if they are not embedded in a sensitive and adequately responsive system of monitoring and revision"[217].

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[215] MARYANOV D., *Sweatshop liability: corporate codes of conduct and the governance of labor standards in the international supply chain*, in *Lewis & Clark Law Review*, vol. 14, issue 1, 2010, p. 428

[216] In this respect, SOBCZAK A., 2006, op. cit., p. 181, pointed out the importance of traditional labor laws, affirming that "consumer law norms could be used as long as labor and employment law is not providing sufficient protection. Consumer law norms must, however, avoid giving rise to a perception that labor law norms are not needed within global supply chains".

[217] ZUMBANSEN P., 2006, *op. cit.*, p. 302

4.4.1 The interaction between codes of conduct and national legislation

Frequently, governments of developing countries are not interested in implementing domestic labor laws[218]. As seen, they hope to attract foreign investors and to promote the economic growth by exploiting the competitive advantage of a low-cost workforce.
Under these conditions workers risk to be more vulnerable than ever. When they contract with companies, they "might before long become subjected to market forces without any effective defense instruments to aid them"[219].
Considered these circumstances, TNCs bear a strong responsibility: they have the extremely important function of promoting workers' rights along international supply chains. A commitment that companies could not accomplish without building a "long-term-oriented institution", which means making projects involving workers and considering the interests of all the stakeholders, thus creating shared value[220] over the long run.
One method to achieve these goals seems to be the adoption of a code of conduct to regulate the supply chain and spread the culture and the ethical values of the firm.

When included in codes of conduct, workers' rights are part a "wider

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[218] YU X., 2008, *op. cit.*, p. 518

[219] ZUMBANSEN P., 2006, *op. cit.*, p. 298

[220] PORTER M., KRAMER M., *Creating Shared Value: how to reinvent capitalism and unleash a wave of innovation and growth*, in *Harvard Business Review,* vol. 89 n. 1-2, January/February, 2011, p. 62 et seq.
In this respect, according to PERULLI A., 2013, *op. cit.*, p. 41, "the social impact becomes part of the strategy of the corporation: the social-based value proposition opens new frontiers in terms of a company's competitive placement and CSR itself ceases to be only a simple strategy to control damages to become a tool for building shared value".

corporate agenda of social responsibility"[221]. However, in this respect, scholars pointed out that the movement towards private regulation could entail dramatic risks to workers' conditions. Precisely, they expressed their concern with regard to the dangerous influence that codes of conduct could have on workers, due to their ineffectiveness and also to the broadness of their contents. Moreover, they pointed out that frequently, when adopting a code of conduct, TNCs are not engaged in an authentic long-term protection of workers. Rather, they often use codes as marketing or pure governance tools to avoid taking on further responsibilities. In this way the adoption of a voluntary regulation could be seen as a "corrupt attempt to free industry from the last vestiges of state regulation and union organizing"[222]. And codes of conduct could consequently not only challenge the legitimacy of domestic legislators but also "slow down, or even prevent the development of compulsory regulation of labour relations within networks of companies by labour law"[223].

Moreover, critics[224] outlined another negative consequence of the interaction between private and national sources: private regulations could indeed make human rights promoters believe that issues have been settled, mollifying their efforts and demobilizing their campaigns to pressure local governments towards the development of effective enforcement procedures.

Described the possible negative interaction between national regulation

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[221] ZUMBANSEN P., 2006, *op. cit.*, p. 302

[222] O'ROURKE D., 2003, *op. cit.*, p. 3

[223] SOBCZAK A., 2003, *op. cit.*, p. 230. The author also pointed out that "many codes of conduct are not very transparent about the conditions for their drafting and application. This relative opacity can be dangerous (…) risks not only failing to improve the workers' situation, but also slowing the intervention of public authorities in regulating labour relations within the network of companies".

[224] Such opinions are reported by O'ROURKE D., 2003, *op. cit.*, p. 3

and codes of conduct, it is essential to examine the other side of the coin. Scholars have indeed also positively commented that codes represent "a further *juridification* of society and particularly of human resources management" that can "hardly be considered as a danger for law"[225]. In this respect, on the one hand, codes of conduct's effectiveness could be enhanced by the presence of a strong platform of labor laws enforced by internal authorities. On the other, codes are considered "instruments that can usefully complement labour and employment law"[226] and, on their turn, enhance the effectiveness of traditional legal sources.

On the field, codes of conduct can positively interact with labor laws in different ways. For example, their adoption could complement the traditional legislation by expanding "the scope of application of existing laws to the network's entire production and distribution chain"[227]. Especially in the fields of the prohibition of discrimination and health and safety protection, codes of conduct often incorporate and specify the contents of domestic labor laws and spread the knowledge of the relative provisions along the supply chain.

Under these circumstances, codes of conduct could be considered tools that do not replace but rather complement countries' internal labor provisions. In any case, scholars outlined that codes should never "weaken the guarantees granted to workers under labour law. They can only contribute to strengthening them"[228].

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[225] SOBCZAK A., 2006, *op. cit.*, p. 169

[226] *Ibidem*, p. 167. The author also affirms at page 180 that "corporate codes of conduct and other corporate social responsibility tools that are based on consumer law could complement the existing labour and employment law in the field of global supply chains." Accordingly COMPA L., 2008, *op. cit.*, p. 7, argues that "CSR and corporate codes of conduct should be seen not as an alternative but as a supplement to labor law enforcement and collective bargaining".

[227] SOBCZAK A., 2003, *op. cit.*, p. 228

[228] *Ibidem,* p. 228. The author points out that it is due to the application of the international *principle of favor* that codes of conduct can only strengthen workers' protection.

4.5 International Framework Agreements (IFAs)

Concerned about their involvement in TNCs' private regulations, workers' representatives have negotiated international framework agreements (IFAs) as an alternative method to move beyond the weakness and unilateralism of codes of conduct[229]. Scholars pointed out that it is indeed impossible "to achieve a legitimate, sustainable, and effective implementation of CSR policies designed to protect workers' interests until workers are empowered to become real stakeholders and participate actively"[230]. In this respect, the adoption of an IFA involves workers' representatives much more intensely than that of a code of conduct.
Actually, the two types of voluntary regulation "serve the same purpose"[231], that is fostering the respect of workers' rights in corporations and their suppliers. However the two instruments are the outcomes of different governance systems: codes of conduct are unilaterally adopted by companies, while IFAs are negotiated and signed by both companies and global union federations (GUFs). This peculiar feature makes the adoption of an IFA a concrete step beyond "a protective/paternalistic approach to labor standards regulation"[232] whereby workers' rights are unilaterally granted by an enterprise to its employees[233].

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[229] According to STEVIS D., 2010, *op. cit.*, p. 2, "the evident limitations of unilateral codes of conduct led to the intensification and diversification of civil society initiatives"

[230] YU X., 2009, *op. cit.*, p. 239

[231] EGELS-ZANDÉN N., *TNC Motives for signing international framework agreements: a continuous bargaining model of stakeholder pressure*, 2009*, op. cit.*, p. 530

[232] THOMAS M. P., 2011, *op. cit.*, p. 280

[233] EGELS-ZANDÉN N., *TNC Motives for signing international framework agreements: a continuous bargaining model of stakeholder pressure,* 2009, *op. cit.*, p. 530

Formally, IFAs, also called Global Framework Agreements (GFAs), are defined as contractual relationships between transnational companies[234] and a GUF[235], such as IndustriALL, IUL, BWI, UNI, IÖD, IJF.

Through such agreement, the parties mutually recognize each other as legitimate contractors, promote the respect of ILO core labor standards, regulate other working conditions and set monitoring and conflict resolution procedures.

Focusing on IFAs' origin, the first agreement, called *Common Viewpoint*, was reached in 1988 by Danone and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations. After this first document, no other efforts had been registered until the end of the 1990s, when the International Confederation of Free Trade Unions (ICTFU) drafted a model agreement as an alternative to codes of conduct. Later on, during the first decade of the new millennium, the adoptions of IFAs had increased and, in 2010, 76 IFAs[236] were operational (figure 1 shows the quantitative development of IFAs until 2012). Scholars outlined that many of them have been adopted in continental Europe[237]. Some of them

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[234] With regard to the definition of the parties, scholars paid attention to define the company's perimeter. According to STEVIS D., 2010, *op. cit.*, p. 7, "it can be argued that their headquarters would be the principal participant", whereas suppliers and subcontractors are not always included in the application sphere of the IFA. Furthermore, according to the author, in the case of multi-divisional corporations "the differences may be even more pronounced and that can also be the case with business alliance." For example, "Nissan is operationally controlled by Renault but is not party to the relevant IFA."

[235] SIDOW J., FICHTER M., HELFEN M., ZEYNEP SAYIM S., STEVIS D., *Implementation of Global Framework Agreements: towards a multi-organizational practice perspective*, in *European Review of Labour and Research,* vol. 20 n. 4, 2014, p. 493, provided also the following definition: "a GFA is an agreement signed by one (or more) GUFs and the management of a TNC"

[236] FICHTER M., HELFEN M., SYDOW J., 2011, *op. cit*., p. 73

[237] Studies showed that the majority of IFAs were signed by companies with headquarters in the European area. Approximately half of them were concentrated in Germany, France and Sweden. Just about 20% of them involved companies with headquarters outside of the European area.
Such data are reported by PLATZER H., RÜB S., *International Framework Agreements. An instrument for enforcing social human rights?*, Friedrich-Ebert-Stiftung, Global Policy and Development, 2014, available at http://library.fes.de/pdf-files/iez/10474.pdf

argued that such phenomenon was probably due to the particular European collaborative industrial relations tradition, but according to others this should not be considered a sufficient factor, since actually many European TNCs still refused to sign IFAs[238].

In this respect, figure 2 represents the distribution of International Framework Agreements according to countries.

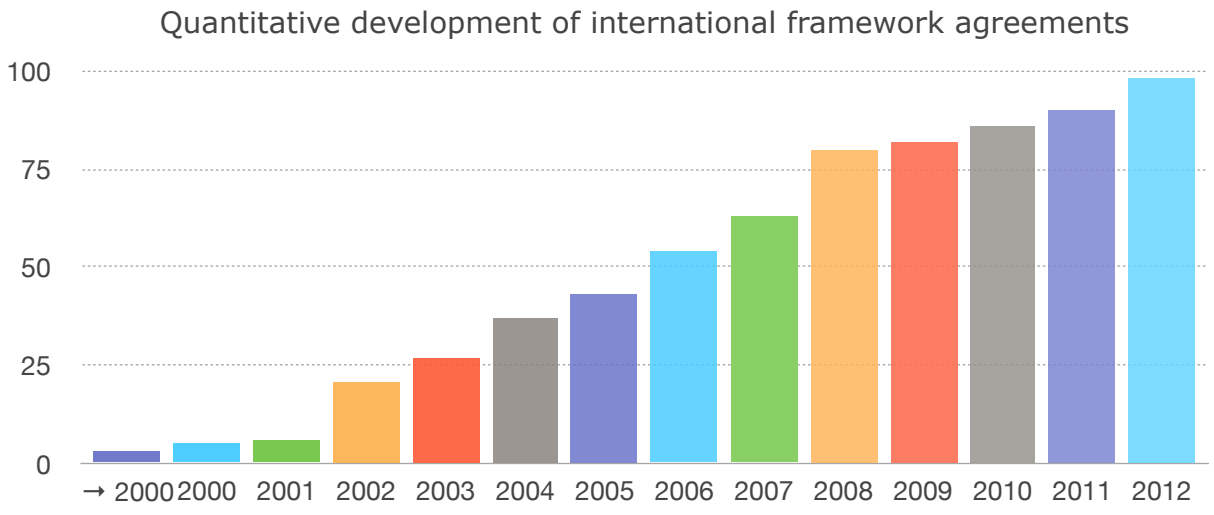

Figure 1
Source: Hessler 2012

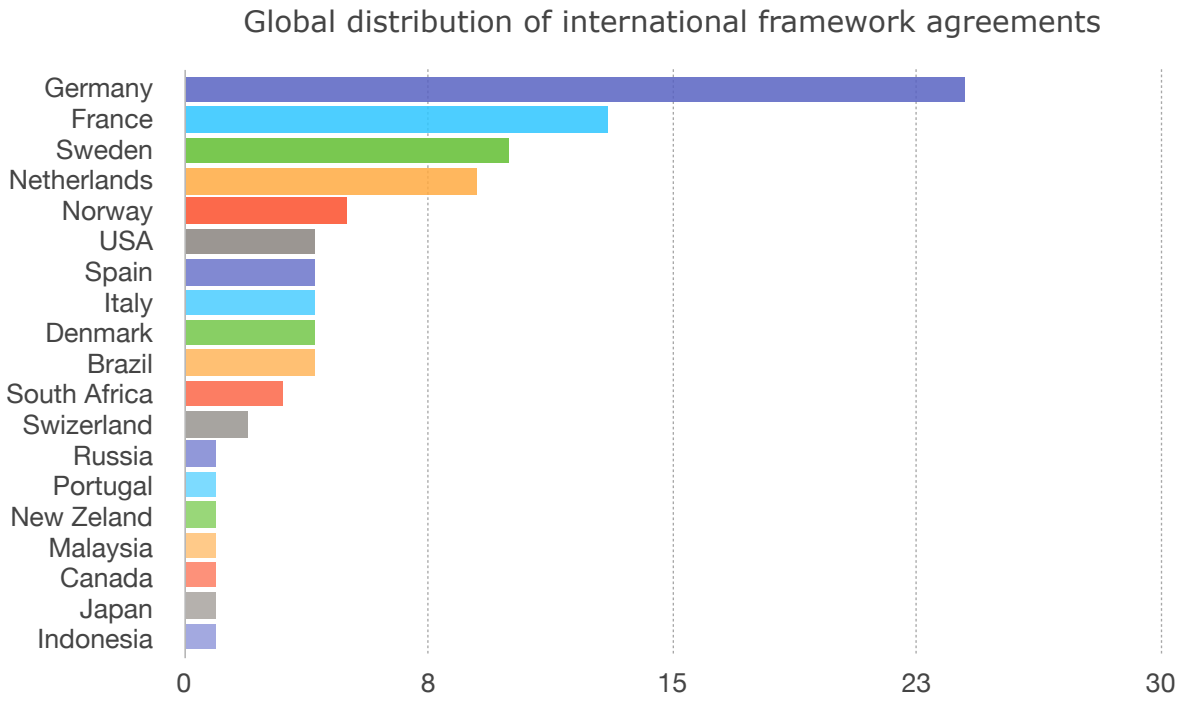

Figure 2
Source: Hessler 2012

[238] STEVIS D., 2010, *op. cit.*, p. 12

The spreading of IFAs was also due to the fact that federations of unions have sought to "redirect the proliferating private codes of conduct away from discretionary forms of CSR"[239] towards new forms promoting *social dialogue* between companies and unions themselves. In this respect, as shown by figure 3, IndustriALL and UNI - two important Global Union Federations - have been extremely active in negotiating agreements with TNCs.

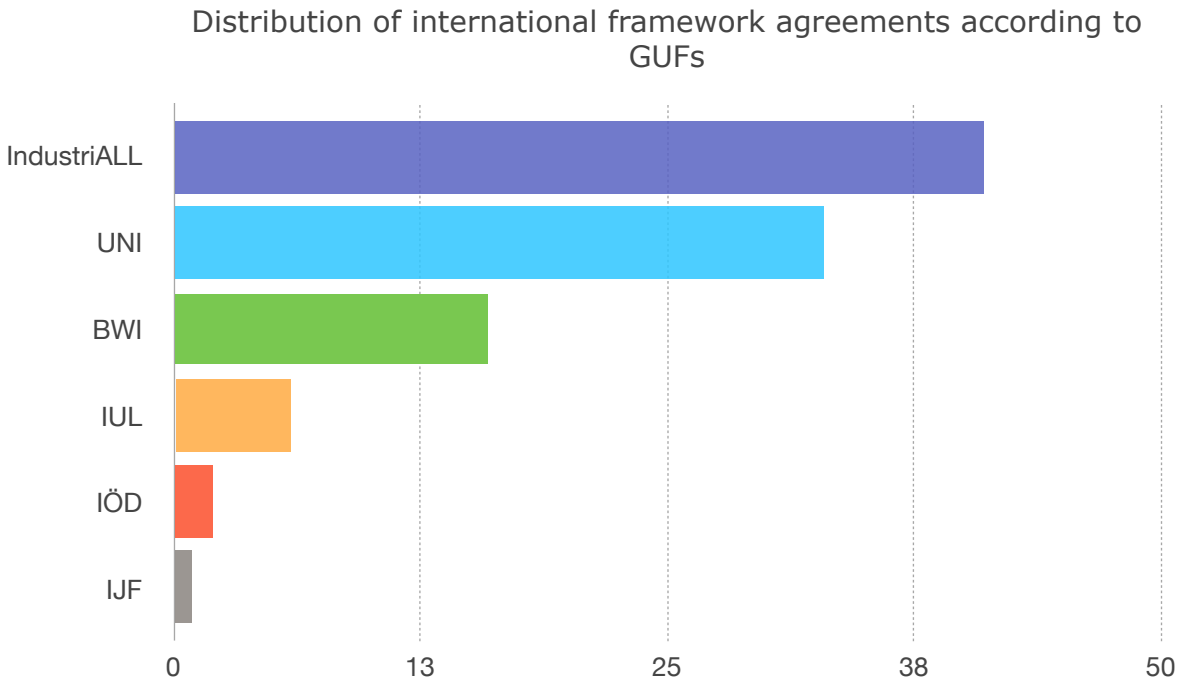

Figure 3
Source: Hessler 2012

IndustriALL Global Union

UNI Global Union International

BWI Building and Wood Workers' International

IUL International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association

IÖD Public Services International

IJF International Federation of Journalists

[239] STEVIS D., 2010, *op. cit.*, p. 2; furthermore, according to FICHTER M., HELFEN M., SYDOW J., 2011, *op. cit.*, "the aim was to reframe this debate to counteract corporate strategies and challenge the legitimacy of voluntary and unilateral codes of conduct".

The formal definition of *social dialogue* encompasses "all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy"[240]. In this respect, the term entails a different commitment in comparison to that at the basis of codes of conduct, a commitment between parties that recognize each other's role, importance and legitimacy "to resolve conflicts and establish policies through dialogue rather than force"[241].
Such observation shows the crucial feature of IFAs: they are negotiated legal tools whereby companies formally recognize that another actor, such a global union federation, is representing workers[242]. And whereby companies legitimize such representation at an international level[243].

According to Dominique Michel, Team Leader of the ILO's Multinational Enterprises Programme, IFAs "do not substitute for direct negotiations between companies and workers at the national or workplace level, they just provide a framework for those negotiations to take place in a constructive way and with a minimum floor"[244].
The consequence of such approach is significant: companies go beyond the previous relationship based on mere information and consultation procedures, and involve workers in a direct negotiation at a global level.

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[240] STEVIS D., 2010, *op. cit.*, p. 5

[241] *Ibidem*, p. 6

[242] According to HENNEBERT M., FAIRBROTHER P., LÉVESQUE C., *The mobilization of international framework agreements: a source of power for social actors*, in *Comparative Labor Law & Policy Journal*, vol. 33, n. 4, 2012, p. 710, "the signing of an IFA implies the recognition by the signatory companies of GUFs as legitimate partners in industrial relations at the transnational level".

[243] As pointed out by STEVIS D., 2010, *op. cit.*, p. 5, "this is a major break from the previous era during which MNEs refused to even have informal interactions with unions at the global level lest they legitimate them".

[244] ILO NEWSROOM, *International Framework Agreements: a global tool for supporting rights at work*, 31 January 2007. Available at www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_080723/lang--en/index.htm (30/05/2015)

In this respect, IFAs provide unions with an array of new opportunities: unions, indeed, can achieve a further level of cooperation across borders and can extend their influence "throughout the organizational domain of the corporation and beyond to match the global reach of production"[245]. For such reason, since they have been positively considered by several unions, IFAs have not just the effect of promoting social dialogue and the respect of core labor standards along the supply chain, but also the effects of "strengthening the organizational foundations of the GUF affiliates" and "promoting cross-border union cooperation"[246].

Focusing on the contents, IFAs' provisions are in general more precise in comparison to those of codes of conduct[247].
For examples, IFAs refer to several ILO conventions, remedying to the slowness of states in ratifying them, they usually include all the fundamental labor standards, namely the prohibition of child labor, forced labor and discrimination and the recognition of freedom of association[248]. In this respect, the dialogue between companies and unions indeed needs to go beyond the workers' rights protected by domestic legislation, since in many countries the floor of protection is lower than the international one. And, even if some companies could find hurdles in promoting higher standards than those of domestic laws, these obstacles should be overcome, in order to achieve an upward harmonization of labor standards[249].

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[245] FICHTER M., HELFEN M., SYDOW J., 2011, *op. cit.*, p. 74

[246] *Ibidem*, p. 75

[247] SOBCZAK A., *Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility,* in *Industrial Relations*, vol. 62, n. 3, 2007, p. 473

[248] EGELS-ZANDÉN N., TNC Motives for signing international framework agreements: a continuous bargaining model of stakeholder pressure, 2009, *op. cit.*, p. 531

[249] *Ibidem*, p. 531; PERULLI A., 1999, *op. cit.*, p. XX

Furthermore, scholars pointed out that global agreements are superior in promoting *workplace democracy*[250]*.* Among the workplace democracy components, IFAs indeed promote the formation of shared decisions between unions and companies by providing patterns for a shared governance, by enhancing participation and by granting specific training to workers and access to essential information. In contrast, codes of conduct just grant certain outcomes of the *workplace democracy* exercise, such as minimum labor standards and some individual rights, but they rarely promote freedom of association and provide workers with concrete mechanism to participate.

To this extent, IFAs provide not just *protective rights*, but also *enabling rights*[251]*.* Rights that foster "workers' engagement in the defense of their rights, for example freedom of association and collective bargaining"[252], and enhance the momentum towards a worker-centered transnational labor rights governance.

Furthermore, a significant feature of IFAs is the internalization of specific provisions in terms of implementation and enforcement: global agreements "provide a legal way to enforce, rather than simply advocate, TNC responsibility for workers' rights"[253]. In this sense, IFAs move beyond the previous failures of codes of conduct by promoting different mechanisms for granting the effectiveness of rules and procedures.

Hence, according to scholars[254], a deep difference is the way whereby a code of conduct and an IFA are monitored: the latter presupposes the existence of workers' representatives that could control the concrete

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[250] EGELS-ZANDÉN N., HYLLMAN P., 2007, *op. cit.*, p. 209

[251] PAPADAKIS K., *Shaping global industrial relations. The impact of international framework agreements*, International Labour Organization, Palgrave Macmillan, 2011, p. 83

[252] THOMAS M. P., 2011, *op. cit.*, p. 273

[253] EGELS-ZANDÉN N., HYLLMAN P., 2007*, op. cit.*, p. 209

[254] *Ibidem*, p. 215

respect of workers' rights, while the former is often monitored by company's specific bodies or hired auditors.
To sum up, IFAs are innovative tools in promoting and protecting workers' rights for several reasons: they recognize GUF as a valuable counterpart, they ensure compliance with the CLS along the entire supply chain with particular attention to the promotion freedom of association, they set up modern "viable collective conflict resolution mechanism" and create a new "organizing space"[255] for management and unions.

Interestingly, IFAs have been evolving in terms of contents and scopes of application. Scholars[256] have recently outlined that four significant *trends* have characterized such improvement.
First, initially IFAs did not involve suppliers and subcontractors. Over time, stakeholders started to be concerned for the conditions occurring at suppliers' workplaces, where the major abuses against workers were perpetrated. Some IFAs have then broadened their scopes, encouraging and involving supplier and subcontractors to respect the agreement. As pointed out, nowadays IFAs' scope of application should go "beyond the enterprise"[257] in order to include its subsidiaries.
Secondly, IFAs evolved in terms of monitoring procedures. They started to involve local unions more in depth, providing "plans for consultation", "period meetings", "the creation of committees to review and implement the agreement"[258].
Another trend that has been outlined is the creation of compliance mechanisms allowing local workers to raise claims when violations

[255] FICHTER M., HELFEN M., SYDOW J., 2011, *op. cit.*, p. 76

[256] HENNEBERT M., FAIRBROTHER P., LÉVESQUE C., 2012, *op. cit.*, p. 693 et seq.

[257] PAPADAKIS K., 2011, *op. cit.*, p. 42

[258] HENNEBERT M., FAIRBROTHER P., LÉVESQUE C., 2012, *op. cit.*, p. 694

occur[259]. In this respect, usually the first actors able to recognize violations are local workers' representatives, which could involve national unions in case of need. Then, in case of failure in settling the dispute, national unions could report the case to the relevant GUF.
Finally, the last trend that has been identified deals with the inclusion of other corporate activities and industrial relations issues within the agreement. In this respect, scholars pointed out that from 2004 on, several IFAs have included provisions regarding "support during restructuring, awareness of major public health problems (such as HIV) and reference to sustainable development and environment protection"[260].

Moving on to the rationales behind IFAs' adoption, two developments are considered by scholars extremely significant. The global movement toward Corporate Social Responsibility and the repeated violations of international labor standards[261]. With regard to the first aspect, companies often adopted code of conduct to "impress consumers and media"[262], showing that they were committed to respect human rights, but they focused less on topics that would have difficultly turned into scandals by press, such as violations of freedom of association[263]. In this respect, unions used IFAs an innovative pattern to promote unionism, moving beyond the unilateralism of codes of conduct.
Considering the second aspect, as mentioned, several violations of labor standards were perpetrated at suppliers' production sites. Hence, GUFs

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[259] *Ibidem*, p. 694

[260] Ibidem, p. 694

[261] KRAUSE R., *International framework agreements as instrument for the legal enforcement of freedom of association and collective bargaining? The German case*, in *Comparative Labor Law & Policy Journal*, vol. 33, n. 4, 2012, p. 752

[262] *Ibidem*, p. 752

[263] *Ibidem*, p. 752

"have discovered IFAs as tool to apply core labor standards to the worldwide activities of multinational companies"[264].

Furthermore, at a company-union level, scholars distinguished internal and external factors to adopt an IFA. "External factors are those to which corporations and unions must respond, such as crises, public policies, and changes in sectorial and global economies"[265], while the internal factors deals more with internal corporate dynamics. For example, with regard to this last case, scholars argued that companies might adopt an IFA to legitimate their internationalization strategy[266] by involving workers' representatives. Another internal reason is purely governance-based: some TNCs may consider the adoption of an IFA as an opportunity to "bring some order to their human resource management"[267]. Finally, transnational companies could also be truly committed to improve social dialogue and working conditions and could see IFAs as proper instruments to make improvement in this direction and, thus, to enhance the company's *culture of responsibility*.

Another significant issue deals with the grounds that found companies and worker representatives' preference towards the adoption of an IFA instead of a code of conduct. By an empirical analysis of negotiations[268], it emerged that the adoption of an IFA is "embedded in a long-term continuous corporate-union relationship"[269].

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[264] *Ibidem*, p. 753

[265] STEVIS D., 2010, *op. cit.*, p. 11

[266] *Ibidem*, p. 12

[267] *Ibidem*, p. 12

[268] EGELS-ZANDÉN N., *TNC Motives for signing international framework agreements: a continuous bargaining model of stakeholder pressure, op. cit.*, 2009, p. 540

[269] *Ibidem*, p. 540

Hence, differently from a code of conduct - which is the outcome of a stakeholders' pressure stemming from activist campaigns, consumers boycotts and public opinion in general - IFA's adoption is the consequence of a continuous bargaining model of stakeholder's pressure[270]. A process that makes firms and stakeholders closer, so that the union becomes an integral part of the company itself[271].

With regard to the implementation of IFAs, as mentioned, these innovative voluntary tools move beyond the ineffectiveness of many codes of conduct also due to the rooted involvement of unions in monitoring procedures.
However, the success of IFAs is often undermined by several factors and in many circumstance their actual implementation turns out to be lacking.
First, compliance strongly depends "on the extent to which management has endorsed corporate social responsibility as an integral element of all its business operations"[272]. Indeed, managers often have a negative attitude towards the involvement of other actors and frequently are negligent during negotiations and monitoring procedures.
Moreover, when managements and unions reach an agreement, they often do not incorporate specific provisions in the document regarding the implementation procedures and the allocation of proper financial resources[273]. Indeed, the two parties often discuss these important issues after having negotiated and then signed the agreement.
Furthermore, hurdles often derive from the opposition of departments and subcontractors located across the supply chain, which often affirm that it is their duty to respect local laws, regardless of the better conditions

[270] *Ibidem*, p. 540

[271] *Ibidem*, p. 543

[272] FICHTER M., HELFEN M., SYDOW J., 2011, *op. cit.*, p. 76

[273] *Ibidem*, p. 77

promoted by IFAs[274].

For the above-mentioned reasons, scholars identified a "dichotomy between the achievement of agreed upon practices and the lack of defined means for their transfer from the level of central management to all other units"[275]. Under such circumstances, the implementation of IFAs cannot simply be delegated to departments or suppliers located far away from the headquarter; actors that know few about the rationales, the bargaining processes and the aims of the agreement. On the contrary, managers of suppliers should be included to actively participate in the negotiations procedures[276], thus making the local level closer to the central one. In any case, it should be acknowledged that local operators frequently are located within reactionary institutional environment, where unionism is not recognized by law and companies scantily involve workers. Clearly, under these conditions, the promotion of a social dialogue could result particularly arduous.

In conclusion, IFAs emerge as promising tools in the workers' rights governance landscape which go beyond the paternalistic approach of codes of conduct, through the involvement of workers' representatives. Hence, they could foster workers' role inside a firm, promote several aspects of workplace democracy and enable a deeper cooperation between employers and employees. Consequently, they could also lead to different plant-based models of compliance initiatives and monitoring procedures.

However, to be really effective IFAs need a more explicit language and more precise definitions, with particular regard to the most challenging issues such as the implementation and the local involvement of unions,

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[274] *Ibidem*, p. 79

[275] *Ibidem*, p. 80

[276] *Ibidem*, p.80

departments, suppliers and subcontractors[277]. Otherwise, IFAs could encounter one of the same limits of codes of conduct, namely an unilateral managerial approach that relegate workers to the corner, jeopardizing the achievement of shared improvements along global supply chains. In this respect, "union input and active monitoring of implementation"[278] is crucial for IFAs' effectiveness.
On their turn, GUFs should pay attention to fully involve local unions in negotiations and drafting procedures, aspiring to create a broadly based system of workers' participation[279].

4.6 The legal enforcement of codes of conduct and IFAs

Ineffective codes of conduct and IFAs could difficultly improve working conditions along transnational supply chains. Or worse, as mentioned, they could even prevent the development of effective domestic regulations. For such reason, the enforcement of voluntary regulations is a topic of primary importance.
On the field there are various ways to enforce IFAs and codes of conduct. In this respect, monitoring and *private* enforcement mechanisms can often be "more effective than any other type of legal enforcement"[280]. These methods will be examined at the last chapter of this paper.
On the contrary, the *legal* enforcement of voluntary forms of regulations is highly controversial but probably it represents - on a legal perspective - the most intriguing issue.

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[277] *Ibidem*, p. 81

[278] *Ibidem*, p. 82

[279] *Ibidem*, p. 82

[280] KRAUSE R., 2012, *op. cit.*, p. 758

Regarding the legal enforcement of codes of conduct, it is worthy to notice that these tools are actually the targets of controversial opinions. Some scholars considered them as mere instrument to enhance the reputation of the corporation, others on the contrary highlighted their potential role in legal systems[281].

The first ones considered codes of conduct as instruments to influence consumers and gain credibility but whose wording is too vague to amount to a juridical duty[282]. The second affirmed that codes of conduct, through their provisions, go beyond the sphere of ethics to assume a crucial role also at the level of legal sources[283].

Codes of conduct are indeed expressions of the company's private autonomy and do have effects on the subjects that enter into contact with the corporation. Through principles and guidelines, they actually aim at influencing the behaviors of suppliers, subcontractors, workers and of the corporation's members[284]. However, in this respect, scholars pointed out that codes of conduct include not just mere exhortations and advices but also commands, to be included in the category of duties[285]. In their analysis, experts moved from the moral distinction between *praeceptum* and *consilium*[286] and from the distinguishing factor between the two categories, namely the system of sanctions.

The issue then evolved, moving on to the understanding of the category

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[281] BENATTI F., *Codici etici e di condotta come vincolo giuridico nei rapporti interni ed esterni alla società*, in VV.AA. *Impresa e forced labour*, 2015, in press

[282] *Ibidem*

[283] SENIGAGLIA R., *La vincolatività dei codici etici: ossimoro o sineddoche*, in PERULLI A., *La responsabilità sociale dell'impresa: idee e prassi*, Bologna, 2013, p. 83

[284] BENATTI F.*, 2015, op. cit.*

[285] SENIGAGLIA R., 2013, *op. cit.*, p. 83

[286] Observation made by SENIGAGLIA R., 2013, *op. cit.*, p. 83, which makes references to AQUINATIS T., *Summa Theologica*, I-II, q. 92, aa. 1-2 and to BOBBIO N., *Comandi e Consigli*, in *Studi per una teoria generale del diritto*, Torino, 1970, p. 50

in which codes of conduct should be included. Scholars[287] pointed out that companies should choose a binding and enforceable solution for their regulatory efforts, since they know that the mere recommendation of a certain behavior implies that those addressed could not embrace such advice and since they comprehend that when their code of conduct is not respected, their credibility and thus their business would be jeopardized[288]. For these reasons, for TNCs is extremely important to adopt a code of conduct that includes commands and, consequently, tangible responsibilities[289].

Furthermore, scholars have pointed out another intriguing consideration regarding codes of conduct. Through the adoption of a code, a corporation would seize a new resource: the value that stakeholders confer to the commitment made by the company to do or to avoid a certain action. A resource that, along with the raising attention paid by consumers to company's behavior, entails a patrimonial value and not just an ethical one. Then, the issue of the binding value of codes of conduct should be discussed also considering the enhancement in terms of *property right* whereof corporations take advantage[290].

Still considering the legal value of voluntary regulations, in the Italian legal system the provisions of a code of conduct could be evaluated as legal duties of *good faith, diligence and correctness*, thus providing to the interpreters fundamental criteria of interpretation[291].

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[287] SENIGAGLIA R., 2013, *op. cit.*, p. 86

[288] *Ibidem*, p. 86

[289] Accoding to SENIGAGLIA R., 2013, *op. cit.*, p. 92, the circumstance of a code including binding provisions makes it possible to image the recourse to civil law institutions, such as an inhibitory remedy, for obtaining the enforcement.

[290] *Ibidem*, p. 96

[291] BENATTI F., 2015, *op. cit.*

In this way, an Italian judge could consider a certain conduct contrary to *good faith, diligence and correctness* when a provision of the code of conduct has been violated[292]. At the same time, even if a company has not adopted a code of conduct, the codes of other corporations could provide standards and reference points to evaluate a certain behavior[293].

Beyond the above mentioned cases, also alternative *indirect* legal mechanisms to enforce codes' provisions have been undertaken. In such cases, the enforcement of codes of conduct's provisions takes place due to the exploitation of legal institutions coming from other categories of law, such as consumer law and competition law.
For instance, some scholars considered the violation of a code of conduct as an example of *unfair trading practices.* Similarly, others experts pointed out that the violation of a code of conduct - which has been made public - could be considered a case of *deceptive advertising*[294], namely a misrepresentation of the consumers believing that the corporation would have followed the provisions of its code of ethics[295]. Furthermore, scholars affirmed that the circumstance of a company that publicizes its code of conduct to consumers, but in truth has not adopted any code or has falsely adopted one, is considered a damage of consumers' trust and thus

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[292] BENATTI F., 2015, *op. cit.*; As mentioned, accoding to SOBCZAK A., 2006, *op. cit.*, p. 168, "judges can use codes of conduct to interpret *vague normative standards*" and "may enforce a code that is sufficiently precise and addressed to the general public".

[293] BENATTI F., 2015, *op. cit.*

[294] In this respect, an interesting case, already mentioned, is *Nike v. Kasky* described in detail by SOBCZAK A., 2006, *op. cit.*, p. 168

[295] According to SOBCZAK A., 2003, op. cit., p. 232, "These new sanctions for violation of the code of conduct are not based on the violation of fundamental social standards, but on the violation of its obligation to inform consumers". However, "a pragmatic approach should be adopted so as to explore all of the possible avenues that can be used to require hub companies to respect the commitments they make in their codes of conduct".

an alteration of the natural formation of the party's consensus[296]. The same would happen in the case of a corporation that adopts a code of conduct, but then completely ignores the relative provisions[297].

A further interesting perspective regarding the enforcement of voluntary regulations considers the duty to monitor compliance that can be deduced from the provisions of a code of conduct. For instance, in the case *Does I v. The Gap, Inc*.[298] the Court affirmed that Gap used its power to force manufactures to carry out unlawful practices that worsened workers' conditions at the supplier's workplace[299]. The plaintiffs pointed out that the TNC was aware of the conditions occurring at the sweatshop and that the code of conduct provided the TNC with enough power to control the production of the supplier. The hub company had then the opportunity to enforce the code of conduct but it caused suppliers to "continue sweatshop conditions by paying an unreasonably low contract price, requiring unreasonably short manufacturing deadlines, and demanding last-minute order changes"[300].

Consequently, it was clear that the TNC exploited the deplorable conditions of the sweatshop and caused "investment injuries by using those profits to perpetuate the arrangement with codes of conduct and monitoring systems that discourage involvement by stakeholders to improve labor conditions"[301].

Commenting such case, scholars pointed out that, in its decision, the

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[296] ADDANTE A., TUCCI G., F*orced labour e pratiche commerciali scorrette nel rapporto di consumo*, in VV.AA. *Impresa e forced labour*, 2015, in press

[297] *Ibidem*

[298] DOES I V. THE GAP, INC., District Court for the Northern Mariana Islands, 2002. Available at http://www.utexas.edu/law/faculty/lmullenix/info/does_v_gap.pdf (30/05/2015)

[299] MARYANOV D., 2010, *op. cit.*, p. 424

[300] *Ibidem*, p. 424

[301] *Ibidem*, p. 424

Court emphasized the decisive importance of the code of conduct and the monitoring procedures in considering the conduct examined as unlawful[302].

Nevertheless, the case enables another consideration: if companies require suppliers to comply with code's provisions but do not predispose the proper conditions to such compliance, then they are co-authors of the violation perpetrated by suppliers and co-responsible of the deplorable conditions suffered by workers. Such circumstance is very close to that examined before at Chapter 3, Paragraph 3.3.1: in that case the implementation of Reebok's campaign at supplier FS[303] was lacking due to company's negative attitude. As often happened, the TNC adopted responsible policies and imposed them to the suppliers, but then it refused to share the relative costs, heightening the risk that the supplier would elude such new responsibilities.

Moving on to the investigation of international framework agreements (IFAs) as legally enforceable instruments, firstly it should be outlined that they are different governance tools in comparison to codes of conduct. Indeed, IFAs involve workers during their drafting and implementation and are not simply a unilateral instrument of commitment, rather an agreement between parties.

On a legal perspective, several voices considered IFAs as *soft law* sources[304], thus emphasizing their non-legally binding nature. Others, however, pointed out the existence of legal ways to enforce IFAs both at an international and at a domestic stage.

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[302] ADDANTE A., TUCCI G., 2015, *op. cit.*

[303] YU X., 2008, *op. cit.*

[304] HENNEBERT M., FAIRBROTHER P., Lévesque C., 2012, *op. cit.*, p. 694; HEPPLE B., *A race to the top? International investment guidelines and corporate codes of conduct*, in *Comparative Labour Law and Policy Journal,* vol. 20, 1999

First of all, it is necessary "to distinguish between direct and indirect methods of enforcement of IFAs"[305], as done with codes of conduct. In this respect, direct enforcement means that "the IFA *as such* will be enforced"[306], while indirect enforcement means that the IFA will be enforced by other avenues, such as tort law, competition law, employment law and consumer law.

The direct enforcement entails the thorny issues of jurisdiction, applicable law and enforceability according to the law resulted applicable[307]. Regarding the jurisdiction, when the signing company is European - as it occurs in the majority of cases - Brussels I-regulation should apply[308]. However, if the claim is directed against a supplier or subcontractor, which is not located in the EU territory, then Brussels I-Regulation will not be applicable. In such case, jurisdiction is determined according to the respective national law[309].

With regard to the applicable law, since an IFA involves more than one legal system, scholars have abundantly and controversially discussed the issue of the legal framework that should apply.

Then, established the applicable law, the crucial issue involves the enforceability of the IFA at stake. In this regard, the most significant question is "whether the parties had the intent to create justiciable rights"[310]. As noticeable, the issue retraces the discussion over codes of conduct's enforceability and the controversial nature of *praeceptum* or

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[305] KRAUSE R., 2012, *op. cit.*, p. 758

[306] *Ibidem*, p. 758

[307] *Ibidem*, p. 758

[308] In this respect, KRAUSE R., 2012, *op. cit.*, p. 758, describes in detail the two conditions that should occur in order to apply the Brussels I-Regulation, namely the *ratione materiae* (the claim should consist of a civil or commercial matter), and the *ratione personae* (the defendant should be domiciled in the EU territory).

[309] KRAUSE R., 2012, *op. cit.*, p. 761

[310] *Ibidem*, p. 765

consilium of their provisions. Some legal scholars outline that IFAs "are not intended to produce any direct legal effect"[311], since they are declaration of corporate policy and guidelines. Others on the contrary argued that IFAs do have binding effects.

Between such positions, others believe that the binding effects of an IFA actually depend on the IFA at stake and on its specific wording. For instance, "if the signatories of such agreement have expressly referred to an applicable law, as for the IFAs of Arcelor and Umicore, there is no doubt that the parties intended to create contractual relations"[312], on the contrary if the parties have excluded justifiable rights, then they have manifested their unwillingness to be legally bound. Moreover, when the signatories have expressly affirmed that the contents of the agreement are binding, then such wording will be a decisive clue of their willingness to create contractual obligations[313]. However, unfortunately several IFAs are characterized by the uncertainty of their provisions, leaving the interpreters doubtful regarding the binding nature of the agreement.

Considering the clear difficulties in directly enforcing an IFA, innovative indirect legal solutions have been explored. As pointed out, there is the need for "strategies that effectively combine forms of transnational regulation with traditional regulatory strategies, such as local labor laws and collective agreements, to ensure the enforcement of international labor norms at local, national, and transnational levels"[314].

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[311] In this respect KRAUSE R., 2012, *op. cit.*, p. 766 describes in detail the positions of the various legal scholars that have commented IFAs' binding nature.

[312] KRAUSE R., 2012, *op. cit.*, p. 766

[313] *Ibidem*, p. 766

[314] THOMAS M. P., 2011, *op. cit.*, p. 284

In this respect, leaning on employment law, parties could incorporate a *referral clause* in the individual employment contract[315].

Furthermore, exploiting an institution of consumer law, German scholars argued that "non compliance with a publicly advertised code of conduct on labor standards might establish a *material defect*"[316]: such approach could maybe be extended also to IFAs. However, critics pointed out that IFAs are actually not publicized and used in advertisement, thus there are no grounds to implement such proposal.

For similar reasons, raising a claim for *deceptive advertising*, as it has been done in the case mentioned above (namely, *Nike v. Kasky)*, seems to be unpromising.

Another way that has been considered to enforce IFAs was that of *unfair competition*: indeed the violation of workers' rights enables the employer to have lower costs in comparison to its competitors. However in this respect, scholars outlined that "private contracts cannot be put on a par with statutory provisions. So the non compliance with an IFA as such does not establish a case for competition law"[317].

Finally, companies may also include IFAs in collective agreements and in contracts signed with suppliers and subcontractors, which are binding documents[318] and domestic courts may interpret IFAs that have been active for enough time as *customary rules*[319] having legal effects for the parties.

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[315] KRAUSE R., 2012, *op. cit.,* p. 769, outlines a specific feature of the German system: even if a referral clause is absent, IFAs may influence the general duty of the employer to protect employees' interests (*Rücksichtnahmepflicht*). However, the author does not consider such approach too promising.

[316] Commentators' opinions are reported by KRAUSE R., 2012, *op. cit.,* p. 769

[317] *Ibidem*, p. 770

[318] HENNEBERT M., FAIRBROTHER P., LÉVESQUE C., 2012, *op. cit.*, p. 694

[319] *Ibidem*, p. 695

4.7 Codes of conduct and IFAs: complementary or alternative tools?

A key question with regard to the adoption of codes of conduct and IFAs deals with their interaction in regulating workers' rights. In particular, scholars have wondered whether the two are conflicting or complementary tools. In this respect, on the one hand, codes of conduct are considered useful governance instruments to mitigate stakeholders' concern and to avoid the signing of an IFA, more invasive in terms of workers participation. On the other, they are also considered a preliminary unilateral recognition of workers' rights, including freedom of association: thus, a step forward unionism and, possibly, forward the signature of an IFA[320].

An empirical study[321] analyzing a Swedish TNC named Trelleborg, with production sites in Sri Lanka, showed in this respect some "negative conflictual interactive effects, indicating that codes of conduct can be used to prevent rather than foster the formation of local unions"[322]. In the case managers took advantage of the code of conduct to demonstrate to consumers the corporate commitment to foster labor conditions and the company's openness towards unionism. However, they did not respect its provisions on the field, obstructing workers' efforts to associate. Indeed, as the code was unilateral, the managers believed that it was a company's right to determine whether a union could be set up or not.

This way the code of conduct turn out to be a governance tool whereby companies could strategically avoid the signing of an inconvenient IFA and, consequently, the empowerment of workers.

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[320] Commentators' opinions are reported by EGELS-ZANDÉN N., HYLLMAN P., 2007, *op. cit.,* p. 207 et seq.

[321] *Ibidem,* p. 207 et seq.

[322] *Ibidem*, p. 217

Furthermore, another problematic issue about codes of conduct and IFAs deals with the relation between NGOs and unions: as the first ones prefer codes of conduct while the second usually make pressure for the adoption of IFAs[323]. Accordingly, the two actors may disperse their power and may be unable to cooperate, promote companies' responsible actions, foster workplace democracy and carry out shared monitoring procedures.

In conclusion, an in-depth analysis[324] of the two voluntary tools should also embrace the study of the rationales that drive companies to adopt one or both the two instruments, paying particular attention to those companies that have adopted both an IFA and a code of conduct. Such cases show indeed that the two methods are the outcomes of different ideas of governance and different systems of industrial relations. Furthermore they demonstrate that the two tools may differ with respect to the monitoring and the implementation of the respective provisions.
In this respect, this work analyzes the *Group Code of Ethics* and the *International Framework Agreement to promote and protect worker's rights* adopted by the Italcementi Group, a TNCs producing cement and other construction aggregates.

[323] EGELS-ZANDÉN N., 2008*, op. cit.*, p. 176

[324] *Ibidem*, p. 174 et seq.

4.7.1 Italcementi's *Group Code of Ethics* and *International Framework Agreement to promote and protect worker's rights*

Italcementi Group is the fifth larger cement producer in the world, with over 23.000 employees in 22 countries. Since, the corporation has interestingly signed both a code of conduct and an IFA, it makes possible a comparison between the contents and the origins of the two legal tools.

On the one hand, Italcementi *Group Code of Ethics*[325] was unilaterally signed by Italcementi Group in 2012, replacing an older code of 1993. With regard to workers' rights, it contains basic provisions on health, safety and anti-discrimination but also on professional growth, workplace atmosphere and cooperation between workers. Finally, it explicitly ensures code's implementation through a specific corporate body (the *Ethic Committee*) delegated to monitor the implementation of the provisions.

On the other hand, Italcementi *International Framework Agreement to promote and protect worker's rights*[326] was signed in 2008 by Italcementi Group and Bulding and Wood Workers International (BWI), a federation grouping independent and democratic unions, with more than 12 million members in 135 countries.

The IFA regulates traditional issues such as the prohibition of discrimination and child labor, health and safety, working hours.

Moreover, it guarantees the freedom of association and the right to collective bargaining, the right to reasonable living standards (standards even more favorable than those established by national legislation), the

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[325] ITALCEMENTI, *Group Code of Ethics*, 2012.
Available at http://www.italcementigroup.com/ENG/Governance/Documentation/Group+Code+of+Ethics/ (30/05/2015)

[326] ITALCEMENTI *International Framework Agreement to promote and protect worker's rights*, 2008. Available at http://www.bwint.org/pdfs/0237_001.pdf (30/05/2015)

education in terms of HIV/AIDS prevention and other facilities in terms of workers welfare. Furthermore, it explicitly refers to several ILO Conventions (namely Conventions n. 29, 87, 98, 100, 105, 111, 131, 135, 138, 167, 182) and to the OECD Guidelines on Multinational Companies.
Finally, it enables local workers and union representatives information and participation with regard to the monitoring procedures and it sets up a *Reference Group* composed by company's representatives, BWI affiliated unions and a European Work Council coordinator, in order to draft reports and monitor the implementation of the agreement.

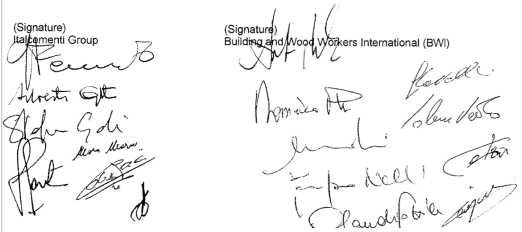
A comparison between the two voluntary tools is represented at figure 4. The first significant difference deals with the signing parties: the code is signed by Italcementi Group only, while the IFA is signed by both the company and the global union federation, namely BWI. Hence, at least at a first glance, the code appears to be unilateral and paternalistic in approaching the regulation of workers' rights, while the IFA seems to involve workers, being the outcome of a negotiation between Italcementi Group and BWI.
Another difference deals with the contents. The code contains provisions on numerous issues, from environment to mass media, while the IFA deals specifically with workers' rights, regulating them in a very precise and detailed manner.
For example, the IFA makes specific reference to several ILO conventions, while the code does not. Furthermore, the Code of Ethics promotes fundamental labor rights, such anti-discrimination, health, safety (*protective rights*) but it does not refer to elements of workplace democracy, whereas the IFA promotes the freedom of association and protects the right to collective bargaining (*enabling rights*) as matters of primary concern (in this respect, it is no surprise that it regulates these topics in the first article). In this respect, provision 2.6 of the *Group Code of Ethics* only prohibits to exercise pressures on trade union and workers

representatives and, with regard to the involvement in *political activities,* interestingly it recalls the relevant domestic legislation, which in many countries actually does not promote unionism at all.

Finally, both the IFA and the Code of Ethics regulate the monitoring and the enforcement creating *ad hoc* bodies (respectively, an *Ethic Committee* and a *Reference Group*). However, the IFA specifically ensures workers' participation in the monitoring procedures through the appointment of unions' representatives as members of the Reference Group.

Figure 4

A comparison between Italcementi Group Code of Ethics and IFA

Differences	Italcementi *Group Code of ethics*	Italcementi *IFA to promote and protect workers' rights*
Signature	Italcementi Group	
Broadness of contents	Introduction 1. Our Vision, Mission and Values 2. Rules of conduct 2.1 Italcementi People 2.2 Investors 2.3 Customers 2.4 Suppliers 2.5 Public administration and public bodies 2.6 Political and trade union organizations 2.7 Mass media 2.8 Local communities 2.9 Environment 3. Implementation of the Code	Introduction 1. Freedom of association and the right to collective bargaining are respected 2. Employment is freely chosen 3. No discrimination in employment 4. Child labour is not used 5. Living wages are paid 6. Hours of work are not excessive 7. Health and Safety of Workers 8. Welfare of workers 9. Skills training 10. The employment relationship is established 11. Follow up Duration

Differences	Italcementi *Group Code of ethics*	Italcementi *IFA to promote and protect workers' rights*
Unionism	2.6 Political and trade union organizations The Group **prohibits direct or indirect pressure** on political and trade union organizations, nor to their representatives or candidates. It does not support, promote and sponsor public events created with political propaganda purposes. As a rule, it does not make **any contributions** to them. When a contribution is believed appropriate in the public interest, the relevant Group company establishes whether it is admissible strictly in accordance with the relevant legislation and duly records it. Italcementi People must recognize that any form of involvement in political activity occurs on a personal basis in People's free time, at their own expense, and in conformity with the relevant legislation.	1. Freedom of association and the right to collective bargaining are respected All workers shall have **right to form and join trade unions** of their own choice. These unions shall have the right to be recognised for the purpose of collective bargaining in conformance with ILO Conventions 87 and 98. Workers' representatives shall not be subjected to any discrimination and shall have access to all necessary workplaces in order to carry out their duties as representatives (ILO Convention 135 and Recommendation 143). The company shall take **a positive attitude to trade union activities**. The company will follow the most expeditious process in the event that BWI affiliate requests union recognition.
References	The Code do not make any reference to ILO Conventions or to other legal documents regarding workers' rights	• ILO Conventions n. 29, 87, 98, 100, 105, 111, 131, 135, 138, 167, 182 • OECD *Guidelines on Multinational Companies*
Monitoring	3. Implementation of the Code The body delegated to keep watch over the application of the Code is the **Ethic Committee of Italcementi SpA** which coordinates Group bodies and functions for the proper implementation and adequate control and monitoring of its content.	11. Follow up (…) a) Both parties recognize that effective local monitoring of this agreement must **involve** the **local management,** the **workers** and their **representatives** and **local trade unions**. b) To enable local workers and union representatives of BWI affiliated unions to play a role in the monitoring process, they will be given adequate time for training and involvement in the monitoring process. The company will ensure that they are provided with information, access to workers, and rights of inspection necessary to effectively monitor compliance with this agreement. c) A **reference group** shall be set up, composed of **representatives of Italcementi**, and of the concerned **BWI affiliated union(s)** in the home country of the company, the European Works Council **(EWC)-Coordinator** and a **BWI coordinator**. It will meet at least once a year, or when necessary, to evaluate reports on compliance and to review the implementation of the agreement (…)

5. The challenge of sweatshop monitoring and the private initiatives to enforce private regulations

5.1 Preliminary observations on sweatshops and private monitoring procedures

Beyond the traditional legal enforcement, other avenues to ensure the compliance with private regulations have been explored.
As seen at Chapter 4, paragraph 4.6, it turns out to be particularly arduous to enforce corporations' voluntary regulations through traditional legal paths. Consequently, *private compliance initiatives* (PCIs) have emerged as modern mechanisms to complement, and sometimes substitute, governmental procedures. These innovative initiatives are different in content, scope and methodology. They also differ in terms of workers' involvement and participation and in terms of interaction with national procedures. However, they have often a common aim, namely promoting the compliance of subcontractors and suppliers with codes of conduct, IFAs and labor standards in general, along global supply chains.

Considering the delocalization of supply chains across numerous developing countries and the absence of a strong national enforcement, private monitoring processes[327] have complemented the traditional domestic procedures.
As scholars pointed out, the public and private initiatives differ with regard to the system of sanctions: the traditional regulations "uses state sanctions to enforce standards", while the "outsourced regulation relies largely on *market* sanctions either through inter-firm purchasing decisions or NGO consumer campaigns". Furthermore, government regulation "is

[327] PERULLI A., 2013, *op. cit.*, p. 64; SEIDMAN G. W., 2012, *op. cit.*, p. 1028.
Such initiatives could be carried out by diverse actors, such as internal or external auditors, NGOs, unions or bodies of the enterprise itself.

hierarchical and arms-length", whereas "outsourced regulation is networked at multiple levels and engaged with multiple actors in the supply chain"[328].

Hence, as a consequence of the chaotic combination of legal tools (such as domestic labor laws, codes of conduct, IFAs, international conventions, guidelines), of the dearth of certain sanctions and of the fragmentation in both private and public initiatives, the transnational enforcement of workers' rights have turned out to be particularly heterogeneous and often also ineffective.

Under these circumstances, scholars[329] have discussed diverse solutions to monitor working conditions and to properly enforce the new private forms of regulation. Indeed, if modern voluntary instruments "are not embedded in a sensitive and adequately responsive system of monitoring and revision", they will never enable workers "to develop a sustainable regime of protected rights"[330].

However, before examining the different typology of *private compliance initiatives*, it is worthy to mention a set of preliminary considerations, which are necessary to fully comprehend the complex landscape of supply chains[331].

A first observation on the issue of private enforcement procedures deals with the definition and description of the places where violations are

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[328] O'ROURKE D., 2003, *op. cit.*, p. 6
Furthermore, with specific regard to market sanction, it should be noticed that commentators outlined their potential negative role. Indeed, as affirmed by as VAN LIEMT G., 2000, *op. cit.*, p. 187, when "non-compliance would lead to a rupture of relations with the contractor", concerned workers have to choose between "fighting for better working conditions and the possibility to lose their job".

[329] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, Temple University Press, Philadelphia, 2004

[330] ZUMBANSEN P., 2006, *op. cit.*, p. 303

[331] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.*, p. 14

perpetrated and monitoring procedures are undertaken, namely the sweatshops.

Sweatshops are production sites where "the employer controls the working conditions and the workers cannot protest"[332], but also places where working conditions are deplorable. Scholars then refer to sweatshop with a twofold definition, including both "the miserable conditions and the imbalance of power that drives workers to suffer sweatshop employment"[333].

Secondly, it is worth noticing that the piece rate system frequently characterizing sweatshops has serious consequences in terms of workers' conditions. According to such mechanism, an employee is paid for each piece rather than for each hour of work. The consequence is an increasing competition among workers: for example in the garment sector, "as the fastest workers become more efficient at sewing the given style, the piece rate drops, and everyone must sew faster to maintain the same pay"[334].

Thirdly, as abundantly described, the tendency towards subcontracting has made the protection of workers' rights an incredibly arduous task to be performed. In this respect, subcontracting entails several negative consequences for workers, as they are dispersed and not directly employed by the hub company and thus unable to cooperate to raise claims and foster their conditions. Furthermore, the production sites where workers are employed are often small and bare, making easy for the suppliers to move and avoid any kind of control.

TNCs, on their turn, have found significant advantages from such conditions: they can avoid unionization and pay a lower amount of money for the same hour or piece. However, with such behavior, they have also

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[332] STEIN L., *Out of the Sweatshop*, Quadrangle/New York Times Book Company, 1977, p. XV

[333] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.*, p. 14

[334] *Ibidem*, p. 14

activated a downward spiral as subcontractors have started to compete against each other by avoiding expenses such as "taxes, workers' compensation, insurance, registration fees, medical and other benefits, and expenditures associated with maintaining a safe and healthy work environment"[335].

Fourthly, the production system has shifted from vertical organizations to horizontal *production webs*[336]. Consequently, since the relation with suppliers and subcontractors was no more hierarchical, it has become very arduous for a TNC to impose its labor-related policies along the entire production chain and to conduct monitoring procedures homogeneously and effectively.

Fifthly, the innovations in technology, in particular in the field of communication and transportation, have allowed TNCs to outsource their production to foreign countries. In this respect, the spread of computers and air travels was extremely important: due to the first innovation companies have become able to control their business even if located far from the production site; while due the second they have had the opportunity to easily and quickly transport goods from great distances.

Sixthly, as mentioned in the previous chapters, since the movement towards globalization was flanked by neoliberal tendencies, which included "free trade, privatization, and deregulation" as principal tenets"[337], governments' role in tackling labor issue has weakened, whereas corporations' importance in the economic scenario has increased.

In this respect, scholars pointed out that "private monitoring is a place where deregulation and privatization are fused"[338]: since the legal enforcement conducted by states has turned out to be no more effective,

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[335] *Ibidem*, p. 36

[336] *Ibidem*, p. 35

[337] *Ibidem*, p. 39

[338] *Ibidem*, p. 41

monitoring procedures arranged by enterprises have replaced state-centered initiatives. As it will be shown, the recourse to private monitoring has entailed extremely convenient consequences for transnational companies and just in some occasions for workers.
Seventhly, since the production sites are small, isolated and dispersed across numerous countries, it has become extremely arduous for workers to meet each other, to associate and to fight together for the improvement of their conditions. It has also become difficult to understand who is in charge of the production and, consequently, to whom workers' claims should be addressed.
Finally, a last consideration deals with the origin of workers employed in sweatshops. With particular regard to the garment sector, employees have traditionally been women and immigrants: mainly young and vulnerable persons. In developing countries, discriminations such as sexism and racism have been exploited to justify lower working conditions in comparison to other workers[339]. And, in many places, due to the traditional way of thinking, women have been considered just supplemental earners in respect to men, thus not entitled to fair wages and labor conditions[340].

Mentioned the features of the transnational supply chains' scenario, it is worthy to focus the attention on the various initiatives undertaken to ensure the compliance with private regulations.
As seen, TNCs' responsible actions are voluntary and their codes of conduct or IFAs are considered by several scholars as soft law non-binding instruments. Then, if consistent actions do not follow such commitments, "corporate social responsibility could fall in the dangerous trap of self-referentiality, remaining a façade instrument, suitable for a good marketing strategy, but barely effective in guaranteeing an effective

[339] *Ibidem*, p. 45

[340] *Ibidem*, p. 45

protection to workers' dignity"[341]. Indeed, as pointed out, "in the absence of a monitoring procedure suited to the characteristics of the codes of conduct in networks of companies", these texts must be considered "marketing instruments that have no concrete effect on workers' situations"[342].

A way out to the risk of ineffectiveness could be the recourse to *private compliance initiatives* (PCIs). Such non-governmental actions are "diverse and *messier* than the traditional regulatory approaches"[343]. They involve stakeholders and external actors "in new roles and relationships, experimenting with new processes of standard setting, monitoring, benchmarking, and enforcement"[344]. Furthermore, as brilliantly pointed out, these private strategies follow the steps of globalization and delocalization processes: arranged across several countries and parts of the global supply chain, they are dispersed but in some ways also interconnected[345].

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[341] LIEBMAN S., TOMBA C., *Funzioni di controllo e di ispezione del lavoro*, in VV.AA. *Impresa e forced labour,* 2015, in press. Furthermore, according to VAN LIEMT G., 2000, op. cit., p. 184, "a well-functioning evaluation system marks the difference between a *genuine* Code and one that was merely drawn up for PR purposes".

[342] SOBCZAK A., 2003, *op. cit.*, p. 230

[343] O'ROURKE D., 2003, *op. cit.*, p. 5

[344] *Ibidem*, p. 5

[345] *Ibidem*, p. 6

5.2 Private monitoring and workers empowerment

An intriguing observation regarding the rise of sweatshops deals with the shift from *social contract* to *social accountability contract*[346]. Initially, under a social contract, government, employers and employees were involved in a tripartite relation where unions were able to represent a countervailing power to multinational corporations[347].

From 1980s on, consequently to the outsource the production to low-cost production sites, the three actors involved have become the national government, the TNC, usually a European or U.S. company, and the subcontractor or supplier. They dominate the sweatshops' scenario, tied by a *social accountability contract*[348] from which workers are excluded or just partially involved (figure 5). According to scholars, through the agreement over monitoring procedures the three mentioned parties control the supply chain, whereas workers are exempted from participate and are often not even aware of the existence of such agreement.

Private monitoring has become in this way a method to privatize government enforcement, to empower companies and to prevent unionism.

To explain such circumstance, scholars have outlined that the main actors that have actually pressured companies to accept new social responsibilities were consumers and investors. Whereas local workers,

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[346] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.*, p. 52

[347] BARNET R., MULLER R., *Global reach: the power of multinational corporations*, Simmon and Schuster, New York, 1974

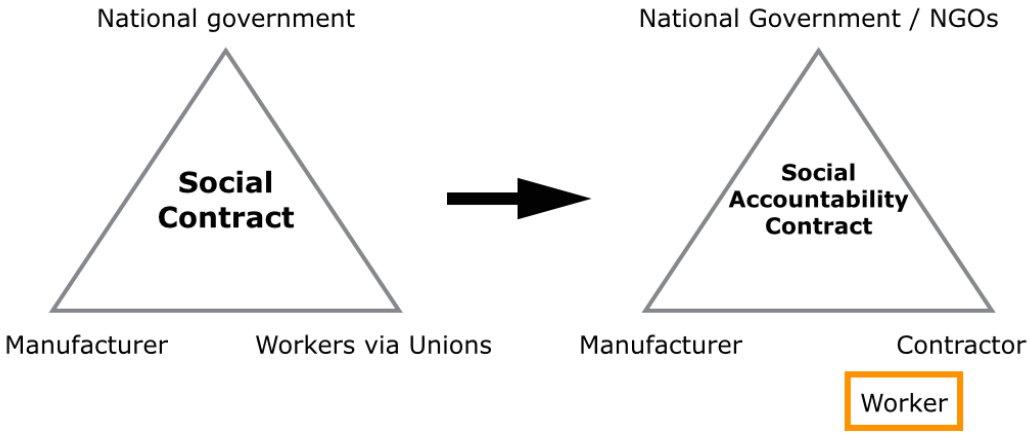
[348] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.,* described an interesting example of such contract. In Los Angeles, manufacturers signed a monitoring agreement with the government and the suppliers, called Augmented Compliance Program Agreement. In this case, workers were not called to sign and, as pointed out, were not even aware of the existence of such agreement.

excluded from the social accountability contract, have just interacted with subcontractors or suppliers but without enough power to negotiate.

Indeed, monitoring mainly represents an answer to consumers and investors[349]. Scholars in this respect considered private monitoring as "an outgrowth of public outcry about sweatshops" but not "an outgrowth of workers' organizing" and pointed out that it represents "a new form of paternalism in labour relations"[350], that weakens rather than strengthens workers' initiatives.

In this respect, private monitoring could turn out to be a phenomenon linked to neoliberal policies, a tool that enhance TNCs' role in controlling the supply chain and weakens that of governments, but without providing innovative mechanisms to involve workers and strengthen their role[351].

Figure 5
Source: Esbenshade 2004



[349] *Ibidem*, p. 55

[350] *Ibidem*, p. 58

[351] Scholars were particularly afraid of this circumstance. ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.,* p. 58, pointed out that workers need "policies that play to their potential strength, not policies that institutionalize their vulnerability".

Private monitoring has also entailed significant advantages for transnational companies, which could avoid national reforms that reinforce enforcement procedures and regulate their liability for suppliers' violations. Furthermore, TNCs could use private monitoring as a modern advertising tool to convince concerned consumers and investors of the corporate commitment towards the improvement of working conditions at sweatshops.

From the above mentioned considerations, it can be argued that TNCs have been primarily driven by consumers and investors' pressures. On the contrary, workers - uniformed, unprepared and isolated in sweatshops - have not had the opportunity to defend their own rights. As a consequence, it seems that "workers will be protected if consumers care about their welfare", which is an "entirely different strategy from empowering workers themselves"[352].
However, as it will be shown, innovative paths of *private compliance initiatives* move on from company-based monitoring. For example, they involve workers and other stakeholders in reporting working conditions and in carrying out shared initiatives and projects.

5.3 The different initiatives for ensuring compliance

The *private compliance initiatives* (PCIs) are voluntary mechanisms aimed at monitoring working conditions along the supply chain.
Due to the discussed non-binding nature of voluntary regulations, private initiatives turn out to be necessary to ensure the compliance with the relative provisions. Otherwise codes of conduct, IFAs and other companies' initiatives of private commitment would run aground,

[352] *Ibidem*, p. 58

remaining just marketing tools[353] ineffective in improving labor conditions at sweatshops.
Scholars have described and listed such initiatives to ensure compliance with private regulations[354]. These categories are extremely different in terms of contents, methodology and scopes.

The first is the case of the self-assessment of the performance directly carried out by the hub corporation. Such approach simply entails the control of suppliers' compliance with the provisions drafted by the company itself and reported in the code of conduct or in other kind of governance tools. Initially, especially in the garment sector, the authority appointed for ensuring compliance was the quality-control staff of the hub company itself[355]. Indeed, such body was already predisposed to conduct monitoring procedures regarding the quality of the products and had just to consider a new aspect, namely the compliance with labor standards. However, scholars pointed out that such staff has not enough expertise to carry out this kind of monitoring and that the staff's goal of obtaining a

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[353] LIEBMAN S., TOMBA C., 2015, *op. cit.*

[354] LIEBMAN S., TOMBA C., 2015, *op. cit.;* ILO LABOUR ADMINISTRATION, LABOUR INSPECTION, AND OCCUPATIONAL SAFETY AND HEALTH BRANCH, *Labour inspection and private compliance initiatives: Trends and issues*, Background paper for the Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives, 2013. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/meetingdocument/wcms_230798.pdf (30/05/2015)
Furthermore, O'ROURKE D., 2003, *op. cit.*, highlights that the terminology used to describe the systems for ensuring compliance is contested among scholars. In its work, the author considers "*internal monitoring* to refer to monitoring conducted by brands and retailers, *external monitoring* to refer to monitoring conducted by third-party organizations, and *verification* to refer to independent evaluations (not paid for by those being monitored) of the results of codes and monitoring systems".

[355] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.,* p. 63

high quality of product with a very low budget is in contradiction with the promotion of fair labor conditions[356].

For these reasons, many TNCs have employed a specific staff to conduct the assessment procedures and to act as an internal monitor.
However, also in this case, scholars pointed out the risks of such mechanism, since companies still "retain a certain authority over the inspection procedure by entrusting it to their own collaborators or specialized audit committees, which were basically under their economic influence"[357].

The second category consists indeed of the internal and external auditing procedures commissioned by the hub company. The internal are conducted by company's staff while the external by actors that are not part of the staff, rather they are called for that specific purpose. An example of these practices is the *Supplier Responsibility* mechanism engaged by Apple to control the supply chain[358], which counted 633 comprehensive in-person audits during 2014[359]. Apple indeed committed itself to the intense responsibility of monitoring and ensuring the compliance by conducting in depth auditing procedures. Its staff is sent to suppliers' workplaces both to control and to directly educate workers. Obviously, violations are still frequent and extremely serious at suppliers' workplaces[360], however the development of specific training programs to educate suppliers' management and employees to the respect of labor standards is a first step to improve the compliance. As affirmed by Apple

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[356] *Ibidem*, p. 63

[357] SOBCZAK A., 2003, *op. cit.*, p. 231

[358] LIEBMAN S., Tomba C., 2015, *op. cit.*

[359] APPLE INC., website, *Supplier Responsibility*. Available at https:// www.apple.com/supplier-responsibility/ (30/05/2015)

[360] *Ibidem*

staff, "when we find noncompliance, which we do in every audit, we partner with suppliers and work onsite to drive change"[361]. In this case, the positive approach of building a trusting relationship with suppliers to evolve and improve together is remarkable. It is the first step towards what is probably the most important factor of success of ethic programs along supply chains: sharing the burden and the costs of the new labor policies with suppliers[362].

In this respect, another example is that of Samsung. In its document on CSR and Suppliers[363], the TNC outlines two of the ways undertaken to ensure compliance: the establishment of a CSR management structure by supplier companies and the implementation of a third party validation program of supplier CSR activities. These initiatives could be respectively connected to the internal and the external categories outlined above.

The third category to be considered is composed by the certification and labeling initiatives. A certification primarily could be the outcome of an auditing procedure. However, it should be noticed that there are several methods to assess the achievement of certain standards.

A company that has been certified can demonstrate its compliance with labor standards to concerned consumers and stakeholders. Clearly, the certification is reliable as long as the body issuing it is trustable and credible.

In certain cases, a certification can be shown to the public through the inclusion of specific label on the products. In this respect, it can be argued that the ethical commitment of a company is tied to its marketing related policies.

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[361] *Ibidem*

[362] YU X., 2008, *op. cit.*, p. 513 et seq.

[363] SAMSUNG ELECTRONICS CO., LTD., *Sustainability Report 2012*, Chapter 9, Material Issues, p. 46 et seq. Available at http://www.samsung.com/us/aboutsamsung/sustainability/suppliers/download/Samsung_sr_2012_Supplier_CSR_FINAL.pdf (30/05/2015)

In this respect, examples are the *Fairtrade Marks*, issued by *Fairtrade International*, showing that producers and traders have met the Fairtrade standards[364], and the *SA 8000*, an ethical certification created in 1997, periodically reviewed by SAI, encouraging companies to adopt respectful and sustainable practices along the supply chain.

The fourth category includes the public reporting initiatives. Such programs, through the disclosure of corporations' level of compliance with public laws or private commitments, exploit the reputation risk to bind TNCs to respect labor regulations. Through such mechanism, civil society groups can be aware of companies' compliance and undertake counteractions, boycotts and other initiatives to improve working conditions. In this respect, an example is the *Global Reporting Initiative*[365], which "promotes the use of sustainability reporting as a way for organizations to become more sustainable".

A residual category includes those organizations that undertake innovative solutions for compliance by combining the above mentioned mechanisms. For example the *Fair Wear Foundation*[366] (FWF) conducts verifications at plant level through a multi-stakeholder approach, both auditing performances, conducting procedures for workers' complaint and performing extensive stakeholder consultations. FWF prompts compliance "through membership and the exchange of learning and good practices – with the threat of disciplinary action, refusal of membership in the organization and expulsion in the event of non-compliance"[367].

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[364] FAIRTRADE INTERNATIONAL website, http://www.fairtrade.net (30/05/2015)

[365] GLOBAL REPORTING INITIATIVE website, www.globalreporting.org (30/05/2015)

[366] FAIR WEAR FOUNDATION website, www.fairwear.org (30/05/2015)

[367] ILO, *Labour inspection and private compliance initiatives: Trends and issues, op. cit.,* p. 13

Another interesting initiative is the Clean Clothes Campaign (CCC). It promotes the compliance with fundamental labor standards, aims at educating and mobilizing consumers, and carries out lobbying activities on governments and companies.
These multifaceted approaches are discretely effective in connecting the different actors of the supply chain. As seen, such organizations maintain strict relationships with governments, transnational companies, suppliers, and often unions. They cannot be assimilated to labor inspection activities but they can trigger public exposure, promote good practices and raise the level of awareness about working conditions along global supply chains[368].

5.4 The weaknesses of private monitoring and the potential role of independent and multi-stakeholder monitoring

As seen, among the private compliance initiatives, private monitoring occupies a pivotal position. Organizing an internal body to ensure compliance with codes' provisions, or outsourcing this activity to an external actor, such as a monitoring firm, has been indeed relatively easy for transnational companies. However, as outlined by scholars "many codes of conduct are not very transparent about the conditions for their drafting and application. This relative opacity can be dangerous, as in the absence of effective methods of inspection and sanction, respect for the commitments made by the company in its code of conduct is not always guaranteed"[369].

Under these circumstances, once described the various private initiatives

[368] *Ibidem*, p. 14

[369] SOBCZAK A., 2003, *op. cit.*, p. 228

for compliance, it is worthy to examine why the recourse to private forms of monitoring raised controversial issues among commentators.

Firstly, it should be noticed that hub companies have frequently the control of the procedures, since they directly hire a staff or a specialized firm for the monitoring. Many of them "have an agreement" whereby "they will pay for all audits that the contractor passes and charge back the contractor for all audits that fails"[370]. Such circumstance has been strongly criticized: since TNCs seek "best quality at the lowest price" and "contribute to violations by paying low contract prices"[371], a monitoring conducted by the same hub company seems to be contradictory.
However, in some cases the contractors hire monitoring firms directly[372]: clearly such circumstance raises issues in terms of conflict of interests. In this respect, it should be also considered that contractors are pressured by the demands of hub company for low-cost and extremely quick orders and they are scared of losing the commission due to the fierce globalized competition. Moreover, if the monitoring firm would not approve the working conditions, the expenses for the compliance with labor laws and regulations would jeopardize the contractors' businesses[373]. For these reasons contractors are naturally inclined to hire the monitor that will positively consider the workplace at stake.

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[370] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.,* p. 67

[371] *Ibidem*, p. 98

[372] *Ibidem*, p. 68
Furthermore, according to VAN LIEMT G., 2000, *op. cit.*, p. 185, several companies "make use of contractual monitoring. They rely on the guarantees made by the suppliers, usually through contractual certification (or *self-certification*), that they are respecting what a company has stipulated in its Code".

[373] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.*, p. 68

Secondly, private monitoring has been criticized for excluding workers from the procedures, dealing with them through a "system of protection" rather than empowerment[374]. In particular, monitoring turned out to be effective in fostering certain labor conditions issues[375] (such as minimum wage, harassment, health and safety), but it rarely provided workers with effective means to directly defend and promote their needs. Private monitoring, indeed, does not empower workers nor promote forms of social dialogue among the parties involved. Workers are often not informed about the interviews and even when informed, they are exposed to the management's "payback" for what they have told[376].

Several of such behaviors have been observed during the monitoring procedures carried out by a third-party labor monitor at several suppliers located in India and China and reported within an interesting study on monitors' role in the modern scenario of supply chains[377]. The work emphasized how the information were mainly gathered from managers rather from workers and even when workers were interviewed, managers knew exactly for how long, on what issues and which workers were involved.

Furthermore, the monitor program did not include sensitive issues, in particular freedom of association and the right to collective bargaining and the interviews did not evaluate certain health and safety issues such as particular hazards, protective equipment, individual illnesses and accidents[378].

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[374] *Ibidem,* p. 90

[375] YU X., 2008, *op. cit.*, p. 245; ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.,* p. 165

[376] O'ROURKE D., *Monitoring the monitors: a critique of corporate third-party labor monitoring*, in JENKINS R., PEARSON R., SEYFANG G., *Corporate Responsibility and Ethical Trade: Codes of Conduct in the Global Economy*, London: Earthscan, 2002, p. 200

[377] O'ROURKE D., 2002, *op. cit.,* p. 196-208

[378] Ibidem, p. 205

In conclusion, the study outlined that a properly conducted monitoring could identify problems at suppliers, evaluate performance and lay the foundations for effective strategies to foster working conditions. On the contrary, a *flawed* monitoring could "do more harm than good", since it could "divert attention from the real issues in a factory, provide a falsely positive impression of performance, certify that a company is *sweat-free* based on a very limited evidence, and actually disempower the very workers it is meant to help"[379]. Accordingly, a proper monitoring should be transparent and accountable in order to allow consumers to compare different factories and make the right choice; it should exclude from the procedure those monitors which have relations with the company at stake; and, finally, it should protect workers that provide information and then promote their involvement, together with local NGOs, in the procedures.

Indeed, the compliance with voluntary regulations, even if particularly arduous to be obtained, is crucial for improving working conditions in the modern globalized scenario. As pointed out, "codes have strong potential to contribute toward improving labour conditions"[380]. They are still a "very unsatisfactory tool at the moment", but considering the expansion of transnational subcontracting chains they are so far "the only mechanism that has been suggested for putting pressure on retailers at the top"[381]. For such reason, the adoption of codes of conduct should not be abandoned, since transnational supply chains can hardly be regulated just through traditional domestic legislations.

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[379] *Ibidem*, p. 206

[380] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.,* p. 161

[381] Declaration of Rohini Hensman, a labor-rights researcher from India, as reported by ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.,* p. 163

In the attempt of improving codes of conduct's effectiveness, scholars emphasized that they should be "translated, posted and made accessible" to workers at all levels of the supply chain, that workers "should be involved in the creation of codes", along with NGOs, that "freedom of association and collective-bargaining rights not only must be included in the codes but must also be focal points of monitoring efforts"[382].

These circumstances have led to the proliferation of new initiatives involving new actors, different than TNCs and contractors. Indeed, as critically outlined by commentators "it would be better to entrust monitoring of the application of the codes of conduct to more independent organizations such as NGOs active in the field of human rights, or to employee unions"[383].
In this respect, independent monitoring carried out by NGOs or other independent actors could represent a way to innovate and foster private monitoring procedures. Such initiatives could flank local advocates, involve workers and build long-lasting relations with them.

Interestingly, scholars pointed out that independent monitoring concentrates "on rights rather than conditions" and creates "a system triggered by the worker rather than the manufacturer", offering "a necessary check on a system that is otherwise controlled by the companies themselves"[384].
Clearly, even within this innovative system, the role of the TNC and the contractors should remain pivotal. They should be deeply involved in the

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[382] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.,* 164

[383] SOBCZAK A., 2003, *op. cit.*, p. 231. Furthermore, according to VAN LIEMT G., 2000, op. cit, p. 186, many activists were "suspicious of internal monitoring": they felt that "this may not be wholly neutral". Also for this reason, NGOs and unions "have called for independent monitoring to avoid conflict of interest".

[384] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.,* p. 165

procedures and positively cooperate with monitors. However, their role would be enriched by the participation of other stakeholders that surround or play a role within the enterprise, such as NGOs, civil society groups and workers[385]. Such approach could even entail extremely positive consequences for the TNCs: their monitoring would be more reliable, transparent and accountable, since it would be the outcome of a shared activity and not the result of a procedure conducted only by the company with its monitors. In this way, the procedures could be shared and easily conducted transnationally, along the supply chain, under the impulse of international programs[386]. Furthermore, such approach could reinforce the trusting relationships with stakeholders, laying the groundwork for further cooperation and creating the proper environment for a shared and long-lasting growth of the value of the firm[387].

A final consideration deals with the particular compliance initiatives of IFAs, the innovative instruments adopted by few enterprises together with global union federations, to improve workers conditions along the supply chain and to promote the respect of workers' dignity.

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[385] For example, the Clean Clothes Campaign (CCC) has worked together with few GUFs to develop an innovative code for fair labor practices in the apparel sector. The organization is currently working on the development of monitoring programs and it continues to push companies to commit themselves to deep and reliable monitoring procedures.

[386] It is then interesting to notice how private actors can cooperate in international programs aimed at promoting labor rights. For example, the Worker Rights Consortium (WRC), composed by students, university administrators and labor experts, have undertaken transnational initiatives to conduct verification on working conditions of those suppliers that produce garments for U.S. Universities. They aimed primarily at empowering workers by opening up the space for them to advocate on their own behalf.
WRC project, as pointed out by ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry*, 2004, *op. cit.*, p. 181 et seq., was different from that of the Fair Labour Organization (FLA), which aimed at coordinating monitoring and selecting reliable monitors for the procedures. Workers, in this respect, were only passively involved and "local NGOs needed only to be consulted, not included, in the monitoring process".

[387] PORTER M., KRAMER M., 2011, *op. cit.*

IFAs are very interesting tools as they frequently contain specific provisions on compliance and monitoring procedures. They often arrange specific bodies to monitor conditions, discuss strategies and raise claims. In such bodies, social dialogue actually takes place: since one of the signature of the agreement is a global union federation, workers are involved through their representatives, and furthermore also a coordinator from the European Works Council is usually called to participate.[388]

Under these circumstances, it seems that IFAs embody an innovative attitude, an open approach towards the involvement and the participation of stakeholders. Through their wording, they lay the foundations for future multi-stakeholders monitoring procedures, embracing the above mentioned advices coming from several voices of the academic community.

However, despite these positive observations, scholars still point out that the enforcement of IFAs is an arduous achievement[389]. The coordination between GUFs and local unions should be improved, empowering the last with stronger responsibilities and roles, and IFAs' strategy need to be more broadly based than top-down[390]. In this respect, "union input and active monitoring of implementation" is crucial for the effectiveness of such modern regulatory strategies[391].

Furthermore, the role of NGOs in IFAs implementation has still to be explored, also considering that "codes of conduct are preferred by TNCs

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[388] In this respect, an example is provided by art. 11 of ITALCEMENTI *IFA to promote and protect workers' rights,* which has been reported at Chapter 4, paragraph 4.7.1.

[389] FICHTER M., HELFEN M., SYDOW J., 2011, *op. cit.*, p. 77

[390] *Ibidem*, p. 82

[391] *Ibidem*, p. 82

and NGOs while unions prefer global agreements"[392]. As pointed out by scholars with regard to codes of conduct, there is "an ongoing tensions between unions and NGOs monitors"[393] and thus a "potential conflict" between "code monitoring and unionization", since the independent monitoring group constituted by NGOs can "unintentionally obviated the need for a union"[394]. In this respect, scholars emphasized that in order "to protect workers' rights at factories in emerging economies, the union-NGO cooperation is crucial in balancing TNC influence in private regulatory systems"[395]. With specific regard to monitoring procedures, "monitors must clearly define their roles so as to not usurp the work of unionists and they must work to build good relationship with labour unions"[396].

5.5 The interaction between private and public initiatives

Under the above mentioned circumstances, two enforcement patterns actually coexist: the national one, based on domestic legislation, which targets the factories located in a certain country, and the voluntary one, which aims at regulating the actors of the entire supply chain through private initiatives.

In this respect, scholars pointed out that private interventions "do not

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[392] EGELS-ZANDÉN N., HYLLMAN P., 2007, *op. cit.*, p. 208

[393] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.,* p. 175. In this respect, COMPA L. referred to NGOs and unions as "wary allies" in its work *Wary Allies: trade unions, NGOs, and corporate codes of conduct,* in *The American Prospect*, vol. 12, n. 12, 2001

[394] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.,* p. 161

[395] EGELS-ZANDÉN N., Hyllman P., 2011, *op. cit.*, p. 258

[396] ESBENSHADE J., *Monitoring sweatshops. Workers, consumers, and the global apparel industry,* 2004, *op. cit.,* p. 161

exist within a vacuum"[397], but rather they interact with local governments' procedures.

More strongly, commentators emphasized the irreplaceable role of states' inspections, affirming that "the effectiveness of labour law depends, preponderantly, on the implementation of labour law norms"[398]. Interestingly, as pointed out by commentators, the field of liability of the actors involved in the production is in expansion. However, to concretely attempt to cover the entire supply chain and cross the borders of countries, governments are called to cooperate, to conduct cross border inspections, to truly promote the enforcement of labor standards. Goals that are not always shared by those governments that are competing to attract foreign investors using their low-cost workforce as a competitive advantage.

In this respect, the private compliance initiatives could give the proper momentum to reactivate governments' efforts to concretely enforce labor standards.

There are indeed certain features of government-centered inspections that are essential. Inspections are in theory primarily a public task that should be conducted by independent bodies[399], that are bearers of a public interest and are entitled through specific licenses for monitoring workplaces.

Furthermore, private compliance initiatives have some weaknesses that make the presence of traditional enforcement procedures fundamental. First, the information collected during monitoring procedures could be the target of doubts in terms of authenticity[400]. For example, as seen in the

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[397] LOCKE R. M., RISSING B. A., PAL T., 2013, *op. cit.*, p. 519 et seq.

[398] LIEBMAN S., TOMBA C., 2015, *op. cit.*

[399] *Ibidem*

[400] *Ibidem*

case above mentioned[401], a third-party firm entitled to conduct the monitoring allowed managers to copy the data on working hours on the computers and it did not control the authenticity of such information. In a situation where managers could have easily altered the data in order to hide violations[402].

Secondly, the hub companies, or the contractors, are often those paying the monitoring firms or entitle an internal body - the quality-control staff or often a specific team - to conduct the procedures. Such circumstance raises questions in terms of conflict of interests and of pressure on the actors that perform the monitoring.

Thirdly, primarily driven by business goals, a company could be tempted to hide information to consumers, while states - at least on paper - pursue a public interest and aim at protect consumers. Furthermore, states are able to inflict stronger sanctions[403], and not just the market sanctions used by companies to influence the less responsible contractors. However, in this respect, it should be noticed that even governments in some occasions have interests - at a different level than company - in hiding information about the companies operating in their territory. They struggle to appear responsible and committed to improve labor conditions in front of the international community, composed by other states and international organizations. But, in the same time, they may hide some information extrapolated during monitoring procedures to avoid an exposure to the public concern, both coming from consumers and international actors, and thus a risk for their economy.

As seen many developing countries believe that a low-cost workforce is a fair competitive advantage. An advantage that developed countries, scared of their increasing importance in the international trade, struggle

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401 O'ROURKE D., 2003, *op. cit.*, p. 202. Precisely, the study was conducted on the monitoring performed by the firm PricewaterhouseCoopers (PwC).

402 VAN LIEMT G., 2000, *op. cit.*, p. 186

403 LIEBMAN S., TOMBA C., 2015, *op. cit.*

to crush. For these reasons, developing countries' governments may be interested in appearing responsible but also in continuing to exploit their peculiar resources in order to attract foreign investors.
Under these circumstances, it seems that also state-centered monitoring procedures could be affected by other driving factors than the mere public interest.
Finally, as pointed out by scholars[404], countries often find concrete limits that do not allow a fully effective application of labor norms. First, the public bodies have frequently scarce resources in terms of capital and workforce to conduct the procedures. Secondly, the shortage of resources frequently permits to perform just the strictly needed inspections, whereas deeper assessments of poor conditions are authorized only under specific conditions.

Under these circumstances, "the situation requires thinking up new types of inspection, based on defining new roles for the private actors and public authorities"[405]. Indeed, as pointed out, "a combination of private and public interventions is necessary to effectively tackle labour standards issues"[406]. An interaction between the voluntary and the state-centered initiatives that could provide the essential means to effectively foster labor conditions along global supply chains.
In conclusion, a coordination operated by international organizations seems to be essential to cross the borders of countries and implement transnational programs for compliance. In this respect, the International Labour Organization have recently expressly discussed the opportunity of assuming a pivotal role in coordinating public and private efforts for

[404] *Ibidem*

[405] SOBCZAK A., 2003, *op. cit.*, p. 231

[406] LOCKE R. M., RISSING B. A., PAL T., 2013, *op. cit.*, p. 519 et seq.

compliance[407]. Moreover, as pointed out by scholars, "the public authorities, whether at the country, European Union or international level, can play a major role, specifically in training and monitoring inspectors"[408].

5.5.1 Private and public initiatives on the field

A comparative study[409] carried out in Mexico and Czech Republic regarding the treatment of agency workers, has shown how public and private regulations could interact on the field, complementing or sometimes contrasting each other.

The problem of the ineffectiveness of public regulation in Mexico was resolved through a combination of different efforts, such as the actions of local NGOs[410], the commitment of the TNC at stake and the positive dialogue with the suppliers. Such actors have arranged a novel dispute resolution system whereby a worker could claim the violation of national laws or code of conduct's provisions, triggering a co-investigation procedure conducted by NGOs representatives and HR managers. If the complaint turns out to be legitimate, the employer will compensate the workers in accordance with Mexican laws.
From such procedure, the TNC takes advantage of a fast solution that spares it form a long-lasting traditional procedure, whereby lawyers

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[407] ILO LABOUR ADMINISTRATION, LABOUR INSPECTION, AND OCCUPATIONAL SAFETY AND HEALTH BRANCH, 2013, *op. cit.*

[408] SOBCZAK A., 2003, *op. cit.*, p. 231

[409] LOCKE R. M., RISSING B. A., PAL T., 2013, *op. cit.*, p. 535

[410] In particular, it has emerged from the study that in Mexico local unions had a very low influence in protecting workers' rights. Consequently, NGOs had room to operate as leading actors for the promotion of better labor conditions.

usually turn out to be the only winners[411].

Differently from Mexico, in Czech Republic the fostering of agency workers' labor conditions has occurred through a deeper interaction of national regulation and private enforcement procedures. Indeed the TNC at stake has arranged a private monitoring mechanism to effectively control the fairness of workers' compensation in agency work firms by successfully complementing the applicable labor regulation.

Considering the above mentioned cases, it can be argued the relation between private and public compliance initiatives highly depends on the country where they are performed.
Since enforcement procedures are not standardized across countries, private and national procedures could interact differently on the field: in some situations company-based compliance initiatives could replace ineffective domestic procedures, while in other cases they could profitably complement them.

[411] *Ibidem*, p. 537

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