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Regulating Work in Global Value Chains

Symposium Submission
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- Justification

One of the most obvious and far-reaching impacts of globalization is on the world of work. Millions of people are affected directly and indirectly at their workplace, in their training institutions or on the job market by dynamic restructuring processes across national borders often far removed from their immediate surroundings. This economic globalization has not, however, been flanked by global social measures; indeed, a lowering of social protection standards in the name of competitiveness, flexibility and the elimination of protective instruments of decommodification has been far more commonplace. As firms grow and reorient their business strategies toward global market demands, governments compete to provide them with optimal conditions for investments and profitability. Despite the increasing transnationalization of labor markets and the increasing impact of global value chains requiring cross-border governance and management, setting standards for wages and working conditions is still generally uncoordinated across borders. This occurs within national boundaries, primarily as a workplace issue marked by employer discretionary or unilateral action, but also, where organized and institutionalized, dependent on a mixture of state regulation and negotiated contracts between national employer and employee representatives.

Trade unions have generally been on the defensive in the challenge to parry the expansionary offensive of trans-national corporations (TNCs) in the context of liberalization and deregulation processes. At the same time, increasing globalization of production and labor market competition on the one hand and the inhuman exploitation of labor in many countries around the globe on the other have fostered the growth of global information and campaign networks and a culture of international concern for the recognition of universal human rights (UN Human Rights Council 2007). Pressured by human rights interest groups and campaigns, whose efficacy is significantly enhanced by mass media and the Internet, corporations have signed on to collective guidelines and compacts as well as to the use of voluntary codes of conduct as pivotal elements of a strategy for corporate social responsibility (CSR). However, the voluntarism of CSR is only a first step toward comprehensive standard-setting which requires the involvement of interested and competent stakeholders to become a truly effective tool for securing good labor standards (Fichter and Sydow 2002: 375).
We argue that the setting of labor standards and the regulation of employment relations with the goal of guaranteeing decent working conditions across global value chains should be integral elements of a system of global governance. Within this framework, our symposium addresses the overall conference theme with particular regard to the themes of tracks one, two and four.

- Format

After a short (5 minutes) introduction into the theme of the symposium by Michael Fichter, the main organizer, three papers will be presented (max. 15 minutes each) and commented by Steve Frenkel (max. 10 minutes). This will leave us 30 minutes for a general discussion. The session will be chaired by Michael Fichter.

<u>Overview of the three papers</u>:

Paper 1 by David Weil (Boston University)
"Rethinking the Regulation of Vulnerable Work in the US: A Sector-Based Approach"

This paper (presentation) will discuss one of the major challenges of US workplace policy: Protecting roughly 35 million workers who are vulnerable to a variety of major risks in the workplace. After laying out the dimensions of this problem, I show that the vulnerable workforce is concentrated in a subset of sectors with distinctive industry characteristics. Examining how employer organizations relate to one another in these sectors provides insight into some of the causes as well as possible solutions for redressing workforce vulnerability in the US as well as other countries facing similar problems.

Paper 2 by Jennifer Bair (University of Colorado) / Florence Palpacuer (University of Montpellier)

"Regulating Labor Standards in the Global Garment Industry"

For much of the twentieth century, textile and apparel production was one of the most regulated manufacturing sectors. The gradual liberalization of the global garment industry, culminating in the elimination of all quotas on textile products in 2005, has rapidly and profoundly transformed the geography and organization of apparel production. Increased competition and the entrance of important new players in Asia has increased concerns about the plight of garment workers, and these concerns have been underscored by several well-publicized sweatshop scandals in places as diverse as Los Angeles and Bangladesh. As apparel production has become disembedded from regulatory contexts and industrial relations regimes at the national level, new initiatives and efforts associated with the "anti-sweatshop movement" are trying to re-embed textile and clothing production globally in ways that will protect the rights of garment workers in this far-flung and intensely competitive industry. My contribution to the symposium on Regulating Work for Global Supply Chains will examine the industry's response to these demands from student groups, consumers, and NGOs for ethical apparel production. Specifically I will survey existing approaches that have emerged in the clothing industry, emphasizing the rise of multi-stakeholder initiatives as an increasingly prevalent, private form of regulation that nevertheless attempts to enlist the participation of "civil society organizations" (though not necessarily organized labor).

Paper 3 by Nikolaus Hammer (University of Leicester) / Steve Davies (Cardiff School of Social Sciences) / Glynne Williams (University of Leicester)

"International Union Strategies in Construction. Voluntary Agreements vs. Regulation in the Global Value Chain"

While trade unions at national and global level have taken into account the underlying logics of Global Value Chains (GVCs) in their campaigns and industrial action, this has developed in distinct ways in the construction sector. The strategies of construction unions have focused on the capacity of lead firms to drive their subcontractors, at national or global level, as well as via voluntary agreements with MNCs or regulation on the part of international organisations or nation states. It is argued here that international trade union strategies in the construction sector are shaped by the extremely segmented nature of GVCs in this area and the limited direct competition workers are exposed to. Threats to conditions of work and employment stem from informal and migrant employment and the way complex subcontracting arrangements can exploit such divisions. Thus, unions have, typically, focused their efforts on strengthening state regulation, rather than building solidarity between workers who compete against each other in different production locations. As a result, for

analytic as well as strategic reasons, it is important to link the global (value chain) section of construction with the one that is locally embedded, link the global (labour) value chains with national regulation and local labour management, and investigate their interrelations.

Compared to manufacturing, textile or agricultural value chains, which have been covered well in the literature, the construction industry is distinctive in many ways. Whilst labour and materials are relatively mobile, the site of production is, by definition, fixed. With these constraints, global competitiveness has been particularly reliant on subcontracting, with resultant pressures on employment conditions and on trade union organising. At the same time though, whilst the lead contractor drives project acquisition and management, drivenness in construction GVCs normally does not extend to routine unskilled construction activities where value is derived from the way labour (supply) is controlled locally. Thus, labour has traditionally had difficulties in exerting much pressure on the subcontracting chain via the lead companies. In this situation it is the institutional context which is particularly important in the social regulation of GVCs.

This paper aims to draw out the significance of different governance forms of subcontracting chains for trade union strategies by contrasting forms of regulation within the European Union with those prevailing in countries like Brazil or Malaysia. Trade unions in the construction sector have concluded a number of International Framework Agreements (IFAs) which are designed to provide a platform for fundamental labour rights. International trade union work has focused on trade union development projects to build capacity and extend organising to informal and migrant workers. However, in the absence of a lead-MNC which has the interest and capability to 'drive' labour standards through the subcontracting chain, unions have long tried to tie obligations to the public funding of construction projects as well as to the way tax payments are handled. While the concept of the ILO Convention No 94 (Labour Clauses in Public Contracts) has been adopted in many countries, the more recent implementation of Performance Standard 2 of the International Finance Corporation has also come with an implementation system. Equally, a number of European countries have established contractor liability arrangements where the (general) contractor is liable for the social insurance payments of the subcontractors (at least those in the tier below).

In this paper we investigate trade union strategies relating to, both, framework agreements and the regulation of subcontracting arrangements and to what extent they are used in addressing problems of informal and migrant workers and to what extent they function as a platform for capacity building and organising. The discussion is based on company case studies and interviews with trade union and management representatives in Austria, Brazil, Germany, Malaysia and the UK.

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Rethinking Regulation of the Workplace

David Weil, Boston University

Symposium on Regulating Work in Global Value Chains.

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Abstract: One of the major challenges facing workplace policy is protecting the millions of workers in most economies who are vulnerable to a spectrum of risks in the workplace. I discuss the challenge of workplace regulation and argue that the vulnerable workforce is concentrated in a subset of sectors with distinctive industry characteristics. Examining how employer organizations relate to one another in these sectors provides insight into some of the causes as well as possible solutions for redressing workforce vulnerability in the US as well as other countries facing similar problems.

Rethinking Regulation of the Workplace

David Weil, Boston University

The Challenge Facing Workplace Regulators

The long term reduction in government resources devoted to enforcement of occupational health and safety, wages and hour standards and other workplace regulations has contributed to the growth of vulnerable workers. Through reduction in the size and role of the federal and state inspectorates, employers and industry sectors face trivial likelihood of investigation in a calendar year. The overall statistics in the US are indicative: while the number of workplaces covered by federal workplace regulations increased by 112 percent over the period 1975-2005, the number of investigators declined by 14 percent (Bernhardt and McGrath 2005). That means even well known employers face little chance of seeing an investigator: for example that the likelihood that one of the top twenty fast food restaurants (e.g. McDonalds, Burger King, Subway) is about 0.008 in a given year (Ji and Weil 2009). But the more pernicious impact is that employers operate under an expectation where government inspectors or other regulatory agents like unions are simply not seen as a matter of first order concern.

The International Labour Organization acknowledged a similar crisis in labour inspection nationally and internationally. In late 2006, the ILO called upon its member States to adopt a series of policies to strengthen and modernize labour inspectorates as a means of assuring implementation of fundamental workplace policies. Other industrial nations face the same enforcement challenge due to the declining presence of government regulators and growing number of workplaces.

The central regulatory task facing labour inspectorates can be said to consist in improving workplace conditions in an ongoing way by drawing on constrained organizational resources. This task cuts across the different ways that national systems are structured. For example, Piore and Schrank (2006 and 2008) describe the difference between “deterrence-based” and “Latin models” of workplace regulation. While the former systems seek to change employer behaviour by raising the expected penalties for non-compliance, the Latin model allows inspectors to take a more flexible approach to compliance that involves helping employers adapt work systems better to meet production demands at the same time as redressing compliance problems. This approach to inspection is more collaborative and adaptive to local conditions than the deterrence model used in many Anglo-American countries. Yet both systems – as well as those that are hybrids of the two (Pires, 2008) – can usefully be evaluated by their capacity to achieve lasting improvements in workplace conditions given constrained organizational resources.

Sector-Based Approaches to Labor Enforcement

The workplace policies of many countries assume clear relationships between employees and employers. Those setting workplace policies, supervising production, setting schedules, and evaluating workers are assumed to directly represent and report to the owners (private) or responsible parties (public / non-profit) of record.

In a growing number of industries and countries, the employment relationship has become fissured thereby requiring regulators to act on webs or networks of employers, not on single, fixed organizations. The enforcement problem begins to resemble more the regulation of a construction worksite - with its many small employers and indirect forms of coordination between owners, project managers, and individual contractor - rather than the stable factory setting assumed by workplace policies. As a result, many of the traditional presumptions underlying workplace regulation no longer hold, leading to ambiguity around some basic questions: Who is the employer (or joint employers) ultimately responsible for

establishing workplace conditions? How much latitude does the employer of record (for example a small janitorial contractor to a large building owner) have to change conditions for their workforce?

Weil (2009) argues that conditions leading to workforce vulnerability arise in sectors where such fissuring has occurred. Policies that attempt to act on and change those conditions can potentially have systemic and sustainable effects that go far beyond traditional enforcement approaches focused on individual employers. Although interventions relating to other factors relating to vulnerability must also be considered - immigration policies, the need for skill development, enhancing the opportunities for union representation - a sector-level approach to regulation provides a critical means for changing the underlying conditions driving vulnerability. Understanding how industry structures relate to the creation of vulnerable work, also provides insight into how those same dynamics could be used as a regulatory mechanism to bring systemic compliance to an entire industry rather than on an employer-by-employer basis.

A common feature underlying many of the sectors where vulnerability appears to be most common is the presence of large, concentrated business entities that have greater market power than the large set of smaller organizations with which they interact. These sectors have characteristics of monopsony markets with distinctive competitive dynamics operating on buyers versus sellers (Erickson and Mitchell 2007). The asymmetric relationships and their impact on vulnerability can be broken into four major categories.

Strong buyers sourcing products in competitive supply chains: In some sectors - for example in many non-durable consumer product markets where retailers play a dominant role in driving supply chains - major players (e.g. retailers like Wal-Mart) set the overall terms of economic relationships in the product markets, yet have no direct employment responsibility for large supply chains that provide products. As a result, pricing policies are set by one set of players who operate in markets where they hold significant pricing power because of scale economies, brand recognition, and geographic barriers to entry. However, the markets (supply chains) providing these goods are characterized by significant competition, low margins, low barriers to entry and therefore significant pressures for low wages and poor working conditions. Agricultural sectors driven by major food processors (e.g. Campbell soups), food retailers, or fast food companies are all examples of this type of industry structure.

Central production coordinators managing large contracting networks: In this type of industry structure, large companies play a role as coordinators of production that entails large numbers of workers. However, few of those workers are directly employed by the coordinators. The US residential housing market is a prime example of this type of structure, where in the 1990s and early portion of 2000s (prior to the housing bust in 2006) a small number of national home builders came to dominate many housing markets. Though major national homebuilders built more than 40,000 homes per year, they directly employed very few construction workers. Instead, construction was undertaken by large number of relatively small local contractors who, in turn, further subcontracted work to other, smaller firms engaged in competitive markets. While the large homebuilders created and managed the plans for developments, set the basic terms for pricing, and establish standards for performance, terms of employment were set by the myriad of small contractors who bid the work (Abernathy *et al.* 2007).

Small workplaces linked to large, branded, national organizations: In a number of service providing industries—in particular in food services and hotels and motels—work is undertaken in small, geographically dispersed workplaces. Although these workplaces operate under the name of well known national brands (eg McDonalds; Hilton) the employment relationship is usually with a different entity, such as a franchisee in the eating and drinking industry or a complicated combination of local owners and third party

management companies in hotel and motels. Conditions leading to workforce vulnerability arise because employment policies for the millions of workers in these sectors reflect the interdependent decisions of relatively small, local employers facing significant product market competition yet having a lower stake in reputation than the multinational brands of which they are a part. Ji and Weil (2009) show that this complex interaction of ownership and management result in about 40 percent non-compliance with minimum wage and overtime regulations among fast food outlets owned by the top twenty national chains in the US.

Small workplaces and contractors linked together by common purchasers: A final form of industry structure occurs where a network of employers is tied together by a common purchaser of services, or a public, not-for-profit, or private entity that disperses payments to employers in that network. Vulnerability is an outgrowth of the fact that services are provided in smaller, more decentralized units whose decisions reflect the concerns of local companies or contractors engaged in far more competitive markets than the larger entities that are the source of revenues. The common purchaser here is neither a coordinator of sales or production, nor a well known business entity. An example of this type of structure arises in the janitorial, landscaping, and related business services area where large end users (building owners) contract out these activities to large numbers of competitive contractors. In many cases, prime contractors to building owners further subcontract work to even smaller business entities. A different, but related variant of this model occurs in child and home health care sectors where service is provided by small community-based facilities or at recipients homes, but paid for via public funds.

New Approaches

Understanding how industry structures relate to the creation of vulnerable work, also provides insight into how those same dynamics could be used as a regulatory mechanism to bring systemic compliance to an entire industry rather than on an employer-by-employer basis. I illustrate this by describing policies in several countries that are built around the first of the industry structures described in the previous section (strong buyers drawing on competitive supply chains).

United States: A highly effective method of dealing with the supply chain structures was developed in the US in the late 1990s by the US Department of Labor's Wage and Hour Division (WHD). WHD—the agency responsible for enforcing labor standards in the US—dramatically shifted the focus of enforcement efforts in the apparel industry by exerting regulatory pressure on manufacturers in the supply chain rather than on individual small contractors. Invoking a long ignored provision of the law regulating labor standards, WHD embargoed goods that were found to have been manufactured in violation of the Fair Labor Standards Act (FLSA), the federal law that sets minimum wages, overtime rules, and child labor restrictions Although this provision had limited impact in the traditional retail-apparel supply chain, when long delays in shipments and large retail inventories were expected, embargoes now quickly raise costs to retailers and their manufacturers of lost shipments and lost contracts, creating implicit penalties that dwarf those arising from the civil monetary penalties faced by repeat violators of the FLSA. WHD used embargoes to persuade manufacturers to augment regulatory activities by making the release of goods contingent on *the manufacturer's* agreement to create a compliance program for its subcontractors. Statistical analyses of these monitoring arrangements demonstrate that they led to very large and sustained improvements in minimum wage compliance among apparel contractors in Southern California (Weil 2005) and New York City (Weil and Mallo 2007), improving conditions in the sector as a whole.

Australia: In Australia, 'supply-chain' focused strategies have been created to deal with similar dynamics in the garment industry in the US. These strategies impose liability for entitlements to workers throughout the garment supply chain including on principal

manufacturers. They also required greater transparency regarding the use of subcontracting and created tripartite structures to create retailer codes of conduct. (Nossar, et al Johnstone, and Quinlan 2004). A related strategy emerged in transport where increasingly small owner-drivers truckers compete to provide long haul road freight transportation services to major retailers and other concentrated purchasers.
(Kaine and Rawling 2009, p.14; James *et al*. 2007).

New Zealand: Related strategies have been devised in New Zealand in order to deal with shortages in the supply of labor for horticulture and viticulture industries while assuring compliance with core workplace regulations and improving overall productivity among contractors employing both domestic and immigrant workers to those industries (Hill et al 2007). One example of this approach is to create a 'return worker scheme' for non-domestic seasonal workers that simultaneously seeks to improve conditions for guest workers, reduce labor turnover and increase productivity for contractors, and address recurrent labor supply shortages overall (Whatman 2007).

Conclusion

Redressing the problems faced by vulnerable workers requires workplace regulators to operate in very different ways than have characterized enforcement in the past. Central to that role is building and acting on a deep understanding of how industries and sectors operate and how those dynamics affect workplace outcomes generally and employment vulnerability in particular (Bray and Waring 2009, Weil 2009). To truly redress this problem, regulatory systems must move beyond the traditional 'cat and mouse' game of inspection and compliance. They must instead attempt to change those aspects of industry operation that lead to deleterious social outcomes in the first place and then allow the parties to act within that changed landscape.

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The Anti-sweatshop Movement in Comparative Perspective

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Abstract
During the last quarter of century, and in tandem with the internationalization of production and the expansion of trade, a number of new social movements focusing on labor standards in global industries have emerged. Our paper examines the development of one such movement—the effort to protect workers and promote labor rights in international supply chains for consumer goods such as clothing and footwear. This movement reflects a new awareness among consumers of the way that people, places, and processes are connected to each other through global production systems, as well as a concern about the challenges that globalization poses for traditional models of social and economic regulation. Several authors have discussed the emergence of what we are calling the anti-sweatshop movement, as well as the various forms of private regulation that have emerged in response to demands for ethical production in global industries (Featherstone 2002, Bartley 2003, 2007; Esbenshade 2004).

While building on this work, we analyze the anti-sweatshop movement in comparative perspective, underscoring the diversity of models and strategies employed by groups in different end markets of the global North. This paper draws from an ongoing project comparing the organizational dynamics of particular coalitions involved in anti-sweatshop politics in western Europe and North America. Due to space constraints, we narrow the focus of our comparative discussion here to the latter, examining developments in the United States and Canada, but leaving aside the European case. We are particularly interested in situating these efforts to protect and promote the rights of garment workers within the broader organizational field of the global apparel industry. In order to understand how the anti-sweatshop movement has developed over the course of the past decade, what is needed is not simply an understanding of activist organizations such as the NGOs that we discuss, but also an appreciation of how these groups interact with the other stakeholders that are likewise seeking to shape the anti-sweatshop debate, including unions, firms, and the quasi-public, quasi-private actors known as multi-stakeholder initiatives (MSIs). We also explore how, and how successfully, organizations promoting an anti-sweatshop agenda are confronting some of the classic challenges encountered by social movements, as they struggle to influence an industry long associated with low margins, extreme capital mobility, far-flung production networks, and intense competition among manufacturers to reduce labor costs (Schlesinger 1951; Rosen 2002).

Our key finding is that while there is extensive collaboration within and across regions on the part of leading organizations, and while there has been some convergence in strategies among the groups (primarily reflecting “campaign and code fatigue”), we also argue that significant differences between them remain. Specifically, we find more similarity between the movements in Canada and Europe, where leading organizations have embraced participation in multi-stakeholder initiatives, in contrast to a more fractured and contentious field of anti-sweatshop politics in the United States.

The Anti-sweatshop Movement in Comparative Perspective

The anti-sweatshop movement is formed of broad interlinked coalitions bringing together activist groups and more mainstream organizations involved in the defense of human rights, workers, women, consumers, and immigrants, among others, to promote improvements in working conditions in the global clothing industry. This paper aims to map out such networked coalitions and trace their emergence over the 1990s in the two main 'consumption' countries of North America. Interestingly, while the U.S. played a lead role in the formation of global production chains by starting to source overseas on an experimental basis as early as the 1950s and 1960s, and launching massive production relocation strategies from the 1970s on, it is in Europe that activist networks have taken their most advanced forms of coordination and transnational integration within the context of the Clean Clothes Campaign (CCC). Although the CCC is not discussed at length in this paper, this organization shares similarities with the leading Canadian organization involved in the anti-sweatshop movement, the Maquila Solidarity Network, with which we begin below.

1. Anti-sweatshop politics in the North American Context #1: Canada

In Canada, the main campaigning organization for work conditions in the global apparel industry emerged in 1994 as the Maquila Solidarity Network (MSN). MSN initially adopted a geographical – rather than industry – focus, naming itself for the in-bond factories located on the Mexican border with the United States. It was formed by two activists respectively coming from a feminist and a labor union background, with historical relationships to local groups in Mexico and Central America.[1] Initially organized to contribute to what was then a lively debate about Canada's participation in the North American Free Trade Agreement, MSN's initial engagement with activist protest in the clothing sector came through participation in a campaign against The Gap in 1995. This campaign emerged in response to an exposé by the National Labor Committee of labor right violations at Mandarin International, one of Gap's suppliers in El Salvador. MSN coordinated Canadian participation in this transnational campaign and established a working relationship with the main North American trade union in the clothing sector, the International Ladies' Garment Workers Union (the ILGWU, which later become UNITE, following a merger with the men's apparel union, the Amalgamated, in 1995). The Gap campaign set the ground for the creation by MSN and UNITE of a now defunct national coalition of NGOs and trade unions based in Toronto, named Labor Behind the Label, which was strongly involved in domestic campaigning for the defense of labor rights for Canadian garment homeworkers.

MSN's relationships with the leading European NGO involved in anti-sweatshop organizing, the Clean Clothes Campaign (CCC), started in the late 1990s. MSN and CCC worked together in numerous instances, as they jointly tried to influence the development of various corporate codes of conduct regulating working conditions in apparel factories. They also cooperated on a number of campaigns targeting specific brands and retailers. The staff at MSN became extremely knowledgeable about codes of conduct, regularly producing 'Codes Memos' and other reports summarizing key developments and issues with regard to the code initiatives proliferating at the time, and MSN shared this expertise with European groups such as the UK-based Ethical Trading Initiative (ETI) and the Fair Wear Foundation in the Netherlands. MSN also brought its historical relationships with groups in Latin American into global campaign networks, and started to expand its own linkages in Asia, and subsequently Africa, by working with the CCC.

MSN was involved in a campaign in support of the Lesotho garment workers' union in Africa in 2002, targeting the Canadian retail company Hudson Bay as well as The Gap, while UNITE simultaneously targeted Gap in the United States. Emphasizing differences between Canadian and American approaches, a MSN founder remarked "our (campaign) was more *engaging with* The Gap and they were *campaigning against* The Gap. And it actually worked well, we were able to persuade The Gap to facilitate a dialogue between the employer and the union…We for the first time developed a direct and more productive relationship with one of the brands – in this case Gap." Thus MSN, similar to CCC, adopts an "oppose and propose" type of strategy vis-à-vis companies. As one founder explained, "you can't just

attack, you have to be willing to talk." As we explain below, this model contrasts with the more confrontational approach that characterizes at least one wing of the anti-sweatshop movement in the U.S., with groups such as United Students Against Sweatshops and the Workers' Rights Consortium essentially regarding cooperation with companies and participation in multi-stakeholder initiatives as ineffective. Reflecting on their relationship with these U.S. groups, MSN staff noted that "[i]n campaigns that are related to union organizing, we work fairly well with US groups. The Clean Clothes Campaign would say the same. On the question of MSIs [multi-stakeholder initiatives], or implementation of labor standards beyond national boundaries, there would be some disagreement with the US groups; they would be critical and negative about MSIs. ..Our feeling is that you need both things: one is to be working on some new methods or mechanisms for regulation, and the other is space for workers to organize. But we feel that you need both things, just focusing on worker organizing is insufficient."

Although MSN progressively enlarged its geographic scope of action towards Asia and Africa, its initial anchoring in Latin America continued to shape the ways in which the global dynamics of clothing production were perceived and acted upon by the organization. The rise of China as a major apparel producer, for instance, was primarily perceived from the perspective of its consequences for production in Latin America. Just as MSN had aimed to overcome rivalry between Mexico and North American workers during the NAFTA debate, so did it seek to develop connections between Chinese and Latin American workers in the context of soaring Chinese apparel exports to global markets. The goal has been to build solidarity and lessen the sense of competition among workers created by employers' relocation strategies. 'We've tried to demystify China with some of the Latin American groups, bringing Chinese groups to Mexico and Central America to discuss conditions in the factories and make comparisons with the conditions and issues faced in Latin America, so they could see that there were similar problems, and groups trying to deal with these problems.' MSN also made a case for the possible 'competitive advantage' that Latin American producers could derive from greater respect for labor standards in the face of widespread labor rights violation in China.

In another parallel to the strategy of the CCC, MSN seeks to launch projects through a network form of organization, especially for mobilizing resources during campaigns: "it's not a military structure, it's pretty loose, that means that people opt in or opt out of campaigns based on their own interests". All partners involved in these campaigns are not necessarily as flexible, however: "Some of these national organizations are structured in a very traditional bureaucratic manner. Sometimes they can be very effective at mobilizing people and sometimes their actions are less effective than ours because of their structure and how difficult decision-making is…whereas obviously the kind of groups that we are, or Clean Clothes, can act much more quickly and are more flexible in terms of taking action or not."

2: The North American Story #2: The United States

The U.S. anti-sweatshop movement has its roots in the public response to several, nearly simultaneous scandals in the mid-1990s involving garment workers producing for major brands. When these sweatshop scandals broke, the issue of economic globalization was already a politically sensitive one. The Clinton administration had risked alienating blue collar voters by supporting a North American Free Trade Treaty which was widely expected to result in the loss of U.S. manufacturing jobs to Mexico. Aware of the President's vulnerability on the trade issue, the White House responded to the sweatshop controversy by calling on NGOs, companies and trade unions to work together to solve the problem via a regime of voluntary compliance. To encourage dialogue between the stakeholders, the Clinton administration created the Apparel Industry Partnership (AIP) in 1996, appointing Secretary of Labor Robert Reich to serve as convener. No major retailers participated in the project, through eight apparel companies did, among them Nike, Liz Claiborne and Phillips-Van Heusen. Organized labor was represented in the AIP by UNITE and the Retail, Wholesale and Department Store Union. Participating NGOs included the Interfaith Center

on Corporate Responsibility, the National Consumers League, and the Robert F. Kennedy Memorial Center for Human Rights.

The central focus of the AIP's efforts was the elaboration of an industry-wide code of conduct. Agreement was reached relatively quickly on about 80% of the Code's content. However achieving agreement on the remaining 20%, dealing mostly with questions of how the Code would be implemented and monitored, proved far more contentious (Esbenshade 2004). In June 1998, the unions and the NGOs, then negotiating together, sent a proposal to the companies that was designed to curb what they considered to be the industry's undue influence over the monitoring scheme that was emerging. A chief criticism of the private sector's proposal was the use of a conventional first-party auditing model to monitor and enforce the industry code. This proposal also included stronger language regarding compensation, as the unions and NGOs felt that the Code should guarantee workers a living wage (Howard 1999). The companies did not respond directly to this proposal, and at some point during the stalemate that followed, several of the NGOs began meeting with the companies to continue negotiations, without the participation or knowledge of the union. One UNITE official elaborated on these developments, "This was before the agreement, when it was coming down to the wire: The companies were on one side, the unions and NGOs on the other and the government was in the middle." From the union's perspective, the decision of some NGOs to abandon the NGO-labor coalition in favor of direct talks with the companies was seen as a "betrayal" and a usurpation of organized labor's role as the legitimate representative of workers' interests.

When a final agreement was announced in November 1998, UNITE's denunciation of it reflected the union's evolving view that the AIP would not result in a regime capable of effectively promoting labor rights. Reflecting ten years later on the union's participation in the initiative and its eventual decision to reject the final agreement, one of our interview subjects explained that "To us, it became clearer and clearer that it [the AIP] was all a sophisticated PR [public relations] operation and way of handling the controversy and was not addressing the structural problems of the industry." The split within the AIP was a formative moment in the history of the anti-sweatshop movement in the United States, resulting in the emergence of what are, in essence, two, quite distinct models for addressing labor issues. The organizations that embody these models—the Fair Labor Association and the Workers Rights Consortium—both emerged out of the AIP; the first as its creation, the second as its rejection, as we explain below.

The November 1998 agreement marked the concluding phase of the Apparel Industry Partnership and the first stage in the creation of its successor organization, the Fair Labor Association (FLA). Created to serve as the monitoring and implementation arm of the new industry code, the FLA counted among its members many, thought not all, of the companies that were active in the AIP, as well as NGOs and university administrators involved in the licensing of collegiate apparel. These constituencies are also reflected in the FLA's governing body, its board of directors, which includes six apparel brands, six NGOs, and six university representatives. In addition, the FLA has a staff of 18 based in Washington D.C. and Geneva, Switzerland. The latter location reflects the organization's attempt to recruit more European brands into the organization. These efforts have added Adidas and Puma to the FLA's roster, giving it substantial density in the athletic footwear market, since Asics and Nike are also members. Among the 26 participating companies are both original AIP-participants, such as Phillips-Van Heusen and Liz Claiborne, as well as more recent members such as Umbro and New Era Cap. However, the continuity between the AIP and the FLA is aptly expressed by the fact that like its predecessor, the FLA counts few retailers among its members. Nordstrom and H&M are the only retailers that belong to the FLA. The former participates in the FLA monitoring scheme for all of its private label apparel, while the latter uses the FLA for its merchandise produced in China. However, none of the major mass discounters, most notably Wal-Mart, or other major apparel retailers (e.g. JC Penney) belong to the FLA.

Established in 1999, the FLA is now a decade old, and its operations have evolved in tandem with the evolution of the debate around ethical sourcing. Early critics of the FLA charged that its code did not go far enough on some issues, particularly a living wage.

Others claimed that the FLA was not transparent with regard to its monitoring regime, and called for the organization to release information to the public about the results of its audits. More generally, many remained skeptical of the perceived influence of industry actors within the FLA, especially in the absence of a similarly institutionalized role for unions or other workers' organizations. The FLA moved to address several of these concerns. For example, it has begun posting the results of factory audits on its website in the form of what it calls "tracking charts." These charts detail the noncompliance findings of the FLA audits by independent monitors and track the remedial measures companies are taking to correct any violations of the FLA Code, without identifying the factory by name. In response to charges that periodic factory audits cannot insure that Code violations or labor abuses occur, the FLA developed a third party complaint mechanism, which is intended to complement the organization's routine monitoring process. Third party complaints enable any person or organization to "confidentially report to the FLA any situation of serious noncompliance with the FLA Workplace Code of Conduct or Principles of Monitoring with respect to the production facilities of FLA-affiliated companies." Available on the FLA website are eight reports documenting investigations of third party complaints involving FLA factories in El Salvador, Honduras, Guatemala, the Dominican Republic and Cambodia.

As a multi-stakeholder initiative, the FLA has both formal and informal relationship with NGOs, or what it calls "civil society organizations" (CSOs). Although neither of the two NGOs that we have studied—CCC and MSN—are members of the FLA, each has worked informally with the FLA on various projects, and in the case of MSN has participated in FLA meetings and public fora. The Fair Labor Association has also commissioned at least one report from MSN, which can be found on the latter organization's website.[2] This report, "Emergency Assistance, Redress and Prevention in the Hermosa Manufacturing Case," was prepared as part of a larger FLA effort to address issues stemming from the closure of a garment factory in El Salvador that left workers without the back wages and severance pay to which they were legally entitled.

The split within the AIP and the creation of the WRC as an alternative, and in some ways, rival initiative, has cast a long shadow over the FLA, as it has consistently struggled to establish legitimacy in the face of skeptics who allege that it cannot effectively protect workers when it is ultimately beholden to the companies whose membership dues provide most of the organization's funding. As noted above, the FLA has responded to these criticisms by making the results of factory audits publicly available and increasing its collaboration with civil society organizations. The basic goal of these reforms has been to increase the accountability of the FLA and to increase the transparency of its independent monitoring and verification model. However, another and more daunting challenge that the FLA has faced is the growing skepticism about the validity of the Code of Conduct model itself as a mechanism for improving working conditions and protecting labor rights in global supply chains. Although some NGOs and many trade unions voiced concerns about the efficacy of Code monitoring regimes early on, many other voices have been added to this chorus of doubt, including some of the most influential and prominent voices within the CSR community (Ballinger 2008).

A near-decade of disappointing results with the Code model has generated a search for new solutions at the FLA, but forging new approaches has also required a departure from the organization's original mission as the successor to the AIP, as an FLA official explained: "The problem with the FLA, with this field, is that you can't stand still. The FLA was created as a monitoring organization. The Charter says the FLA is supposed to do independent monitoring, but we know that…monitoring is a necessary but not a sufficient condition [of compliance]. To stay with the original mission [of the FLA] would be dishonest…If you know you have to go beyond monitoring, you have to do due diligence of the audits and you have to be innovating. The organization is in a constant state of flux. It's exciting because you get to try a lot of things, but a lot of things don't work, or have unintended consequences."

The FLA is has developed a new program called FLA 3,0, which is attempting to go beyond a static monitoring regime to the kind of "root cause analysis" that is necessary to make labor compliance more sustainable. However, some critics argue that any initiative which does not include a discussion of the purchasing practices of buyers, and the

implications of these practices for suppliers, fails to provide precisely the kind of root cause analysis that many believe is a prerequisite of any credible, long-term solution to the problem of sweatshop conditions. The emphasis on buyer practices has emerged as a major fault line within the U.S. anti-sweatshop movement, with the major MSIs appearing reluctant to address the issue and labor rights groups insisting that these issues must be put on the table. The view of the latter contingent is that the "capacity-building" argument favored by the MSIs—viz. that compliance issues emerge primarily because manufacturers lack the know-how necessary to insure better performance in the area of labor rights—puts all the onus at the factory level and fails to acknowledge the role of the brands in generating an industry environment in which non-compliance among suppliers is an endemic problem. The question they pose of programs like the FLA is the following: How can sustainable compliance be built into the everyday operations of a company if the competitive dynamics of the industry and the business models of the leading companies militate against compliance?

The Workers Rights Consortium has placed the pricing issue at the center of its proposal to create a Designated Suppliers Program (DSP). Although the program has been criticized on anti-trust grounds, what the DSP tries to do is resurrect, at an international level, a variation on the old theme of jobber agreements, which were developed by the International Ladies Garment Workers Union and which effectively curbed sweatshop conditions in New York's garment district for several decades (Schlesinger 1951; Quan 2002). Under the DSP, collegiate licensees would agree to place orders only with a list of select factories that would promise to insure certain higher labor standards, including a living wage. The core of the DSP model is the principle that licensees would promise to provide designated suppliers greater security in the form of more stable orders and a price premium, and this, in turn, will enable the supplier to meet the higher standard set for the DSP companies (Dirnbach 2008). A similar initiative called SweatFree Communities is being developed as a separate program to target the public procurement market, e.g. the uniforms purchased by city and state governments for public employees.

The contrast between FLA 3.0 and the WRC's Designated Supplier Program aptly captures the different approaches that these two organizations have represented since their creation. With strategic and financial assistance from UNITE, the Workers Rights Consortium was established in 2001 as an alternative model to what its supporters consider the "top down" model of the FLA. Rather than focus on the elaboration and implementation of a code of conduct, the WRC aimed to create a "third party complaint" mechanism that would enable it to support bottom up struggles of workers in garment factories worldwide by investigating allegations of labor rights violations. From the beginning, the WRC rejected the monitoring and compliance verification model favored by the MSIs, arguing that the nature of the industry made it difficult to certify that any factory was "sweat-free." The WRC was created with UNITE's support and maintains close links to the union, and to the other union-supported anti-sweatshop initiative that was begun around the same time, the campus-based student movement called United Students Against Sweatshops (USAS). Although each organization is independent, UNITE, WRC, and USAS form a triumvirate of organizations that have been highly critical of the MSIs and has opted more for the "oppose" than the "propose" strategies characterizing MSN in Canada and CCC in Europe.

Since the creation of the WRC in the aftermath of organized labor's departure from the AIP, the relationship between it and the FLA has been uneasy. While these organizations coordinate frequently with regard to specific campaigns, such as the Hermosa case mentioned above, and the WRC has a policy of not publicly criticizing the FLA, they have very different philosophies and operational approaches, and find themselves on different sides of several key issues. One observer summed up the relationship between the two organizations by saying that they work "in collaboration, but not in partnership." However, the FLA and WRC did both participate in a recent program called the Joint Initiative on Corporate Accountability and Worker Rights, which involved, in addition to the FLA and WRC, the CCC and three other MSIs: the UK-based Ethical Trading Initiative, Social Accountability International, and the Dutch Fair Wear Foundation. Accounts of Jo-In from individuals and organizations close to the project suggest that little in the way of concrete progress was achieved via the initiative's trial program in Turkey (see also the materials available at

http://www.jo-in.org/english/index.asp). Although the participating organizations did create a draft common code of conduct which includes stronger language on the living wage issue than that found in the current MSI codes, none of the participating MSIs agreed to replace their existing codes with the new Jo-In draft.

While there are good arguments to be made for more collaborative efforts along the lines of Jo-In, there is also evidence of a growing fatigue among groups who feel that, to date, the various forums and initiatives that have been organized have failed to produce significant, concrete gains for workers, with some of our informants going so far as to describe them as "a waste of resources, a waste of time." Another remarked that "[t]here is a lot of money being spent but very little to show for it." This frustration underscores a conflict between two contradictory impulses among those NGOs that have opted for the "propose and oppose" strategy. Groups such as MSN and CCC have chosen the "engagement route" because they hoped that they could leverage more collaborative relationships with MSIs and industry players into influence over the evolving debate about labor compliance and workers rights in global industries. In part, this decision reflects earlier frustrations with the code and campaign model that oriented many of the NGOs during the early phase of the anti-sweatshop movement. We conclude by offering some very preliminary reflections on the strategies being adopted by the NGOs and highlight what we see as an interesting difference between the European/Canadian groups, on the one hand, and the U.S. movement on the other.

3. Concluding thoughts

The origins of the contemporary anti-sweatshop movement lie in numerous high-profile scandals involving labor abuses and appalling working conditions in garment factories located in both the global North and South. Over the past two decades, organizations involved in promoting a more ethical global garment trade have struggled to keep this issue on the radar of consumers, and also to diversify their strategies beyond the kinds of targeted brand and retailer campaigns that have figured so prominently in the efforts of anti-sweatshop activists. One of the lessons that MSN and CCC have learned is that consumer campaigns are extremely time- and energy-intensive, and even when they are successful, the gains are difficult to secure for the long or even medium-term. Several of these groups' major accomplishments have turned out to be something of pyrrhic victories, as local factories close, brands shift orders to new locations, and/or multinational suppliers decide to close a factory in, say, the Dominican Republic in favor of expanding production in China or opening a new plant in Vietnam. It is therefore easy to see why NGOs have sought a more sustainable mode of activism and influence, and for the most part, the alternative they have seized upon is participation in multi-stakeholder initiatives that involve private sector actors. Participating in the MSIs provide groups such as MSN with an opportunity to influence the internal dialogue among companies. As a result of their contributions to MSI forums, the leaders of these organizations have become familiar, if not necessarily beloved, faces to some industry actors, and although it is difficult to gauge their success in advancing workers rights via the MSI route, they are regarded, at least among some brands, as credible and constructive participants in a dialogue from which, in large measure, organized labor has been relatively absent and/or excluded.

Groups such as MSN and CCC do not see participation in these forums as a substitution for their campaigns or urgent appeals, which they acknowledge will continue to be necessary on occasion. However, there is reason to believe that when NGOs participate in MSIs, there is an expectation that they will first attempt to address reports of violations within the structure of the MSI—that is, that efforts will be made to address problems internally, with public campaigns considered something of a last resort. In this sense, involvement in the MSIs does serve as something of a substitute for the campaign model of activism, even though it was the public campaigns targeting the brands that led to the creation of the MSIs, and more generally, enabled the consolidation of an anti-sweatshop movement.

Those groups that have stayed outside of the MSI structures are skeptical that the exchange between NGOs and industry actors is an even one. While the participation of these

groups provides legitimacy to the MSIs, it is unclear how much influence civil society actors are able to exert within them. To date, most MSIs have been reluctant to address the issues that the NGOs believe are critical in order to move the anti-sweatshop movement forward—chiefly, the living wage issue and the purchasing/pricing practices of the brands, and to a lesser extent, freedom of association. Bringing these issues on to the agenda of the MSIs is the most significant challenge confronting the organizations opting for the “propose and oppose” model.

The final point we want to make touches on the different trajectories of regions within the global anti-sweatshop movement. Although the larger comparative analysis from which this paper is drawn includes organizations in both North America and Europe, the greatest degree of variation among our cases does not fall along this “continental” axis. In both Europe and Canada, the anti-sweatshop movement has taken the form of structured networks connecting various kinds of actors, including religious groups, feminist organizations, student activists, and NGOs focusing on labor rights or development issues in the global South. In both cases, MSN in Canada and CCC in Europe play an important role in coordinating the anti-sweatshop network for particular campaigns and in educating the groups that comprise this coalition on specific issues. Although these are independent organizations whose governance structure excludes trade unions and companies, both groups also interact with unions and firms, sometimes via multi-stakeholder initiatives.

In contrast, the U.S. field is characterized by a split between those groups that see collaboration with the companies and MSIs as a viable strategy, and those that do not; there are few labor rights NGOs in the former category. In this context, it is instructive to note that the FLA, the leading American MSI, works more closely with MSN and CCC—a Canadian- and European-based NGO, respectively—than with most of their U.S. counterparts. In large measure, the more confrontational tone of the U.S. movement reflects the conflict that resulted in the departure of organized labor from the Apparel Industry Partnership a decade ago. However, in a deeper sense, it also reflects the radically different history of labor-capital relations in the United States versus Europe and Canada, where union density is higher and where there is a history of institutionalized cooperation between companies and labor that may make the MSI model seem more credible than it appears to many in the United States, and particularly to U.S. unions. The dynamics of the U.S. movement may prove more effective in that country’s political economic context than the more cooperative European/Canadian model of networked coalitions would be: Insofar as groups such as USAS and the WRC have pushed MSIs like the FLA to be more responsive, they have had a different, but not necessarily less effective form of influence than the one that CCC and MSN seek through dialogue. While much is uncertain about the future of the anti-sweatshop movement at the close of its first decade, we are confident that there will be little convergence between these two models anytime soon.

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[1] CCC (2005 : 86-87) and interview with MSN co-founder, June 2007.
[2] The full report, as well as responses from the FLA and from affected workers, is available at http://en.maquilasolidarity.org/en/currentcampaigns/Hermosa/MSNReport.

International Union Strategies in Construction. Voluntary Agreements vs. Regulation in the Global Value Chain

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Introduction

The logic of multi-stakeholder codes and International Framework Agreements (IFAs) often relies on the power of lead MNCs in order to implement and secure fundamental labour rights in global value chains (GVCs). This paper draws on evidence from the construction industry and argues that two broad areas need to be investigated in more detail in order to assess the dynamics of labour rights implementation along GVCs: on the one hand, this concerns the different forms of inter-firm networks, their governance structures and power relations; on the other hand, more emphasis needs to be given to the dynamics of the labour control regimes where GVCs 'touch down' in particular places. These arguments are explored with reference to the IFA concluded between Hochtief and the Building Workers' International (BWI), the European services and freedom of movement Directives, and the Performance Standard 2 of the International Finance Corporation (IFC) and national-level subcontractor liability clauses.

Value Chains and Local Labour Control Regimes in Construction

There has been an emerging debate about the nature of networks in GVCs (Gibbon *et al* 2008; Bair 2009) which tries to account for the nature of restructuring of production and trade in the global economy. One strand of GVC analysis, emphasizing 'governance as drivenness', underscores the role of power relationships in inter-firm networks 'that determine how financial, material, and human resources are allocated and flow within a chain.' (Gereffi 1994, 97) While Riisgaard and Hammer (forthcoming) have focused on the implications of different forms of chain governance – producer- vs. buyer-driven value chains – for labour strategies, the role of social institutions and practices at the local level need to be analysed in more depth, in order to better understand both the functioning of inter-firm networks as well as embedded labour.

Recognising the role of MNCs in the changing global political economy, unions have tried to use lead firms as conduits for implementing fundamental labour rights in their subcontracting and supplier chains. This spans a range from private to public regulation with the common feature that regulation proceeds along inter-firm networks: multi-stakeholder codes, international framework agreements between Global Unions and MNCs, or fundamental labour rights endorsed by international organisations such as the International Finance Corporation (IFC).

Bair (2008) has discussed a number of underlying network concepts within GVC analysis, and, in particular, pointed to the problematic of micro-sociologically inspired network concepts which are deemed ill suited to global inter-firm chains. What remains open in such discussions, however, are the ways in which firms' ties into local production strategies and modes of social regulation are linked into their inter-firm networks and how tensions between those two (e.g. with regard to the labour process) are resolved. Below we provide evidence how the power distribution in different forms of subcontracting chains impacts on the product as well as labour markets, constellations which need to be seen as contested outcomes of socio-political struggles.

In this paper we draw on an alternative concept from labour geography in order to capture the embeddedness of labour within GVCs. Jonas (1996) has introduced local labour control regimes (LLCRs) as an element of local modes of social regulation as well as an extension of Burawoy's approach to the labour process and factory regimes (1985; see also Castree *et al* 2004). The concept emphasizes a tension between place and space that underscores accumulation and labour control: while capital exploits variations across space in product, consumer and labour markets, there is a simultaneous need to stabilize the conditions of accumulation and social regulation in particular places in order to realize profits. An LLCR constitutes a crucial element in this respect, defined as

> an historically contingent and territorially embedded set of mechanisms which co-ordinate the time-space reciprocities between production, work, consumption and labour reproduction within a local labour market. (Jonas 1996, 325)

Embeddedness, in this perspective, becomes the fragile and contested result of socio-political dynamics and allows us to differentiate between the interests of various factions of capital and labour in governing global value chains as well as local labour markets.

Compared to manufacturing, textile or agricultural value chains, which have been covered well in the literature, it is labour and materials that are relatively mobile within construction, while the site of production is, by definition, fixed. With these constraints, global competitiveness has been particularly reliant on subcontracting, with resultant pressures on employment conditions and on trade union organising. At the same time though, whilst the lead contractor drives project acquisition, management, drivenness in construction GVCs normally does not extend to routine unskilled construction activities where value is derived from the way labour (supply) is controlled locally. In this respect it is crucial to account for the particular LLCRs in the construction industry which help to provide a tractable labour force (Jonas 1996, 331), for example through regulations on labour mobility. Flows of migrant labour often overlap with the rise of informal labour, thereby creating tiers of labour control which correspond to tiers of subcontracting. Furthermore, the structure of subcontracting, in its vertical as well as horizontal dimension, has clear implications for the shape and strategy of construction firms as well as employment outcomes. Harvey (2003, 195-96), for example, discusses different forms such as short vertical chains in which a contract management firm employs through a labour agency, resulting in the 'hollowed-out firm' (1); extended vertical chains of complementary capabilities with repeat contracting and relatively stable networks (flexibilisation without fragmentation) (2); and extended vertical chains in which similar work is put out for tender, resulting in competitive and non-cooperative relations at each tier (flexibilisation with fragmentation) (3). Thus the specific constitution of LLCRs clearly impacts on labour's capacity to organise as well as the interests of different capital factions to subject themselves to the exhortations and demands of lead companies.

Our argument in this paper is twofold: on the one hand, we illustrate that regulation through sub-contractor chains remains problematic and incomplete as it assumes uniform local labour markets and underestimates the tensions such regulation would create. As the LLCR approach argues, labour markets are highly segmented along different constellations of production, work, consumption, and reproduction. This would imply, on the other hand, that an analysis of the embeddedness of value chains needs to investigate the particular insertion of locally embedded forms of re/production into wider inter-firm networks. The following cases illustrate in different ways how labour markets in the construction industry are circumscribed by standards and regulations that shape inter-firm networks at the same time as the actual labour market dynamics cannot be abstracted from the respective LLCR.

The Role of Lead Firms: The International Framework Agreement and the IFC Performance Standard 2

Over the last years, instruments to implement fundamental labour rights have been designed which accord lead firms the crucial role as conduit to implement these core labour standards

(CLS) in their subcontractor and supplier chains. Prominent in this respect are International Framework Agreements (IFAs) between MNCs and a Global Union Federation on the ILO's core conventions regarding the freedom to organise and bargain collectively, non-discrimination as well as the ban of child or forced labour (see Hammer 2005). Equally, in 2003 the World Bank accepted, under pressure from the global unions and its own ombudsman (Sims, 2008:9), that union organisation did not necessarily have a detrimental impact on economic growth (Toke, 2002). Subsequently, its private-sector lending arm, the International Finance Corporation (IFC) announced that CLSs would be included as a new performance standard (PS), making respect for labour rights a condition of all loans.

Although different in the sense that IFAs constitute voluntary agreements as opposed to the public regulatory nature of the IFC's performance standard, the problems of implementation, monitoring and enforcement along the subcontracting chain are similar as they (explicitly or informally) rely on the lead firm and the power relations within that chain. Davies *et al* (2008), for example, highlight how Leighton, a construction MNC with major projects in Asia and the Gulf states which is majority owned by the Germany-based Hochtief, is excluded from the latter's guidelines on corporate social responsibility. Here as well as in Hochtief's other regional operations such as Brazil, ownership and control even within the MNC can pose considerable obstacles for the implementation and enforcement of the IFA. Similarly, the IFC's new PS2, introduced in 2006, commits clients to complying with international (and national) law. The standard applies to sub-contractors, contract labour and non-employee workers, although these categories are narrowly defined; the standard applies in full only to legal employees (see Martin, 2008). The client's responsibility for workers in the supply chain, for example, is restricted to cases where "low labor cost is a factor" in competitiveness. In such cases, clients will "inquire about and address" child labour and forced labour (IFC 2006, 2; 6). Thus, while monitoring mechanisms are universal, their actual use and effectiveness is contingent on power relations within the MNC as well as between the firms in the subcontracting chain.

The challenges in implementing CLSs through lead firms are underscored when we look at the employment and industrial relations dynamics in particular LLCRs. MNCs effectively operate a tiered approach to fundamental labour rights which distinguishes the direct workforce, those working in regional subsidiaries and joint ventures, employment in subcontractors, as well as informal labour which often constitutes the bulk of the workforce (Davies *et al* 2008, 14-15). A significant concentration of construction activities could be observed in this last tier, allowing major construction services providers to exploit key aspects of LLCRs such as informal labour, migrant labour, labour intermediaries, restrictions on organising, as well as lacking enforcement of national (health and safety) legislation (Interview, ILO expert). In Malaysia, for example, 74% of the construction workforce does not have formal contracts and the vast majority of these (80%) are foreign migrant workers. Although there is no longer a legal barrier to organising these workers, some "indirect restriction" is imposed (BWI, n.d.), that is to say that employer clauses in contracts may effectively prohibit membership (Piper, 2007). In Brazil, a significant part of the construction workforce is made up by internal migrants: an estimated 46% of construction workers were migrants in 1996 (ILO, 2001: 11), while the proportion of undocumented and self-employed workers increased from 56.7% to 74.6% between 1981 and 1999 (ILO, 2001: 18).

Implementation along subcontracting chains as well as union campaigns on the basis of IFAs or the PS2 is further complicated by structural tensions between the national industrial relations and union traditions on the one hand, and the centralised ad-hoc approach to administering those tools on the other. In Brazil, union organisation at city, rather than workplace or national level, has made the development of a company-specific strategy difficult. In Malaysia, union fragmentation by industry, occupation and region, has focused on the core 'organisable' workforce, particularly in the context of Leighton's anti-unionism.

The construction industry highlights the main conundrum of implementing CLSs along lead firms' contracting chains: as monitoring and reporting is contingent on existing workplace organisation, subcontracting and labour mobility pose considerable obstacles for labour to

establish such workplace presence. Thus, loan requirements, like IFAs, are at their most effective when used as a part of wider campaigning (Bakvis and McCoy, 2008.) They cannot create organisation and are not a substitute for it. On the contrary, the implementation of the right to organise relies on some level of organisation being already in place.

European Directives on Posted Workers and Services

The use of sub-contracting is highly developed in the construction sector, perhaps particularly so within the UK construction sector. At the end of 2008 and beginning of 2009, the UK Arbitration and Conciliation Service (ACAS, 2009: 9) commented on a dispute in the UK construction industry (the Lindsey dispute in January/February 2009; see also Broughton 2009):

> The complexity produced by the interrelation of EU law, national agreements and supplementary local collective agreements is a real source of confusion and potential dispute.

The root of the Lindsey dispute lies in the interaction between the contracting relationship and the impact of European legislation and subsequent judgements by the European Court. The Lindsey Refinery is owned and operated by Total, who decided to install a new desulphurisation facility on the site. The American company, Jacobs Engineering (who have a UK base and a UK based workforce of around 6,000) were contracted to carry out the construction. They then sub-contracted the mechanical and piping work to Shaw Group UK. To meet the deadline, Shaw and Jacobs agreed to remove some work from Shaw and for Jacobs to re-tender this work. In December 2008, IREM, an Italian company, was awarded the contract to carry out the work that had been taken from Shaw Group.

According to ACAS (2009), there were seven bids for the work that IREM eventually won (all of the companies bidding were European, with five based in the UK). IREM indicated that it would use its own workers, not UK nationals, except where there were gaps in their own workforce and only 'on less skilled work or where the work entailed servicing mainstream operations' (ACAS, 3).

Under the tender, IREM was expected to employ their workers under the terms and conditions of the National Agreement for the Engineering Construction Industry (NAECI) – the 'blue book'. Pay and conditions for workers at all major UK engineering construction sites are set by the blue book and all member firms of the Engineering Construction Industry Association (and of other signatories to the agreement) are obliged to abide by its terms. Although it is not mandatory, Total made the decision to place this project under the NAECI agreement terms.

Media coverage of the dispute focussed around UK Prime Minister Gordon Brown's earlier ill-judged call for 'British jobs for British workers' (Daily Telegraph, 2007). However, it quickly became clear that the essence of the dispute was the alleged use of the Posted Workers' Directive to employ foreign-based workers at below the rate paid to UK-based workers, thereby allowing IREM to underbid UK-based companies.

Articles 49 and 50 of the EC Treaty guarantees the 'freedom' to provide services in any part of the European Union and any nationality or residence requirements which act as a restriction on this freedom are prohibited. This could involve a company based in one Member State (the home state) providing services in another (the host state) and using its workforce from the home state to carry out the contract. These would be 'posted workers' and under the Posted Workers Directive (Directive 96/71/EC), in general terms they are guaranteed the standards laid down by law, regulation or administrative provision in the host state. They are entitled to these standards even if standards in their home state are inferior to that of the host state. The Directive was agreed in 1996 but did not come into force until December 1999, and did not begin to attract real attention until the downturn in the economy replaced a labour shortage with a labour surplus. However, the unions warned early on of the need of the UK government to make certain that the implementation of the Directive ensured the objective of preventing 'social dumping' (National Engineering Construction Committee, 2005).

A series of important legal decisions (the Laval and Ruffert cases) by the European Court of Justice (ECJ) have narrowed the meaning of the Directive and caused controversy with unions across Europe. The ECJ ruled that employers cannot be obliged to comply with measures for posted workers that go beyond the legal minimum (there is a public policy exception to this, but must be interpreted strictly by the national governments).

Collective agreements can form part of the legal minima for standards under certain conditions:

- They must be 'declared universally applicable'. In other words, they 'must be observed by all undertakings in the geographical area and in the profession or industry concerned' (Laval case).
- If there is no universally applicable system, the host state may decide to rely on:
    - collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or
    - collective agreements which have been concluded by the most representative employers and labour organisations at national level and which are applied throughout national territory. (ACAS, 2009: 8)

As there is neither a mechanism in the UK for extending the terms of collective agreements to be universally applicable, nor has the UK government decided to rely on the NAECI agreement as a source, then it does not comply with these conditions. In the Ruffert case, the ECJ specifically ruled that employers cannot be required to apply standards in collective agreements unless the conditions outlined above are present. So in the Lindsey case, IREM is not obliged to comply with anything other than the minimum legal framework – the minimum wage for example (although they claimed to have agreed to abide by the NAECI agreement as part of the terms of the contract).

The unions argue that the legal judgements have reversed the intention of the original directive and that minimum standards – at least in a UK context – effectively become maximum standards, unions are more vulnerable to court action and that business' right to free movement has taken precedence over workers' collective rights. The Laval judgement:

> raises issues relating to trade unions' ability to ensure equal treatment and protection of workers of other nationalities in the host country, which is increasingly a core objective of trade unions as worker mobility increases. (GMB, 2008: 3)

It is important to recognize here how the unfavourable situation for construction trade unions results from the combination of a particular LLCR that has evolved over decades on the one hand, the impact of European legislation on the other. Harvey (2003, 197; see also Davies 2008) argues that the dominant forms of subcontracting are those where hollowed-out firms contract agency labour and those in extended vertical subcontracting chains with strong horizontal competition. The labour market is characterized by a very high proportion of (false) self-employment (around 50%), resulting from specific taxation and social insurance regimes. These features have obvious implications for collective bargaining, wages, training and skills, as well as health and safety.

The companies involved in the Lindsey dispute were seen as using the law to avoid compliance with agreements, and importing 'posted workers' to undercut UK-based companies by paying below the negotiated rate for the jobs (although the company denied this). Potential problems had earlier been identified by the unions and communicated to the UK Government. They had an assurance in an agreement with the ruling Labour party (the 'Warwick Agreement') that the Posted Workers Directive would not lead to under cutting and the then Chancellor, Gordon Brown told the 2005 TUC conference that the government would 'put in place this year and next the legislation honouring in full the Warwick agreement' (National Engineering Construction Committee, 2005: 4).

Nevertheless, no legislation was forthcoming and the dispute at Lindsey erupted. Without the collective bargaining or political structure of other countries such as Finland and Germany, UK

workers found it difficult to 'relocalise labour relations' (Lillie and Greer, 2007). In the light of this, TUC general secretary Brendan Barber's frustration with the conciliation service ACAS's report is evident:

> It is hardly surprising that the ACAS enquiry has found that no laws have been broken, as the major union complaint is that the law does not properly protect UK based workers - wherever they were born (TUC, 2009).

However, because the engineering construction part of the UK construction sector is relatively well organized, the unions retained some bargaining leverage even in this situation. The strike at Lindsey spread to other sites with sporadic outbreaks of similar action in unconnected construction workplaces and looked to be growing. These strikes were unofficial (and therefore illegal under the UK's draconian labour legislation), so the unions walked a tight rope of support and encouragement of the action while attempting to avoid any possible legal action from the employers. Eventually a compromise deal was done at Lindsey which guaranteed some jobs for UK-based workers as well as the posted workers from Italy.

Conclusion

The construction industry constitutes an extreme case where numerous tiers of subcontractors are paralleled by as many formal and informal labour markets. The particular form of these LLCRs determines the way mobile as well as fixed segments of capital (and labour) can take advantage of the frontier of control, skill levels, as well as other characteristics of the local political economy.

> Investigating the role of community-based resistance … involves, amongst other things, recognizing that spatial restructuring strategies are contingent upon the degree to which the local LCR is no longer able to meet capital's labour needs. In other words, the forms of resistance that develop within local labour markets are structured by historical struggles around local labour control practices in which relocation represents one of several possible outcomes. (Jonas 1996, 332)

International trade union strategies in the construction sector are shaped by the extremely segmented nature of GVCs and the limited direct competition workers are exposed to. Threats to conditions of work and employment stem from informal and migrant employment and the way complex subcontracting arrangements can exploit such divisions. While trade unions have focused their efforts on strengthening regulation along subcontractor chains through the state as well as lead firms it has been shown that the actual outcome of such regulation and campaigns are contingent on pre-existing organisation at the local level in order to link campaigns at the global and local level and/or to defend compromises on the terms of work and employment within the existing LLCR.

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