

# CORPORATE CODES OF CONDUCT: ARE THREE GENERATIONS SUFFICIENT TO ENSURE THE EFFECTIVE ENFORCEMENT OF LABOUR RIGHTS?<sup>1</sup>

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**Abstract:** In the 1970s, the number of reports concerning unethical or illegal activities of multinational corporations increased and led to discussions within international organisations. In 1976, the OECD was first to adopt its Guidelines for Multinational Enterprises. The ILO adopted its Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977, and UN issued the Global Compact in 2000. Subsequently, many codes of conduct have been established to provide a stable framework in which MNEs conduct their business. The purpose of this paper is to assess, through the prism of three generations of codes, if self-regulation is sufficient to ensure the effective enforcement of labour rights. I fill the gap in existing research by providing a comprehensive explanation for the shortcomings of this instrument. Research indicates that there is a lack of involvement of social partners in the decision-making process leading to the adoption of codes of conduct. Once adopted, they impose lower standards than the public regulatory frameworks. They are more selective in their choice of labour rights. There are also many difficulties in implementing, monitoring and enforcing a corporate code of conduct. These tools mainly address marketing aims and respond to the unfavourable publicity produced by the media about the inconsistency of certain corporate policies with international labour standards. I conclude by discussing how codes of conduct could be transformed to more effectively address workers' rights.

**Keywords:** labour law, codes of conduct, labour standards, multinational corporations

## 1 INTRODUCTION: DEFINITIONS AND HISTORICAL BACKGROUND

The purpose of this paper is to assess, through the prism of three generations of codes, if self-regulation is sufficient to ensure the effective enforcement of labour rights. The study aims at providing an overview of shortcomings of this tool and analysing ways in which codes could be transformed to more effectively address workers' rights.

The research method is based on the analysis and criticism of codes, case law and the relevant literature, e.g. books by Hepple (2005), Kaufmann (2007), Marassi (2015), article by Stohl et al. (*Journal of Business Ethics* 90(4), 2009), and by Herman (*Virginia Journal of International Law* 52(2), 2012), and other articles, e.g. published in *Journal of Business Ethics* or *Business Ethics Quar-*

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terly. The historical and comparative legal methods are also used, and a synthesis is an investigative technique for development of the accumulated literature.

Corporate codes of conduct can be defined as “unilateral recommendations through which the main decision-making bodies of companies set up rules of behaviour for managers and employees (sometimes also for suppliers and subcontractors) that reflect the principles and values of corporate social responsibility”.<sup>2</sup> By contrast, corporate social responsibility (CSR) is “an umbrella term for a variety of theories and practices all of which recognize the following: (a) that companies have a responsibility for their impact on society and the natural environment, sometimes beyond legal compliance and the liability of individuals; (b) that companies have a responsibility for the behavior of others with whom they do business (e.g., within supply chains); and (c) that business needs to manage its relationship with wider society, whether for reasons of commercial viability or to add value to society”.<sup>3</sup>

In the 1970s, the number of reports concerning unethical or illegal activities of multinational corporations increased and led to discussions within international organisations.<sup>4</sup> The UN Centre on Transnational Corporations (UNCTC) set up in 1974 developed the UN Draft Code of Conduct on TNCs.<sup>5</sup> In 1976, the OECD was first to adopt its Guidelines for Multinational Enterprises. The ILO adopted its Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977.<sup>6</sup> Subsequently, many codes of conduct have been established to provide a stable framework in which MNEs conduct their business.<sup>7</sup> In 1977, the Sullivan Principles were launched. The Principles played a role of a code of conduct for companies with operations in apartheid South Africa. Their goal was to achieve equal opportunity for employees in a particular company. Instead of withdrawing their activities from a country, companies were to remain and act as drivers of change by committing themselves to a number of principles concerning non-discrimination.<sup>8</sup> However, the Sullivan Principles illustrates “how severely Western-written codes can miss the practicalities of local issues”. Despite its objective, they “blur[red] definitions of race in measuring the racial composition of the workforce or racial patterns in hiring”.<sup>9</sup>

<sup>2</sup> MARASSI, S.: Globalization and Transnational Collective Labour Relations. International and European Framework Agreements at Company Level. In: BLANPAIN, R. (general ed.): *Bulletin for Comparative Labour Relations*. Alphen aan den Rijn: Kluwer Law International, 2015, p. 21.

<sup>3</sup> BLOWFIELD, B. – FRYNAS, J. G.: Editorial. Setting new agendas: Critical perspectives on corporate social responsibility in the developing world. In: *International Affairs*, Vol. 81, 2005, Issue 1, p. 503. I quote from: LUND-THOMSEN, P. – LINDGREEN, A.: Corporate Social Responsibility in Global Value Chains: Where Are We Now and Where Are We Going? In: *Journal of Business Ethics*, Vol. 123, 2014, Issue 1, p. 12, DOI: 10.1007/s10551-013-1796-x. For more definitions see: DAHLSTRUD, A.: How Corporate Social Responsibility is Defined: an Analysis of 37 Definitions. In: *Corporate Social Responsibility and Environmental Management*, Vol. 15, 2008, Issue 1, pp. 1-13, DOI: 10.1002/csr.132.

<sup>4</sup> KAUFMANN, C.: *Globalisation and Labour Rights. The Conflict between Core Labour Rights and International Economic Law*. Oxford-Portland, Oregon: Hart Publishing, 2007, p. 156.

<sup>5</sup> JENKINS, R. – PEARSON, R. – SEYFANG, G.: Introduction. In: JENKINS, R. – PEARSON, R. – SEYFANG, G. (eds.): *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy*. London, Sterling, VA: Earthscan Publishing Ltd., 2002, p. 2.

<sup>6</sup> TERGEIST, P.: Multinational Enterprises and Codes of Conduct: The OECD Guidelines for MNEs in Perspective. In: BLANPAIN, R. (ed.): *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*. Alphen aan den Rijn: Kluwer Law International, 2014, p. 213-214.

<sup>7</sup> KAUFMANN, C.: *Globalisation*, op. cit., p. 156.

<sup>8</sup> SEGERLUND, L.: *Making Corporate Social Responsibility a Global Concern. Norm Construction in a Globalizing World*. Farnham: Ashgate, 2010, p. 55.

<sup>9</sup> HERMAN, A.: Reassessing the Role of Supplier Codes of Conduct: Closing the Gap Between Aspirations and Reality. In: *Virginia Journal of International Law*, Vol. 52, 2012, Issue 2, p. 463.

The second wave of codes appeared in the early 1990s and concentrated its attention on labour conditions.<sup>10</sup> In 1992, Levi Strauss adopted so-called “Global Sourcing and Operating Guidelines”,<sup>11</sup> which were described as belonging to the second generation of codes.<sup>12</sup> This was the first supplier code of conduct for the apparel industry introduced by a MNC.<sup>13</sup> However, the document omitted reference to freedom of association and the right to collective bargaining.<sup>14</sup> Since the early 1990s, a considerable number of MNCs have adopted codes, most of which fully or partly address employment standards.<sup>15</sup>

In 1999, the Global Sullivan Principles were launched in the presence of Kofi Annan, the UN Secretary General. On that occasion he made a reference to the Global Sullivan Principles as important for the UN Global Compact (UN 2000). The Global Compact, named in the literature as a “Model Code”,<sup>16</sup> includes references to freedom of association and the right to collective bargaining, and “symbolizes the evolution of the «international human rights regime» to incorporate what is described as the «third generation»”.<sup>17</sup> In the area of labour, the Global Compact establishes the same principles as the ILO Declaration on Fundamental Principles and Rights at Work. However, the intended effect is to ensure that MNCs – rather than governments – comply with them.<sup>18</sup> Interestingly, it does not address issues of monitoring.<sup>19</sup> Moreover, the UN Global Compact Principles that developed not long after the launch of the UN Global Compact correspond to a significant degree with the Global Sullivan Principles.<sup>20</sup>

As rightly highlighted by Carby-Hall, in order to maintain the Global Compact partnership, companies have to meet some significant commitments. Firstly, they should integrate the Global Compact and its ten principles with the company’s strategy, policy, organisational culture and daily operations. Secondly, they should disseminate the Global Compact concept to customers, clients,

<sup>10</sup> JENKINS, R. – PEARSON, R. – SEYFANG, G.: Introduction, op. cit., p. 3.

<sup>11</sup> KAUFMANN, C.: Globalisation, op. cit., p. 156. Also known as “Business Partner Terms of Engagement”, JENKINS, R. – PEARSON, R. – SEYFANG, G.: Introduction, op. cit., p. 2.

<sup>12</sup> STOHL, C. – STOHL, M. – POPOVA, L.: A New Generation of Corporate Codes of Ethics. In: *Journal of Business Ethics*, Vol. 90, 2009, No. 4, p. 614. DOI 10.1007/s10551-009-0064-6.

<sup>13</sup> HERMAN, A.: Reassessing, op. cit., p. 449.

<sup>14</sup> 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, 2014, No. 3, p. 463, DOI: 10.1007/s10551-013-1840-x.

<sup>15</sup> 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. (eds.): *Labour Law in an Era of Globalization: Transformative Practices and Possibilities*. Oxford: Oxford University Press, 2004, p. 474; see the cited literature. JENKINS, R. – PEARSON, R. – SEYFANG, G.: Introduction, op. cit., p. 1.

<sup>16</sup> BRONSTEIN, A.: *International and Comparative Labour Law. Current challenges*. Geneva: Palgrave Macmillan, 2009, p. 112.

<sup>17</sup> STOHL, C. – STOHL, M. – POPOVA, L.: A New..., op. cit., p. 612. “Third generation embodies the social and material conditions as well as the reflexivity associated with globalization, and ethical behavior grounded in the larger interconnected environment within which an organization functions”, STOHL, C. – STOHL, M. – POPOVA, L.: A New..., op. cit., p. 612. “Third generation CSR focuses on the rights of a collective that only can be realized through global participation, cooperation, and agreement. Sections mentioning overall social good, such as peace, healthy environment, and the common heritage of mankind, were coded as third generation”, STOHL, C. – STOHL, M. – POPOVA, L.: A New..., op. cit., p. 614.

<sup>18</sup> LYUTOV, N.: Traditional International Labour Law and the New “Global” Kind: Is There a Way To Make Them Work Together? In: *Zbornik Pravnog Fakulteta u Zagrebu*, Vol. 67, 2017, Issue 1, p. 33. CARBY-HALL, J.: Labour Aspects of Corporate Social Responsibility Emanating from the United Nations Global Compact: the Global Case and that of the EU and the United Kingdom. In: *E-Journal of International and Comparative Labour Studies*, Vol. 5, 2016, No. 2, p. 15.

<sup>19</sup> BRONSTEIN, A.: *International...*, op. cit., p. 114.

<sup>20</sup> SEGERLUND, L.: *Making...*, op. cit., p. 56.

consumers, employees and general public. In the third place, they are required to incorporate the Global Compact and its ten principles at the highest level of the company. Fourthly, the method of implementing the Global Compact's principles should be characterised in the annual or sustainability reports. Lastly, companies are supposed to contribute to wider development goals, inter alia the Millennium Development Goals.<sup>21</sup>

## 2 THE MAIN SHORTCOMINGS OF CORPORATE CODES OF CONDUCT

The assurance of scientific integrity requires that there be an explanation of the fact that corporate social responsibility and codes of conduct tend to be viewed differently. It should be clearly stated that some authors prove that they exert some positive impact on the workers' situation (this will be explained later in the article). Besides, according to Toffel, Short and Ouellet, private codes of conduct that implement global labour standards accomplish an important objective consisting of the reinforcement of the norms promoted by the ILO and the provision of a source of enforcement pressure that the ILO lacks.<sup>22</sup> Harrington writes about "quite positive results" of codes of conduct, especially in developing countries.<sup>23</sup> Referring to corporate social responsibility policies, the author highlights that they can ensure that progressive labour standards are used even if they are not legally compulsory. She adds that in this manner, corporate social responsibility can eventually lead to the future revision of the domestic labour law.<sup>24</sup>

While it is admittedly true that some authors believe in the potential of codes of conduct, there are much more concerns about these instruments. One of the aims of this article is to provide an explanation for the shortcomings of codes of conduct.

Codes of conduct classified as falling under the first generation differ between companies and across industries. There is little uniformity in their content. Many of such tools use vague language, and for some rights, are limited to asking for compliance with the supplier countries' domestic laws. Codes of conduct often lack clear language on the freedom of association and wages, and make a "renvoi" to domestic law.<sup>25</sup> Their underlying values are perceived as obscure.<sup>26</sup> Codes of conduct mainly address marketing aims and respond to the unfavourable publicity produced by the media.<sup>27</sup> They are seen as a measure of propaganda and a means of improvement of MNC's reputation,<sup>28</sup> cor-

<sup>21</sup> CARBY-HALL, J.: *Labour...*, op. cit., p. 17-18.

<sup>22</sup> TOFFEL, M. W. – SHORT, J. L. – OUELLET, M.: Codes in context: How states, markets, and civil society shape adherence to global labor standards. In: *Regulation & Governance*, No. 9, 2015, Issue 3, p. 208. DOI: 10.1111/rego.12076.

<sup>23</sup> HARRINGTON, A. R.: Corporate Social Responsibility, Globalization, the Multinational Corporation, and Labor: an Unlikely Alliance. In: *Albany Law Review*, Vol. 75, 2011/2012, No. 1, p. 493. See the cited literature.

<sup>24</sup> *Ibid.*, p. 508-509.

<sup>25</sup> HERMAN, A.: *Reassessing...*, op. cit., p. 450-451. See the cited literature.

<sup>26</sup> ARTHURS, H.: *Private...*, op. cit., p. 477.

<sup>27</sup> MARASSI, S.: *Globalization...*, op. cit., p. 22.

<sup>28</sup> DÄUBLER, W.: Corporate Social Responsibility: A Way to Make Deregulation More Acceptable? In: BLANPAIN, R. – HENDRICKX, F. (eds.): *Bulletin for Comparative Labour Relations. Labour Law between Change and Tradition. Liber Amicorum Antoine Jacobs*. Alphen aan den Rijn: Kluwer Law International, 2011, p. 49; LYUTOV, N.: *Traditional...*, op. cit., p. 45; WRATNY, J.: Kodeksy dobrych praktyk jako wyraz społecznej odpowiedzialności korporacji. In: HAJN, Z. – SKUPIEŃ, D. (eds.): *Przyszłość prawa pracy. Liber Amicorum*. W pięćdziesięciolecie pracy naukowej Profesora Michała Seweryńskiego. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2015, p. 143; WRATNY, J.: Korporacyjne kodeksy dobrych praktyk z perspektywy prawa pracy. In: *Praca i Zabezpieczenie Społeczne*, No. 3, 2016, p. 4.

porate legitimacy, trust, image or brand.<sup>29</sup> Research indicates that there is a lack of involvement of social partners in the decision-making process leading to the adoption of codes of conduct.<sup>30</sup> Once adopted, they impose lower standards than the public regulatory frameworks. Besides, they are more selective in their choice of labour rights.<sup>31</sup>

When it comes to the second generation, as supplier codes of conduct enjoyed rising popularity in the 1990s, advocates began to focus less on code adoption and more on compliance verification.<sup>32</sup> The above-mentioned Sullivan Principles represent the first effort towards the implementation of codes of conduct with e.g., monitoring schemes, independent monitoring, in a multi-stakeholder forum.<sup>33</sup> Currently, there are always numerous problems with implementation, monitoring and enforcement of a corporate code of conduct.<sup>34</sup>

Monitoring may take different forms within which internal staffing, hiring an accounting firm and independent monitoring should be mentioned. Certain MNCs use their own internal compliance staff in order to monitor suppliers.<sup>35</sup> Lyutov rightly compare the situation to a “fox in the henhouse” scenario – the MNC in the role of the fox controls itself in the worker henhouse.<sup>36</sup> As it comes to accounting firms it turned out that they were not successful mainly due to the fact that in general accountants are not trained in monitoring labour conditions, and they are seldom specialists in labour issues. Third-party certification based on independent monitoring performs a little better. Herman points out that certification takes two forms: brand and factory certification. The mode of action of the first one lies in the fact that a brand’s products are certified as being produced under acceptable conditions. The latter model assumes that individual supplier factories are certified. The supplier factories bear the responsibility for retaining a monitor, whilst the brand-name MNC commits to using certified factories. Herman enumerates obstacles that limit the effectiveness of monitoring. They include: monitors’ conflict of interest, the limited resources available to monitor suppliers, the lack of uniformity in MNCs’ codes of conduct, and the suppliers’ ability to game monitoring efforts. MNCs benefit from poor labour conditions, so a “fox in the henhouse” scenario, i.e. monitoring to detect their own irregularities constitutes an obvious conflict of interest. Furthermore, sometimes the interest of NGO involved in voluntary labour rights monitoring initiatives is incompatible with the interest of the supplier’s workers. After detection of infringements of labour rights, NGO talks about the “success” and publicizes the case. This may result in cancelling the supplier’s contracts and workers losing jobs. Next, monitoring codes of conduct consumes significant resources. Then, as it has been highlighted, codes are vague and differ between companies. They not only vary on the relevant labour standards, but also conflict on some issues. This seriously hampers the monitoring.<sup>37</sup> However, there are worse problems in trying to game the monitoring system. There are some popular methods for hiding code violations from monitors. Under the first option,

<sup>29</sup> EGELS-ZANDÉN, N. – MERK, J.: *Private...*, op. cit., p. 464.

<sup>30</sup> MARASSI, S.: *Globalization...*, op. cit., p. 22.

<sup>31</sup> HEPPLER, B.: *Labour Laws and Global Trade*. Oxford: Hart Publishing, 2005, p. 76.

<sup>32</sup> HERMAN, A.: *Reassessing...*, op. cit., p. 455.

<sup>33</sup> SEGERLUND, L.: *Making...*, op. cit., p. 56.

<sup>34</sup> HEPPLER, B.: *Labour...*, op. cit., p. 76; SOBCZAK, A.: *Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft Law Regulation of Labour Relations to Consumer Law*. In: *Business Ethics Quarterly*, Vol. 16, 2006, Issue 2, p. 168.

<sup>35</sup> HERMAN, A.: *Reassessing...*, op. cit., p. 456.

<sup>36</sup> LYUTOV, N.: *Traditional...*, op. cit., p. 45.

<sup>37</sup> HERMAN, A.: *Reassessing...*, op. cit., p. 456-458 and 460. However, the majority of codes of conduct at least address core labour issues like child labour, forced labour, discrimination, harassment, and health and safety in the workplace. HERMAN, A.: *Reassessing...*, op. cit., p. 450.

suppliers keep two sets of books, an impeccable set for the monitors and an actual set for business. In this way they manage to conceal actual hours and wages. Moreover, suppliers instruct workers on what to say. They even recourse to handing out scripts. Additionally, they use the services of consulting firms, which engage in cheating on the monitoring firms hired by MNCs. They also use a special software designed with the aim of creating fictitious employee work information. It is also common practice that suppliers share information with each other on how to pass monitoring inspections.<sup>38</sup>

During the period between 2000s and early 2010s, many impact assessment studies revealed that codes of conduct improved tangible work conditions (outcome standards), e.g. the reduction of overtime work, the payment of minimum wages, and occupational health and safety. According to the result of research conducted by X. Yu, the implementation of Reebok labour-related codes at the second largest footwear supplier factory in China during 1997–2005 caused that sweatshop labour abuses, e.g. using child labour, imposing corporal punishments to discipline workers, providing unsafe and unhealthy working conditions, forcing workers to take long overtime, after sharp criticism were purged away. Besides, labour practices grievously infringing Chinese labour law, e.g. not paying legal minimum wage or forcing workers to take overtime working hours longer than legal maximum workweek, were also curbed. A “race to ethical and legal minimum” effect, as the author calls it, not only saved Reebok from attacks, but also contributed to the company’s long-term profitability. It did not, however, satisfy workers’ expectations concerning labour practices improvement. Indeed, the situation had imposed contradictory impacts on other working conditions. The overwhelming majority of the factory production workers were supposed to work faster and harder for less pay, not sufficient to meet basic needs of workers and their families. What were the reasons for this? The author finds the cause in the fact that Reebok had committed to neither sharing cost for code implementation with the supplier factory nor amending its sourcing policy to make improvement labour standards more financially manageable to the factory management, although Reebok benefited from a significant increase in profitability.<sup>39</sup> The supplier factory was evaluated as Reebok’s “best partner” and, as a “reward”, received a relatively higher volume of forward orders. Workers were obliged to work in a more stressful environment in order to fulfill higher production tasks.<sup>40</sup> Ngai argues similarly that codes of conduct were intentionally implemented as a top-down regulatory process, replacing the role of the Chinese state in regulating labour standards in the workplace. This results in maintaining authoritarian factory regimes in which, *prima facie* MNCs play a paternalistic role in “protecting” workers from labour exploitation, meanwhile allowing the sweating to continue, in the form of, e.g. excessive overtime work or illegally low wages per hour.<sup>41</sup>

On the other hand, what is probably beyond dispute, codes of conduct have limited impact on less tangible issues (process rights), such as freedom of association and the right to collective bargaining.<sup>42</sup> According to Egels-Zandén and Merk, codes exert little effect on trade union rights because of:

- buyers paying lip service to trade union rights;

<sup>38</sup> Ibidem, p. 461. See: LUND-THOMSEN, P. – LINDGREEN, A.: Corporate..., op. cit., p. 13; NGAI, P.: Global Production, Company Codes of Conduct, and Labor Conditions in China: a Case Study of Two Factories. In: The China Journal, No. 54, 2005, p. 107.

<sup>39</sup> 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, 2008, Issue 3, p. 523-525, DOI: 10.1007/s10551-007-9521-2.

<sup>40</sup> Ibid., p. 519-520.

<sup>41</sup> NGAI, P.: Global..., op. cit., p. 113.

<sup>42</sup> LUND-THOMSEN, P. – LINDGREEN, A.: Corporate..., op. cit., p. 13; EGELS-ZANDÉN, N. – MERK, J.: Private..., op. cit., p. 464; NGAI, P.: Global..., op. cit., p. 112.

- codes not being able to open up space for union organizing when leveraged in grassroots struggles (there is a lack of complaints or grievance mechanisms);
- codes introducing parallel means of organizing (instead of labour unions), which are not able to guarantee an independent workers' voice, including real worker representation and collective bargaining;
- workers lacking voice in the development of codes of conduct, knowledge of codes, and workers and unions being deprived of possibilities to participate in monitoring processes;
- monitoring being unable to reveal and remedy infringements of trade union rights and
- suppliers having limited encouragement for compliance. Comparing two alternatives with regard to costs (the higher cost of compliance and the lower cost of noncompliance), greater financial incentives from buyers would be necessary in order to persuade factory managers to comply with trade union rights.<sup>43</sup>

### 3 WAYS IN WHICH CODES COULD BE TRANSFORMED TO MORE EFFECTIVELY ADDRESS WORKERS' RIGHTS (DOCTRINAL PROPOSALS)

Codes of conduct seem “like a weak, uncertain method for improving world labor conditions”.<sup>44</sup> Tough competition for just-in-time production and low-cost products in the world market is unfavourable to codes implementation,<sup>45</sup> and the implementation itself does not grant workers the right to demand that this code be applied.<sup>46</sup> Moreover, once implemented, codes of conduct have limited effectiveness — 58.5 percent of the variance in the perceived effectiveness of codes (effectiveness of codes measured by the opinion of the respondent),<sup>47</sup> and slightly above 50 percent compliance with the standards in corporate codes of conduct (as regards corporate audits).<sup>48</sup>

Given these facts, it is worth recalling some viewpoints articulated in the literature, on how codes of conduct could be transformed to more effectively address workers' rights.

Herman argues that a more practical approach to improving workers' labour conditions should be found and introduced in the new generation of codes of conduct. To this end, a better understanding of the role for different organizations (especially local NGOs that should be given a top priority role in monitoring) and of business strategies and the economic motivations of suppliers and MNCs should be adopted. Besides, such an attitude requires a thorough rethinking the types of labour standards that can effectively be improved through codes of conduct.<sup>49</sup> According to the author, adopting a narrower point of view and concentrating on a single “linchpin” labour condition,

<sup>43</sup> EGELS-ZANDÉN, N. – MERK, J. Private..., op. cit., see the cited literature.

<sup>44</sup> FLANAGAN, R. J.: *Globalization and Labor Conditions. Working Conditions and Worker Rights In a Global Economy*. Oxford: Oxford University Press, 2006, p. 141.

<sup>45</sup> NGAI, P.: *Global...*, op. cit., p. 107.

<sup>46</sup> MARTIN, I.: *Corporate governance structures and practices: From ordeal to opportunities and challenges for transnational labour law*. In: BLACKETT, A. – TREBILCOCK, A. (eds.): *Research Handbook on Transnational Labour Law*. Cheltenham-Northampton: Edward Elgar Publishing, 2015, p. 62-63.

<sup>47</sup> SINGH, J. B.: *Determinants of the Effectiveness of Corporate Codes of Ethics: An Empirical Study*. In: *Journal of Business Ethics*, Vol. 101, 2011, Issue 3, p. 386, 389, 393. DOI 10.1007/s10551-010-0727-3.

<sup>48</sup> KATZ, H. C. – KOCHAN, T. A. – COLVIN, A. J. S.: *Labor Relations in a Globalizing World*. Ithaca-London: Cornell University Press, 2015, p. 277.

<sup>49</sup> HERMAN, A.: *Reassessing...*, op. cit., p. 471 and 481.

i.e. a sufficient hourly wage, would better align supplier codes with the objective of improving the labour conditions of supplier workers.<sup>50</sup>

According to Yu, fair distribution among crucial players in global supply chains of the cost of improving labour standards and transformation of codes into a supplement initiatives (not the alternatives) to international law and state legislation constitute important conditions for the creation of a new quality approach.<sup>51</sup> This is an interesting view, in particular because the research indicates that currently private and public regulation interact in diverse ways — one time as complements, another time as substitutes. It depends not only on the national contexts, but also on the specific matters being addressed.<sup>52</sup> In countries where labour regulations are weakly and irregularly enforced, private compliance initiatives frequently serve as substitutes for government enforcement or national laws and regulations, while in countries with more decisive government enforcement of labour regulations, private compliance efforts often complement stricter government regulation.<sup>53</sup> However, what refers to freedom of association, there is no substitute for effective government enforcement of national labour laws.<sup>54</sup>

Another important constant trend is a “soft law to hard law” trajectory, as codes of conduct are moving to legally-binding and legally-enforceable sphere.<sup>55</sup> For instance, in 1986, the Sullivan Principles became the basis of US sanctions legislation. This process still takes place until today.<sup>56</sup> Optional codes of conduct are more frequently becoming legally-binding through legislation, through contracts and possibly through litigation.<sup>57</sup>

García-Muñoz Alhambra *et al.* propose a transnational labour inspectorate system, i.e. a bow in the direction of publicly based monitoring, complementary to national labour inspectorates. Its premises are featured in the voluntary participation of the MNC (however, after the submission of the application the rules of the monitoring would be entirely binding) and a public root which upholds the independence of the monitoring system. According to this concept, the ILO should provide or control, supervise and/or coordinate the monitoring system, and would be responsible for providing a list of transnational labour inspectors who have been trained and accredited by the organization. The ILO should establish a special protocol introducing the basic rules and requirements for monitoring, with the aim of ensuring its independence and quality.<sup>58</sup>

<sup>50</sup> Ibid., p. 448.

<sup>51</sup> YU, X.: *Impacts...*, op. cit., p. 526-527.

<sup>52</sup> 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, 2013, No. 3. DOI: 10.1111/bjir.12003.

<sup>53</sup> LOCKE, R. M. – RISSING, B.A. – PAL, T.: *Complements...*, op. cit., p. 543. See also: CAMPBELL, T.: *A Human Rights Approach to Developing Voluntary Codes of Conduct for Multinational Corporations*. In: *Business Ethics Quarterly*, Vol. 16, 2006, Issue 2, p. 257.

<sup>54</sup> LOCKE, R. M. – RISSING, B.A. – PAL, T.: *Complements...*, op. cit., p. 544; LOCKE, R. – KOCHAN, T. – ROMIS, M. – QIN, F.: *Beyond corporate codes of conduct: Work organization and labour standards at Nike's suppliers*. In: *International Labour Review*, Vol. 146, 2007, No. 1-2, p. 24.

<sup>55</sup> BLECHER, L.: *Codes of Conduct: The Trojan Horse of International Human Rights Law?* In: *Comparative Labor Law & Policy Journal*, Vol. 38, 2017, No. 3, p. 437.

<sup>56</sup> Ibid., p. 438.

<sup>57</sup> Ibid., p. 474.

<sup>58</sup> GARCÍA-MUÑOZ ALHAMBRA, M.A. – TER HAAR, B. – KUN, A.: *Independent Monitoring of Private Transnational Regulation of Labour Standards: a Proposal for a “Transnational Labour Inspectorate” System*. In: ALES, E. – SENATORI, I. (eds.): *The Transnational Dimension of Labour Relations: A new order in the making?* Atti dell'XI Convegno internazionale in ricordo di Marco Biagi. Torino: G. Giappichelli Editore, 2013, p. 275-277.



In fact, some (e.g. the Worker Rights Consortium, WRC) argue that in order to be really effective, monitoring must be completely independent of brands and factories.<sup>59</sup> Others add that not only codes of conduct must be independently monitored, but also the trade unions representing the workers at the factories must be involved.<sup>60</sup> Recognising the differences between codes of conduct and international framework agreements (IFAs) in the monitoring process, Schömann *et al.* point out that a vast majority of codes are implemented, monitored and enforced only by management parties, sometimes with the help of external auditors, whereas IFAs often provide for a certain role for employees' organisations and<sup>61</sup> trade unions in this context. The authors indicate that this impacts on the effectiveness of labour rights. They give the case of IKEA as one of the exceptional examples where, on the one hand, management on its own undertakes extensive action to monitor implementation of the code of conduct, and on the other hand, supports the active involvement of trade unions in this process, including the establishment of a joint monitoring and implementation group with Building Workers International (BWI, formerly IFBWW – International Federation of Building and Wood Workers). An analogous shared monitoring process exists at Bosch and Securitas. According to Schömann *et al.*, the potential added value of a cooperation between management and trade unions is underlined by the fact that at IKEA and Securitas, the IFAs were negotiated with the aim of improving the pre-existing code of conduct or the CSR practice.<sup>62</sup>

In order to avoid a “fox in the henhouse” scenario, some international organizations and many companies specialized in auditing adopt their own codes of conduct in order to make MNC subscribe. Such codes of conduct are known as “external” in opposition to “internal” ones adopted by companies themselves. However, while it is admittedly true that the majority of international employers subscribe to external codes, they keep their internal codes anyway.<sup>63</sup>

Däubler shows great scepticism about the whole CSR concept, even considering its abolition.<sup>64</sup> The author recognises the role of NGOs and public opinion as new agents in industrial relations, but only in a small field and with limited possibilities. He highlights that the profit does increase when bad conditions are offered to workers in developing countries, but it decreases even more due to the bad publicity in industrialized countries. Nobody would like to buy T-shirts produced by persons working like slaves and suffering from inhumane conditions or produced by children. At this point social sanctions are activated.<sup>65</sup>

Däubler proposes a “stakeholder model” under which an enterprise should balance different interests, give adequate instruments to each stakeholder with the aim of avoiding predominance of one of them (especially the shareholders), endow employees with a right to collective action which can question even management decisions, and consumers with a right to act collectively, mainly to boycott certain products.<sup>66</sup>

<sup>59</sup> LOCKE, R. – KOCHAN, T. – ROMIS, M. – QIN, F.: *Beyond...*, op. cit., p. 23.

<sup>60</sup> EATON, J.: *Comparative Employment Relations. An Introduction*. Cambridge: Polity Press, 2000, p. 168.

<sup>61</sup> SCHÖMANN, I. – SOBCZAK, A. – VOSS, E. – WILKE, P.: *Codes of conduct and international framework agreements: New forms of governance at company level*. Dublin: European Foundation for the Improvement of Living and Working Conditions, 2008, p. 74.

<sup>62</sup> SCHÖMANN, I. – SOBCZAK, A. – VOSS, E. – WILKE, P.: *Codes...*, op. cit., p. 75.

<sup>63</sup> LYUTOV, N.: *Traditional...*, op. cit., p. 45-46.

<sup>64</sup> DÄUBLER, W.: *Corporate...*, op. cit., p. 50 et seq.

<sup>65</sup> *Ibid.*, p. 54-55.

<sup>66</sup> *Ibid.*, p. 56-57.

## 4 CONCLUSION

The purpose of this paper was to explore the the main shortcomings of corporate codes of conduct and ways in which codes could be transformed to more effectively address workers' rights as existing generations of these instruments seem not to be sufficient enough to ensure the effective enforcement of labour rights. Starting with the positive, codes of conduct are at least able to eliminate the worst abuses, such as child labour or corporal punishments. Nevertheless, the analysis of the extant literature reveals that certain labour standards are not suitable for improvement through codes of conduct. It has been stated that there is no substitute for effective government enforcement of national labour laws when it comes to, e.g. freedom of association and the right to collective bargaining. But what if the national labour law does not guarantee any rights? Caution is also required if one, believing in the potential of codes of conduct, wants to treat them as effective supplement initiatives. It would be difficult to supplement effectively something that actually does not exist. In China, for instance, no separate unions are protected by law. The Trade Union Law (dating back to 1992 and amended in 2001) states that the All-China Federation of Trade Union (ACFTU) shall be established as the unified national organization (Article 10). Although Article 35 of the Constitution refers to the freedom of assembly and association, the concept does not establish pluralism in the trade union organization. In China, the terminology of collective bargaining is not used in legal acts. In contrast, the Trade Union Law introduces the practice of equal consultations and collective agreements. On the employees' side, the trade union, represented by the trade union chairman, or representatives, elected by the employees, where there is no trade union organized, will act for the employees to conduct collective consultations and conclude the collective agreement.<sup>67</sup> It goes without saying that, e.g. *ad hoc* representatives without any real voice cannot be treated as true partners. It seems that codes introducing, e.g. parallel means of organizing, can constitute neither effective complements nor substitutes for national law. However, the problem here goes far beyond corporate codes of conduct and calls for thorough reforms. Given this context, it should be mentioned that China has not even ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)<sup>68</sup> and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).<sup>69</sup>

It seems proved under several different circumstances that the role of NGOs cannot be underestimated. NGOs, indeed, engage in detecting infringements, enforcement practices, lobbying for better standards, representing workers and auditing labour conditions in supplier plants. The Worker Rights Consortium is one of the most active of these NGOs. It participated in activities for improving labour conditions at Foxconn, at apparel factories in Bangladesh, and at Nike.<sup>70</sup> However, when publicizing their "successes", NGOs should take the necessary measures to overcome the concerns relating to the above-mentioned conflict of interests between them and the supplier's workers. Moreover, the idea of publicly rooted monitors (e.g. transnational labour inspectors according to García-Muñoz Alhambra *et al.*) also seems interesting. Upon such a foundation a system that would enable employees to report violations of labour rights could be subsequently developed. Independ-

<sup>67</sup> CHEN, K.: *Labour Law in China*. Alphen aan den Rijn: Kluwer Law International, 2011, p. 104, 114-115.

<sup>68</sup> Available at: <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0:NO:11310:P11310\\_INSTRUMENT\\_ID:312232:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0:NO:11310:P11310_INSTRUMENT_ID:312232:NO)> (accessed on 5<sup>th</sup> November 2018).

<sup>69</sup> Available at: <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0:NO:11310:P11310\\_INSTRUMENT\\_ID:312243:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0:NO:11310:P11310_INSTRUMENT_ID:312243:NO)> (accessed on 5<sup>th</sup> November 2018).

<sup>70</sup> KATZ, H. C. – KOCHAN, T. A. – COLVIN, A. J. S.: *Labor...*, op. cit., p. 289.

ent international “observers” could promptly react and more effectively put pressure on corporations highlighting that the situation can result in the increased public awareness of infringements as a consequence of media coverage. Additionally, it is worth noting that periodic training and testing programs to ensure employee knowledge and comprehension of codes of conduct<sup>71</sup> could be a good idea, especially when employees have little understanding of the concept of rights.

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<sup>71</sup> BRASWELL, M. K. – FOSTER, C. M. – POE, S. L.: A New Generation of Corporate Codes of Ethics. In: *Southern Business Review*, Vol. 34, 2009, No. 2, p. 8.

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