

CORPORATE SOCIAL RESPONSIBILITY, GLOBALIZATION,  
THE MULTINATIONAL CORPORATION, AND LABOR: AN  
UNLIKELY ALLIANCE

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I. INTRODUCTION

Corporate social responsibility is often viewed as an industry or corporation-based concept with some base in law, but it is largely concerned with preserving the public face of the corporation.<sup>1</sup> However, in recent years, the focus of corporate social responsibility has shifted to new areas ranging from environmental protection to sustainable development and labor concerns.<sup>2</sup> At the same time, the world has witnessed the rise of globalization and the multinational corporation,<sup>3</sup> an entity that has been represented as everything from a source of economic growth in underdeveloped areas<sup>4</sup> to the perpetual nemesis in print and movie stories.<sup>5</sup>

Those concerned by the typical mantra of globalization and the rise of the multinational corporation worry that taken together they represent the potential downfall of labor rights, especially given the constant threat of labor outsourcing to countries that are more

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<sup>1</sup> Beth Kytte & John Gerard Ruggie, *Corporate Social Responsibility as Risk Management: A Model for Multinationals* 1, 4 (Corporate Soc. Responsibility Initiative, Working Paper No. 10, 2005), available at [http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper\\_10\\_kytte\\_ruggie.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_10_kytte_ruggie.pdf).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> For the purposes of this article, the term “multinational corporation” will be defined broadly to include large, medium, and small scale corporate entities that have business dealings in and impacts on foreign states and operate transnationally.

<sup>4</sup> Ian Lifshitz, *Balancing Sustainability with the Economic Development in Developing Countries—The Case Study of Indonesia*, ENVIRONMENTAL LEADER (May 28, 2010), <http://www.environmentalleader.com/2010/05/28/balancing-sustainability-with-economic-development-in-a-developing-countries—the-case-study-of-indonesia/>.

<sup>5</sup> See *10 Evil Movie Corporations*, IGN.COM (Aug. 4, 2009), <http://movies.ign.com/articles/101/1010757p1.html> (listing several iconic corporate antagonists in various movies).

amenable to business interests and, by insinuation, less amenable to fair labor practices.<sup>6</sup> In this view, corporate social responsibility is something that the multinational corporation must embrace in order to avoid public wrath and questions as to its business practices but is not something that provides a meaningful vehicle for development in any affected policy area. This is not, however, the only way to view the relationship corporate social responsibility and globalization as embodied by the multinational corporation.

With that in mind, this article discusses the intersection between globalization, the more legally robust corporate social responsibility regimes that are being developed in relation to multinational corporate actions and actors, and the future of labor regulation.<sup>7</sup> While it is easy to gloss over this intersection through pessimism based on prior corporate bad acts, there is a need to look beyond this understanding of the intersection. Accordingly, this article argues that through robust corporate social responsibility practices and international organization regulations, globalization and the rise of the multinational corporation can serve as a source of improved labor rights within both developed and developing countries.<sup>8</sup>

Part II of this article examines the link between globalization, the multinational corporation and labor issues, both in terms of exacerbating the problem of exploitative labor practices and in terms of bringing domestic and international attention to these practices. Part III examines corporate social responsibility both as a soft law construct and within the realm of international legal agreements and regimes. This Part demonstrates that corporate social responsibility is a flexible concept in law and that this

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<sup>6</sup> See generally Holger Görg, *Globalization, Offshoring and Jobs*, in MAKING GLOBALIZATION SOCIALLY SUSTAINABLE 21–41 (Marc Bacchetta & Marion Jansen eds., 2011), available at [http://www.wto.org/english/res\\_e/booksp\\_e/glob\\_soc\\_sus\\_e\\_chap1\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/glob_soc_sus_e_chap1_e.pdf) (discussing the real and potential impacts of globalization and outsourcing on the modern economy).

<sup>7</sup> While the focus of this article is on the relationship between corporate social responsibility, globalization, and labor rights, it should be remembered that corporate social responsibility and globalization also link to other crucial policy areas, such as environmental concerns, health, and sustainable development.

<sup>8</sup> It should be noted that this article will not specifically address domestic or international legal regimes which would punish multinational corporations and corporate actors for engaging in acts of public corruption (i.e. bribery of foreign public officials) that impact labor rights. These regimes are indeed important and carry with them the need for a separate analysis and discussion in terms of scope and effectiveness. This discussion is not made here because it involves actions that are specifically established as illegal under domestic or international regimes and does not focus on the intersection between soft law, such as corporate social responsibility terms and labor law. Nothing in this article should be read to discount the importance of such anti-corruption regimes in promoting and maintaining legitimate labor law regimes once they are established.

flexibility can indeed create a positive link with the quickly evolving pace of globalization and the practices of multinational corporations.

Part IV brings the lessons of the previous Parts together to discuss the meaning of the relationship between corporate social responsibility, globalization, multinational corporations, and labor rights. Cynically, of course, the meaning of this relationship could be seen as quite thin, since corporations increasingly need to present a “clean” image to their consumers and labor rights represent an easy way to do this.<sup>9</sup> This Part argues that moving beyond this inherent cynicism reveals far more important lessons. Essentially, multinational corporations need to make a profit and also need to be responsible actors in the communities in which they operate, including the communities in which their subsidiaries and affiliates operate. This often requires that the corporation use labor standards that are more generous or protective than those required by the domestic laws of the host state in which they operate. Although this requirement does not change the content of the domestic laws, it does provide for labor interests, ranging from unions and individual workers, with additional benefits and also with a more robust ability to petition for changes to the domestic laws based on the feasibility of implementing these higher standards. This in turn fulfills at least part of the applicable labor interests. Working together in this way also fulfills the interests of labor in ensuring that there are jobs for those within their constituencies.<sup>10</sup> Thus, it is argued that these areas form discrete spaces within which an alliance can be made in order to further the purpose of corporate social responsibility, the goals of globalization and the multinational corporation, and the needs of labor.

Finally, Part V concludes with a summary of the information and arguments that were presented in the article, and again stresses the positive ways in which multinational corporations, corporate social responsibility, and labor can interact to promote an agenda that is beneficial to all involved.

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<sup>9</sup> Matthew Haigh & Marc T. Jones, *A Critical Review of Relations Between Corporate Responsibility Research and Practice*, 12 ELECTRONIC J. BUS. ETHICS & ORG. STUDIES 16, 17, 19 (2007), [http://ejbo.jyu.fi/pdf/ejbo\\_vol12\\_no1\\_pages\\_16-28.pdf](http://ejbo.jyu.fi/pdf/ejbo_vol12_no1_pages_16-28.pdf).

<sup>10</sup> See Int'l Labour Org. [ILO], World Comm'n on the Soc. Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All*, at 6–7 (Feb. 2004) [hereinafter *A Fair Globalization: Creating Opportunities for All*], available at <http://www.ilo.org/public/english/wcsdg/docs/report.pdf>.

## II. GLOBALIZATION AND LABOR ISSUES

Globalization is a wide-ranging phenomenon that is at once a commonly understood concept and yet elusive in definition.<sup>11</sup> Globalization is a driver of product availability and consumer choice the world over.<sup>12</sup> Through the process of opening markets and the lowering of barriers on access to products and services from abroad, the concept of globalization has enabled corporate entities, ranging from large multinational corporations to small and medium enterprises,<sup>13</sup> to gain new market share and access to a new workforce.<sup>14</sup>

Globalization is also recognized as bringing benefits and burdens.<sup>15</sup> This is especially true in the context of corporate activities and labor issues, as the expansion of global markets and corporate activities creates the opportunity for jobs in developing markets and also creates the opportunity for exploitation of workers in developing states with weaker legal regimes to protect them.<sup>16</sup> Indeed, it is possible to view globalization as a negative means for corporations to maximize profit while minimizing costs incurred in foreign worker wages, benefits, and working conditions.

The problem of exploitative labor practices is particularly prominent in areas that are currently experiencing conflict, are in the immediate post-conflict stage, or are at very high risk of

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<sup>11</sup> Jan Aart Scholte, *What Is Globalization? The Definitional Issue—Again* 5–6 (Univ. of Warwick, Center for the Study of Globalisation and Regionalisation, Working Paper No. 109/02, 2002), available at [http://wrap.warwick.ac.uk/2010/1/WRAP\\_Scholte\\_wp10902.pdf](http://wrap.warwick.ac.uk/2010/1/WRAP_Scholte_wp10902.pdf).

<sup>12</sup> ORG. FOR ECON. CO-OPERATION & DEV., OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: RECOMMENDATIONS FOR RESPONSIBLE BUSINESS CONDUCT IN A GLOBAL CONTEXT 50 (2011) [hereinafter OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES], <http://www.oecd.org/dataoecd/43/29/48004323.pdf>.

<sup>13</sup> See generally *id.* (noting that multinational corporations vary in size and discussing recommendations for all multinational enterprises). Additionally, it should be noted that while the majority of multinational corporations are based in developed states, there is a steady increase in multinational corporations that are based in certain developing states. See U.N. Conference on Trade and Development, 2007, *The Universe of the Largest Transnational Corporations*, 7, U.N. Doc. UNCTAD/ITE/IIA/2007/2 (2007).

<sup>14</sup> It should be noted that while the types of labor practices discussed in this article are predominantly those that impact low-wage, blue-collar workers, studies have shown that globalization also results in the development of higher paying, white-collar jobs in developing states. See generally Theodore H. Moran, *A Perspective from the MNE Declaration to the Present: Mistakes, Surprises, and Newly Important Policy Implications* 1 (Int'l Labour Org., Working Paper No. 11, 2008), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_124920.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_124920.pdf) (discussing the flow of labor into medium skilled industries in the developing world).

<sup>15</sup> *A Fair Globalization: Creating Opportunities for All*, *supra* note 10, at 2–3.

<sup>16</sup> *Id.* at 7.

exploding into conflict.<sup>17</sup> In these areas, exploitation can occur as part of the conflict funding process, for example through the “conflict diamonds” or “blood diamonds” extraction situation,<sup>18</sup> the post-conflict need for employment, which is often marked by desperate poverty on the part of the conflict survivors,<sup>19</sup> or the overall breakdown of recognized legal authority.<sup>20</sup> In the latter situation, the vacuum of legal authority can result in exploitative labor practices by those factions who either could be part of a future conflict or who were part of the conflict.<sup>21</sup> For multinational corporations that obtain resources or products from these areas, there is a very real possibility that these resources/products were obtained through illegal or at least unsavory labor practices.<sup>22</sup> For multinational corporations that are directly on the ground in these areas, there is a pronounced tension between following the often lax, if even existent labor law regimes at the domestic level and following the accepted corporate standards for labor, as well as the standards that the consumer market and general public would expect.<sup>23</sup>

The problem of exploitative labor regimes is in no way limited to areas that are involved in conflict. In developing and even developed states, there are issues relating to the labor practices of multinational corporations and their affiliates.<sup>24</sup> These issues range from fair wages paid to employees,<sup>25</sup> equality in wages between genders and ages,<sup>26</sup> the use of child labor, particularly in dangerous

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<sup>17</sup> See OECD INVESTMENT COMMITTEE, ORG. FOR ECON. CO-OPERATION & DEV., OECD RISK AWARENESS TOOL FOR MULTINATIONAL ENTERPRISES IN WEAK GOVERNANCE ZONES 11 (2006) [hereinafter OECD RISK AWARENESS TOOL], <http://www.oecd.org/dataoecd/26/21/36885821.pdf>; ORG. FOR ECON. CO-OPERATION & DEV., OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS 8 (2011) [hereinafter OECD DUE DILIGENCE GUIDANCE], <http://www.oecd.org/dataoecd/62/30/46740847.pdf>.

<sup>18</sup> See Alexandra R. Harrington, *Faceting the Future: The Need for and Proposal of the Adoption of a Kimberley Process-Styled Legitimacy Certification System for the Global Gemstone Market*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 353 (2009), for a discussion of the problem of blood/conflict diamonds and their impact on the diamond industry.

<sup>19</sup> *Id.* at 356–57.

<sup>20</sup> See OECD RISK AWARENESS TOOL, *supra* note 17, at 11.

<sup>21</sup> See generally *supra* text accompanying note 17 (suggesting that institutional demise in conflict prone areas can generally lead to exploitative labor practices by multinational corporations).

<sup>22</sup> See OECD DUE DILIGENCE GUIDANCE, *supra* note 17, at 12.

<sup>23</sup> *Id.* at 15.

<sup>24</sup> Moran, *supra* note 14, at 15.

<sup>25</sup> See THE WORLD BANK GRP., COMPANY CODES OF CONDUCT AND INTERNATIONAL STANDARDS: AN ANALYTICAL COMPARISON 8 (2003) [hereinafter THE WORLD BANK GRP.], [http://siteresources.worldbank.org/INTPSD/Resources/CSR/Company\\_Codes\\_of\\_Conduct.pdf](http://siteresources.worldbank.org/INTPSD/Resources/CSR/Company_Codes_of_Conduct.pdf).

<sup>26</sup> *Id.* at 9.

circumstances,<sup>27</sup> freedom to enter into and leave employment,<sup>28</sup> employment discrimination,<sup>29</sup> set working hours and mandatory time off for workers,<sup>30</sup> health concerns of employees and the maintenance of healthy working facilities for employees,<sup>31</sup> the ability of employees to freely bring grievances without repercussions,<sup>32</sup> the ability of employees to form and participate in unions and without repercussions,<sup>33</sup> and the respect for and enforcement of the domestic labor laws of the host state.<sup>34</sup>

In developed states these issues are certainly present and offer their own set of challenges at the worker and corporate levels.<sup>35</sup> However, at the level of developing states these challenges become more complicated, particularly in areas with weak labor law regimes or weak enforcement of labor law regimes.<sup>36</sup> This is not to suggest that globalization has been or necessarily must be negative for labor law regimes in general.

There are examples of positive labor practices by multinational corporations—directly or through the subsidiaries and contractors used by multinational corporations in the host states—and in these examples there is evidence of societal and even legal advancement for the workers involved.<sup>37</sup> Indeed, it has been noted that multinational corporations can offer a moderating influence in conflict and post-conflict areas if they are careful in crafting their labor practices.<sup>38</sup> It has also been noted that multinational corporations can assist in the creation of greater protections for

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<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 11.

<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Id.* at 11.

<sup>34</sup> *Id.*

<sup>35</sup> Moran, *supra* note 14, at 15.

<sup>36</sup> See OECD RISK AWARENESS TOOL, *supra* note 17, at 3, 5; see also THE WORLD BANK GRP., *supra* note 25, at 1. By weak enforcement of labor law regimes, the author refers to both the inability of the state to enforce its labor law regimes due to budgetary or other restrictions on the hiring and deployment of those who would enforce these regimes and the unwillingness of the state to enforce its labor law regimes due to issues of corruption at all levels of government. See OECD RISK AWARENESS TOOL, *supra* note 17, at 9, 11.

<sup>37</sup> For example, through its Ethical Sourcing policy Starbucks implements policies that are aimed at increasing the standards of living for its sub-contractors and their employees, as well as ensuring that the planting and harvesting techniques used do not harm the environment. See *Ethical Sourcing*, STARBUCKS, <http://www.starbucks.com/responsibility/sourcing> (last visited Dec. 18, 2011); see also Moran, *supra* note 14, at 14 (discussing research which shows that multinational corporations in developing states often paid both blue-collar and white-collar workers more than other domestic corporations).

<sup>38</sup> See OECD RISK AWARENESS TOOL, *supra* note 17, at 15–18, 25, 27.

workers under domestic labor law regimes in conflict affected, post-conflict, and non-conflict affected areas, provided that the multinational corporation is willing to do so or to provide backing to trade unions that are involved in the process.<sup>39</sup> Rather than blaming or glorifying the multinational corporation, the lesson of this Part is that globalization, as seen through the multinational corporation, can have both negative and positive impacts on labor law regimes.

### III. CORPORATE SOCIAL RESPONSIBILITY: WHAT IS IT?

Corporate social responsibility is defined in myriad ways by international organizations, domestic organizations, the business sector, and union interests.<sup>40</sup> Put together, the common strands from these definitions establish that corporate social responsibility represents the ethical and responsible methods of corporate operations and business practices.<sup>41</sup> In this context, corporate entities agree to respect law—the laws of the home state and the laws of the foreign host states in which they operate—and accepted human rights norms and to apply these to their business decisions and dealings. A key to the common understanding of corporate social responsibility is that it does not stop where the law, particularly the law of the foreign host state, ends. Thus, simply because a foreign state in which a multinational corporation operates does not have a minimum wage law, or the minimum wage established is extremely low, a multinational corporation is not absolved from paying its workers a decent wage.

The pressures on multinational corporations, industries, and the international community to create and implement corporate social responsibility rules, especially in regard to labor practices, are

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<sup>39</sup> See *id.* at 21–24, 29, 31–33.

<sup>40</sup> See *A Fair Globalization: Creating Opportunities for All*, *supra* note 10, at 9, 122–24; Michael Fichter & Jörg Sydow, *Organization and Regulation of Employment Relations in Transnational Production and Supply Networks. Ensuring Core Labor Standards through International Framework Agreements?*, FREIE UNIVERSITÄT BERLIN, GER., 6–7 (2008), available at [http://www.global-labour-university.org/fileadmin/GLU\\_conference\\_Unicamp\\_2008/Submitted\\_papers/Organization\\_and\\_Regulation\\_.....by\\_Fichter\\_and\\_Sydow.pdf](http://www.global-labour-university.org/fileadmin/GLU_conference_Unicamp_2008/Submitted_papers/Organization_and_Regulation_.....by_Fichter_and_Sydow.pdf); THE WORLD BANK GRP., *supra* note 25, at 1–2.

<sup>41</sup> See, e.g., *A Fair Globalization: Creating Opportunities for All*, *supra* note 10, at 7–9, 122; Fichter & Sydow, *supra* note 40, at 7; THE WORLD BANK GRP., *supra* note 25, at 1–2; CONFEDERATION OF SWEDISH ENTER., *THE ROLE OF BUSINESS IN SOCIETY: QUESTIONS AND ANSWERS ON THE ROLE OF BUSINESS IN SOCIETY 9* (2004) [hereinafter CONFEDERATION OF SWEDISH ENTER.], available at [http://www.ioe-emp.org/fileadmin/user\\_upload/documents\\_pdf/memberpublications/english/csr\\_sweden01\\_roleofbusiness.pdf](http://www.ioe-emp.org/fileadmin/user_upload/documents_pdf/memberpublications/english/csr_sweden01_roleofbusiness.pdf).

many.<sup>42</sup> These pressures typically center on social expectations of the multinational corporation; in turn, these social expectations are the result of pressures from consumers, human rights groups, domestic and international labor groups, and increasingly the media.<sup>43</sup> The role of the media in promoting the use of corporate social responsibility regimes is difficult to understate,<sup>44</sup> especially in an increasingly inter-connected media world where news of a potentially negative corporate practice can travel fast and far.<sup>45</sup> This has resulted in a more informed—and possibly jaded—consumer society that has begun to take corporate human rights practices into account when making purchasing decisions.<sup>46</sup>

Corporate social responsibility requirements are found in a variety of sources ranging from voluntary corporate or industry mechanisms to international agreements.<sup>47</sup> Voluntary mechanisms undertaken by a corporate entity or industry group are typically viewed as “internal mechanisms,”<sup>48</sup> as they are generated from within the entity or industry organically,<sup>49</sup> while international agreements and the regime-based mechanisms they create are viewed as “external mechanisms”<sup>50</sup> because they are created outside of the entity or industry and are imposed from without rather than from within.<sup>51</sup> With few exceptions, both internal and external mechanisms of corporate social responsibility are classified as soft law because they are not actually codified at the domestic or (largely) international level.<sup>52</sup> This in no way undermines the importance of corporate social responsibility. Corporate social responsibility can be viewed as a complex and constantly emerging legal field in which hard law could in fact inhibit the speed and

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<sup>42</sup> *A Fair Globalization: Creating Opportunities for All*, *supra* note 10, at 4, 20.

<sup>43</sup> *Id.* at 20.

<sup>44</sup> In fact, some business groups have argued that the media’s scrutiny of corporate activity in fact makes the development and implementation of corporate social responsibility policies and practices less than voluntary. See CONFEDERATION OF SWEDISH ENTER., *supra* note 41, at 5, 9.

<sup>45</sup> *Id.* at 17.

<sup>46</sup> *See id.*

<sup>47</sup> *See id.* at 3, 6; *A Fair Globalization: Creating Opportunities for All*, *supra* note 10, at 77, 95, 122–24.

<sup>48</sup> Lance Compa, *Corporate Social Responsibility and Workers’ Rights*, 30 COMP. LAB. L. & POL’Y J. 1, 3–4 (2008) [hereinafter Compa, *Corporate Social Responsibility*]; see also Lance Compa & Tashia Hinchliffe-Darricarrère, *Enforcing International Labor Rights through Corporate Codes*, 33 COLUM. J. TRANSNAT’L L. 663, 674–75 (1995) [hereinafter Compa & Hinchliffe-Darricarrère, *Enforcing International Labor Rights*].

<sup>49</sup> Compa, *Corporate Social Responsibility*, *supra* note 48, at 3.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

flexibility necessary to keep pace.<sup>53</sup>

### A. *Internal Voluntary Mechanisms*

#### 1. General Corporate Practices

As multinational corporations increasingly become aware of the importance of corporate social responsibility issues, they incorporate practices and policies that are geared toward promoting corporate social responsibility into their overall governing practices.<sup>54</sup> In addition to the below-discussed practice of adopting corporate codes of conduct,<sup>55</sup> there are many other avenues that can be taken.

For example, rather than establishing additional factories on the ground, many multinational corporations have contracted with local firms in developing states for the production of their products.<sup>56</sup> Problems have ensued, however, in regard to the labor practices of the firms contracted with.<sup>57</sup> This is particularly problematic given that these factories are often continents away and it is difficult for multinational corporations to ensure full compliance with their labor practice standards, especially where these standards are higher than the domestic labor law requires.<sup>58</sup> As a result, some firms have done away with this practice entirely and elected to create their own subsidiary organizations for the purposes of production.<sup>59</sup>

In other situations, there is the even more basic issue of whether examining policies regarding corporate social responsibility and labor issues to see if and to what extent those policies mirror the needs and values of a multinational corporation. At a fundamental level, a multinational corporation cannot expect to be a responsible corporate actor in the globalized labor market if it does not have the

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<sup>53</sup> *Id.* at 1–3.

<sup>54</sup> See, e.g., *IWAY Standard*, IKEA (June 4, 2008), [http://www.ikea.com/ms/en\\_US/about\\_ikea/pdf/SCGlobal\\_IWAYSTDVers4.pdf](http://www.ikea.com/ms/en_US/about_ikea/pdf/SCGlobal_IWAYSTDVers4.pdf); *Corporate Responsibility*, PATAGONIA, <http://www.patagonia.com/us/patagonia.go?assetid=37492&ln=65> (last visited Dec. 18, 2011); *Supply Chain*, GAP INC., [http://www.gapinc.com/content/gapinc/html/csr/supply\\_chain.html](http://www.gapinc.com/content/gapinc/html/csr/supply_chain.html) (last visited Dec. 18, 2011).

<sup>55</sup> See THE WORLD BANK GRP., *supra* note 25, at 7.

<sup>56</sup> See generally Compa & Hinchliffe-Darricarrère, *Enforcing International Labor Rights*, *supra* note 48, at 674–85 (discussing specific sourcing standards of various multinational companies).

<sup>57</sup> OECD RISK AWARENESS TOOL, *supra* note 17, at 11.

<sup>58</sup> See PATAGONIA, *supra* note 54.

<sup>59</sup> See *id.*

ability to understand the impact of its operations relative to labor impacts.<sup>60</sup> Once these evaluations are made, multinational corporations are free to implement internal labor requirements that are beyond the domestic labor law regimes used in foreign factories and other installations.<sup>61</sup> For example, the corporation is free to limit the ability of children to work in these facilities even where the domestic provisions for child labor protections are nowhere near as stringent.<sup>62</sup>

In some instances, multinational corporations have also have established direct working relationships with important constituencies in the relevant policy area—such as labor or human rights groups—in order to ensure that they have a full ability to address the needs of the community within the overall structure of corporate practices.<sup>63</sup> When assessing a potential sub-contractor, multinational corporations have begun to conduct thorough inspections of the contractor's business practices, including its labor and associated human rights practices.<sup>64</sup>

On another level, multinational corporations have taken ownership over positive acts that are based in the corporate responsibility doctrine and have begun to embrace the power of media to advertise these acts.<sup>65</sup> Examples include television advertising,<sup>66</sup> in-store promotions and explanations,<sup>67</sup> and, perhaps most importantly, the use of corporate websites to explain the good works of the multinational corporation in labor and other areas.<sup>68</sup> While there is a cynical view to these forms of media use, they are nevertheless important ways in which multinational corporations have crafted their corporate social responsibility strategies.

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<sup>60</sup> See, e.g., OECD RISK AWARENESS TOOL, *supra* note 17, at 11.

<sup>61</sup> *Id.* at 13.

<sup>62</sup> See, e.g., THE WORLD BANK GRP., *supra* note 25, at 7.

<sup>63</sup> *Id.* at 8.

<sup>64</sup> See *id.* at 13–14.

<sup>65</sup> SUSTAINABILITY, KETCHUM AND THE UNITED NATIONS ENVIRONMENT PROGRAMME, GOOD NEWS AND BAD: THE MEDIA, CORPORATE SOCIAL RESPONSIBILITY AND SUSTAINABLE DEVELOPMENT 22 (2002); see sources cited *supra* note 54.

<sup>66</sup> See, e.g., *Ben & Jerry's - Fairly Nuts*, YOUTUBE, <http://www.youtube.com/watch?v=IdZUB5llkbs> (last visited Dec. 18, 2011) (describing how Ben & Jerry's uses Fair Trade practices in gathering ingredients for their ice cream); see also *What is Fair Trade?*, FAIRTRADEUSA.ORG, <http://transfairusa.org/what-is-fair-trade> (last visited Dec. 18, 2011) (describing fair trade referred to from the Ben & Jerry's video).

<sup>67</sup> See, e.g., *SEAR Report – 2006*, BEN & JERRY'S ICE CREAM, [http://www.benjerry.com/company/sear/2006/sear06\\_4.5.cfm](http://www.benjerry.com/company/sear/2006/sear06_4.5.cfm) (last visited Dec. 18, 2011) (stating that Ben & Jerry's would be placing a Fair Trade logo on pints of ice cream made according to Fair Trade practices).

<sup>68</sup> See sources cited *supra* note 54.

## 2. Codes of Conduct

In addition to the general corporate practices that can be changed or shaped to incorporate corporate social responsibility, one of the primary vehicles of corporate social responsibility used by multinational corporations is the internal code of conduct.<sup>69</sup> These codes can be used for corporate employees, subsidiaries, affiliates, contractors, sub-contractors, or at any other level of corporate involvement that is deemed appropriate.<sup>70</sup>

Acceptance of codes of conduct within the structure and mentality of the multinational corporation can be difficult, or at the very least time-consuming, and can require that there be a shift in the standards of the corporation.<sup>71</sup> However, where acceptance of codes of conduct occurs and is reflected in the insistence on labor and other rights being created and enforced on the ground—particularly in developing states—there can be quite positive results.<sup>72</sup> When adopting codes of conduct, multinational corporations have received support from civil society, international organizations, and governmental actors, such as that of the European Union.<sup>73</sup>

Within codes of conduct there are many policy areas; labor concerns typically have a very large role to play.<sup>74</sup> Important aspects of labor law and policy that are often contained in codes of conduct include the following: child labor protections and prohibitions;<sup>75</sup> forced labor prohibitions;<sup>76</sup> provisions for decent wages and benefits afforded to workers;<sup>77</sup> non-exploitative working

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<sup>69</sup> See THE WORLD BANK GRP., *supra* note 25, at 2 (noting that there are at least 1,000 corporate codes of conduct in use throughout relevant corporations).

<sup>70</sup> See, e.g., *id.* at 36–42 (applying different companies' internal codes of conduct to subcontractors, employees, manufacturers, etc.).

<sup>71</sup> ORG. FOR ECON. CO-OPERATION & DEV., OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: 2003 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS 41–42 (2003) [hereinafter OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES].

<sup>72</sup> See Compa, *Corporate Social Responsibility*, *supra* note 48, at 2 (providing a brief case reference to the impact of a foreign multinational corporation's code of conduct on the development of labor unions in Sri Lanka).

<sup>73</sup> See Fichter & Sydow, *supra* note 40, at 3.

<sup>74</sup> See generally THE WORLD BANK GRP., *supra* note 25 (discussing codes of conduct in apparel, footwear, and light manufacturing; agribusiness; and tourism sectors).

<sup>75</sup> *Id.* at 7–8 (discussing child labor in the apparel industry); *id.* at 19–20 (discussing child labor in agribusiness). It should be noted, however, that within industries and generally within the community of multinational corporations there is no set age or standard of maturity required for the employment of children. See *id.* at 7 (discussing age variances in the apparel sector).

<sup>76</sup> *Id.* at 6–7 (discussing forced labor in the apparel industry); *id.* at 18 (discussing forced labor in agribusiness).

<sup>77</sup> *Id.* at 8–9 (discussing wages in the apparel industry); *id.* at 20–21 (discussing wages in agribusiness). Within this particular topic there is a tension between complying with the

hours;<sup>78</sup> the prohibition of abuse or harassment of workers either by other workers or by those in a managerial capacity;<sup>79</sup> the requirement of decent health and safety standards for workers in factories and other facilities (especially where the products handled could cause health issues);<sup>80</sup> and the ability of workers to freely associate, form labor unions and other groups, and enter into collective bargaining agreements with management and/or the corporation itself.<sup>81</sup> Some codes of conduct will explicitly embrace and incorporate the labor standards created and endorsed by international organizations and agreements.<sup>82</sup> It is perhaps obvious that the terms of a code of conduct will differ depending on issues such as the industry involved and the particular requirements of that industry, the areas in which the multinational corporation works, and the overall size and needs of the corporation itself.<sup>83</sup>

Codes of conduct for multinational corporations are not, however, a universal panacea. As with any internal corporate regulation or piece of statutory law, the impact of a code of conduct is only fully ascertainable in its actual application. Indeed, recognizing this, many codes of conduct contain provisions regarding compliance monitoring and evaluation.<sup>84</sup> It has been noted that codes of conduct often sound far loftier than they are in implementation,<sup>85</sup> and that codes of conduct, as voluntary—and often aspirational—

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established domestic minimum wage where one exists and paying workers above that minimum wage in order to establish a decent wage overall. *Id.* at 8.

<sup>78</sup> *Id.* at 9 (discussing these issues in the apparel industry); *id.* at 21 (discussing these issues in agribusiness). Again, there is a substantial variation in code provisions between those that simply recite adherence to whatever the domestic working hours and overtime hours laws require and a more restrictive regime that is aimed at ensuring less potential for exploitative working hours. *Id.*

<sup>79</sup> *Id.* at 10.

<sup>80</sup> *Id.* at 11–12 (discussing these issues in the apparel industry); *id.* at 23–24 (discussing these issues in agribusiness).

<sup>81</sup> *Id.* at 11 (discussing these issues in the apparel industry); *id.* at 22–23 (discussing these issues in agribusiness). There are substantial differences in domestic laws regarding labor unions and collective bargaining, and thus there are substantial differences in the ways that corporate codes of conduct address these issues, again ranging from compliance with domestic legal regimes to creating greater rights for workers. *Id.* at 11.

<sup>82</sup> See *id.* at Annex A (discussing labor and human rights standards in the apparel sector), C (discussing labor and human rights standards in the agribusiness sector); *id.* at Annex E (discussing labor, human rights, and environmental standards in the tourism sector); Compa, *Corporate Social Responsibility*, *supra* note 48, at 5 (discussing “multi-stakeholder” codes of conduct).

<sup>83</sup> For prime examples of these differences and their impacts on codes of conduct enacted see generally THE WORLD BANK GRP., *supra* note 25 (discussing codes of conduct in apparel, footwear, light manufacturing, agribusiness, and tourism sectors).

<sup>84</sup> See *id.* at Annex A, C, E.

<sup>85</sup> See OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, *supra* note 71, at 42; Compa, *Corporate Social Responsibility*, *supra* note 48, at 4.

measures, are subject to questionable enforcement measures by the corporation and its subsidiaries.<sup>86</sup> However, as others have pointed out, the genuine desires of corporate social responsibility advocates to improve the labor situation across the board, especially as seen through the terms of codes of conduct, must be tempered with the realization that immediately imposing a stringent and punitive system for violations by sub-contractors and other such entities will not provide the desired goal of assisting workers out of poverty and into a stronger legal and societal position vis-à-vis their own assertion of rights.<sup>87</sup>

### 3. Industry-based Practices

Internal corporate social responsibility practices and the adoption of codes of responsibility are powerful tools for a multinational corporation to both assert its stance as a good corporate actor to those with whom it works and also to assert this stance to the public, particularly those members of the public that are or could become its customers.<sup>88</sup> In some instances, however, there is a larger issue of industry concern that a lone multinational corporation—large though it might be—cannot handle on its own.<sup>89</sup> When this situation occurs, it is not uncommon for the members of a particular industry to come together and craft industry-based codes, standards, rules, and statements that reflect appropriate corporate social responsibility norms.<sup>90</sup>

An example of this occurred in the 1990s, when revelations that diamond sales provided a source of financing for several bloody civil wars in Africa led to the creation of the term “blood diamond” or “conflict diamond.”<sup>91</sup> Public knowledge of the issue was spread, largely by human rights groups, which began to create a significant media backlash against the diamond industry.<sup>92</sup> As a result, the diamond industry came together and ultimately, with the

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<sup>86</sup> See OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, *supra* note 71; see also Compa, *Corporate Social Responsibility*, *supra* note 48, at 4.

<sup>87</sup> See Compa, *Corporate Social Responsibility*, *supra* note 48, at 5.

<sup>88</sup> See Compa & Hinchliffe-Darricarrère, *Enforcing International Labor Rights*, *supra* note 48, at 668–69.

<sup>89</sup> See Harrington, *supra* note 18, at 357; see also William H. Meyer & Boyka Stefanova, *Human Rights, the UN Global Compact, and Global Governance*, 34 CORNELL INT'L L.J. 501, 510 (2001) (describing the fostering of industry-based codes to “enhance[] the importance of social responsibility criteria in the global operations of [transnational corporations].”).

<sup>90</sup> See Harrington, *supra* note 18, at 357; see also Meyer & Stefanova, *supra* note 89.

<sup>91</sup> See Harrington, *supra* note 18, at 354.

<sup>92</sup> See *id.* at 357–58.

intervention of states that were involved in diamond production or sales, led to the creation of the Kimberley Certification Process, an international certification process for diamonds.<sup>93</sup>

The mining and extractive industries continue to be subject to allegations relating to the sourcing of their products and human rights abuses.<sup>94</sup> In recognition of this, the gold mining industry in developing states has begun to issue assurances that its products are mined ethically and that no forced or otherwise objectionable labor was used in the mining process.<sup>95</sup> Other industries have also seen a rise in the use of voluntary, industry-based regimes relating to corporate social responsibility. For example, agricultural producers have come together to implement standards that relate in part to labor, as have groups of corporations within the apparel sector.<sup>96</sup>

Overall, it is more common for multinational corporations to enact corporate social responsibility mechanisms at the individual level rather than at the collective, industry based-level. The reasons for this are perhaps obvious, as each multinational corporation necessarily has its own considerations and constraints that are relevant to the drafting of its corporate social responsibility policies.

### *B. External Regime-based Mechanisms*

Corporate social responsibility has become part of several external regime-based mechanisms as well. Key among these mechanisms are instruments enacted and adopted by the International Labour Organization (“ILO”)<sup>97</sup> and the Organisation for Economic Co-operation and Development (“OECD”).<sup>98</sup> In addition, independent International Framework Agreements

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<sup>93</sup> *See id.*

<sup>94</sup> Adrienne Margolis, *Overdue Diligence*, INTERNATIONAL BAR ASSOCIATION, <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=866A30C1-76FC-42E4-9C05-9E3237F82781> (last visited Dec. 18, 2011).

<sup>95</sup> *See, e.g., Human Rights*, BARRICK GOLD CORP., <http://www.barrick.com/CorporateResponsibility/Human-Rights/default.aspx> (last visited Dec. 18, 2011); *Responsible Mining*, GOLDCORP INC., <http://goldcorp.com/Responsible-Mining/default.aspx> (last visited Dec. 18, 2011); *Ten Guiding Principles: Principle 6*, KINROSS, <http://www.kinross.com/corporate-responsibility/guiding-principles/6.aspx> (last visited Dec. 18, 2011).

<sup>96</sup> *See* THE WORLD BANK GRP., *supra* note 25, at 1–2.

<sup>97</sup> *See* Int'l Labour Org. [ILO], *The ILO and Corporate Social Responsibility (CSR)*, ILO HELPDESK NO. 1, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_116336.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_116336.pdf).

<sup>98</sup> *See* ORG. FOR ECON. CO-OPERATION & DEV., *THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 2* (2011), available at <http://www.oecd.org/dataoecd/12/21/1903291.pdf>.

(“IFAs”) are discussed in this section because they describe ways in which globalized trade unions and multinational corporations have begun to collaborate in order to establish and maintain labor standards.<sup>99</sup> The European Union has encouraged corporate social responsibility as a voluntary form of soft law through a variety of policy statements.<sup>100</sup> Although not discussed in this article due to their limited applicability overall, the actions of the European Union are important in that they endorse the use of corporate social responsibility.<sup>101</sup>

## 1. International Labour Organization

The ILO is involved in corporate social responsibility at many levels. In terms of its treaties and agreements, many of these instruments create responsibilities for employers—decent wage requirements,<sup>102</sup> to child labor protections,<sup>103</sup> and prohibitions to protections for those working in dangerous jobs<sup>104</sup> to name only a few—that are, when implemented, essentially at the core of many corporate social responsibility plans and corporate codes of conduct.<sup>105</sup> However, none of these instruments themselves articulate the ILO’s specific policy stance on corporate social responsibility, nor do they attempt to holistically address corporate social responsibility as such. The ILO has adopted several other instruments in order to directly address corporate social responsibility and labor-related issues.<sup>106</sup>

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<sup>99</sup> See Owen E. Herrnstadt, *Are International Framework Agreements a Path to Corporate Social Responsibility?*, 10 U. PA. J. BUS. & EMP. L. 187, 188, 207–08 (2007).

<sup>100</sup> See *Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility*, at 3, COM (2001) 366 final (July 18, 2001), available at [http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001\\_0366en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0366en01.pdf).

<sup>101</sup> See *id.*; *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*, at 2–3, COM (2006) 136 final (Mar. 22, 2006), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0136:FIN:en:PDF>.

<sup>102</sup> See, e.g., Int’l Labour Org. [ILO], *Equal Remuneration Convention*, Convention No. 100 (1951), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_decl\\_fs\\_84\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_84_en.pdf).

<sup>103</sup> See, e.g., Int’l Labour Org. [ILO], *Worst Forms of Child Labour Convention*, Convention No. 182 (1999), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_decl\\_fs\\_46\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_46_en.pdf).

<sup>104</sup> See, e.g., Int’l Labour Org. [ILO], *Chemicals Convention*, Convention No. 170 (1990), available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C170>.

<sup>105</sup> Int’l Labour Org., *How International Labour Standards Are Used*, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-use/lang--en/index.htm> (last visited Dec. 18, 2011).

<sup>106</sup> See, e.g., INT’L LABOUR ORG., *ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR*

*a. Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*

The paramount instrument adopted by the ILO is the *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (“*Tripartite Declaration*”), which was originally adopted in 1977 but amended in 2000 and again in 2006 in order to update the real world implications of its policies.<sup>107</sup> The terms of the *Tripartite Declaration* reflect the nature of the ILO itself, in which representatives from states/governments, workers bodies and unions, and employers come together to discuss the pressing issues facing these constituencies and craft policies that are effective and appropriate for each of these constituencies.<sup>108</sup>

The *Tripartite Declaration* expressly notes that globalization and multinational corporations can present opportunities for better employment, labor rights, and practices within developing states and other states that are the site of multinational corporate activity, but it also notes the profound damage that globalization can do to both the labor situation in the host state and the overall state of labor rights.<sup>109</sup> In light of this, the goal of the *Tripartite Declaration* is to highlight the ways in which multinational corporations can contribute to positive labor practices, while at the same time emphasizing the role of the state in enacting protective labor laws that guarantee fundamental human and labor rights for workers within its jurisdiction.<sup>110</sup>

Under the *Tripartite Declaration*, governments, labor representatives, and multinational enterprises are required to give full observance to domestic labor laws, the labor standards and requirements created by the ILO, and those rights protected under human rights regimes.<sup>111</sup> This includes a requirement that the multinational corporation ensure that its policies and practices are in conformity with the development policies and standards enacted

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GLOBALIZATION (2008), available at [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@cabinet/documents/publication/wcms\\_099766.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@cabinet/documents/publication/wcms_099766.pdf); INT'L LABOUR ORG., TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY (4th ed. 2006) [hereinafter TRIPARTITE DECLARATION], available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

<sup>107</sup> See TRIPARTITE DECLARATION, *supra* note 106, at 1.

<sup>108</sup> See *id.*; Int'l Labour Org., *How the ILO Works*, <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm> (last visited Dec. 18, 2011).

<sup>109</sup> TRIPARTITE DECLARATION, *supra* note 106, at 1.

<sup>110</sup> *Id.* at 2.

<sup>111</sup> *Id.* at 3.

by the host state.<sup>112</sup> Multinational corporations bear a substantial burden under the *Tripartite Declaration* in that they are required to conform to the domestic labor laws and standards of the host state (perhaps not that onerous in itself), but also to act in ways that encourage increased protections for workers and respect for their rights as a theoretical matter and as a practical matter.<sup>113</sup> In this context, burdens are also placed on states since they agree not to attempt to impose any form of discriminatory hiring practice requirement on multinational corporations.<sup>114</sup>

Multinational corporations further stipulate that they will treat their foreign and domestic work forces in the same manner, and that they will use no less favorable labor policies abroad than they would in their home country.<sup>115</sup> There is a special duty for multinational corporations working in developing states to ensure that their labor practices meet the essential monetary and societal needs of their workers, and that they strive to “provide the best possible wages” and benefits to these workers.<sup>116</sup> Regardless of the development status of the state in which the multinational corporation operates, it is tasked with ensuring that minimum age requirements are met for child labor practices.<sup>117</sup> Both the multinational corporation and the appropriate state are tasked with providing protections for worker health and safety on the job, particularly where hazardous materials are involved.<sup>118</sup> In terms of industrial relations, the *Tripartite Declaration* reiterates that workers abroad are to be afforded, at the very least, the same rights and abilities as workers who are based in the multinational corporation’s home state.<sup>119</sup>

The *Tripartite Declaration* guarantees the rights of foreign workers to freely organize and to enter into collective bargaining agreements without reprisal from the multinational corporation.<sup>120</sup> Further, multinational corporations are to establish a grievance procedure under which their foreign workers can express complaints freely and without fear of reprisal.<sup>121</sup>

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 3–4.

<sup>114</sup> *Id.* at 5.

<sup>115</sup> *Id.* at 6.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 7.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 8–9.

<sup>121</sup> *Id.* at 9.

*b. Declaration on Social Justice for a Fair Globalization*

The ILO has established an overall agenda for Decent Work, which places stress on “employment, social protection, social dialogue, and rights at work.”<sup>122</sup> As a follow-up to the *Tripartite Declaration* and to underscore the agenda for Decent Work, the ILO adopted the *Declaration on Social Justice for a Fair Globalization* (“*Social Justice Declaration*”) in 2008.<sup>123</sup> In addition to reiterating the terms of the *Tripartite Declaration*, the *Social Justice Declaration* stresses that the interests of labor and the exercise of labor rights, such as freedom of association and collective bargaining, cannot be sacrificed in an attempt to increase corporate profits.<sup>124</sup> However, the *Social Justice Declaration* does recognize that multinational corporations need freedom to design and implement labor relations plans—which essentially contain the traditional labor rights provisions that corporate social responsibility seeks to protect—in order to adapt to the structure of the corporation, its particular needs, and the realities of the political and developmental situation in the host state.<sup>125</sup>

## 2. Organization for Economic Cooperation and Development

Unlike the ILO, the OECD’s membership consists solely of states,<sup>126</sup> thus the instruments adopted by the OECD are only intended to govern state conduct.<sup>127</sup> The OECD has been active in adopting instruments that address issues of globalization, multinational corporations, and labor concerns.<sup>128</sup> Included in these instruments are tools which target specific policy areas associated with corporate social responsibility, particularly where multinational corporations operate or seek to operate in areas that have experienced or are experiencing conflict.

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<sup>122</sup> Int’l Labour Org. [ILO], *ILO Declaration on Social Justice for a Fair Globalization*, at 1–2 (June 10, 2008), [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms\\_099766.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf).

<sup>123</sup> *Id.* at 1.

<sup>124</sup> *Id.* at 11.

<sup>125</sup> *See id.* at 11–12.

<sup>126</sup> *See* Org. for Econ. Co-operation & Dev., *Members and Partners*, [http://www.oecd.org/pages/0,3417,en\\_36734052\\_36761800\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36734052_36761800_1_1_1_1_1,00.html) (last visited Dec. 18, 2011).

<sup>127</sup> *See* Org. for Econ. Co-operation & Dev., *OECD Legal Instruments – “The Acts”*, [http://www.oecd.org/document/46/0,3746,en\\_21571361\\_38481278\\_40899182\\_1\\_1\\_1\\_1,00.htm](http://www.oecd.org/document/46/0,3746,en_21571361_38481278_40899182_1_1_1_1,00.htm) (last visited Dec. 18, 2011).

<sup>128</sup> *See* ORG. FOR ECON. CO-OPERATION & DEV., *BETTER POLICIES FOR BETTER LIVES: THE OECD AT 50 AND BEYOND* 14, 20 (2011), <http://www.oecd.org/dataoecd/63/52/47747755.pdf>.

*a. OECD Guidelines for Multinational Enterprises*

The *OECD Guidelines for Multinational Enterprises* (“*OECD Guidelines*”) are intended to ensure that multinational corporations are held to, at a minimum, the legal standards of the host state(s) in which they operate while at the same time encouraging multinational corporations to operate abroad and increase investment in foreign states.<sup>129</sup> The *OECD Guidelines* begin with a broad discussion of the potential for globalization and the spread of multinational corporate activity to benefit consumers and workers, as well as to benefit the governments of the host states in which multinational corporations operate.<sup>130</sup> As with the *Tripartite Declaration*, the *OECD Guidelines* also acknowledge that there have been less than positive examples of foreign behavior by multinational corporations and that these examples need to be countered by a strong corporate and governmental response.<sup>131</sup>

The *OECD Guidelines* place a good deal of emphasis on the role of states in creating strong legal structures for labor rights and worker protection, not only in terms of statutory enactment but also in terms of enforcement and application of these requirements to multinational corporations.<sup>132</sup> The *OECD Guidelines* advise that multinational corporations should adhere to local labor and other laws and that they should not allow the state in which they are operating to provide them with loopholes or other ways to circumvent the standard domestic labor law requirements.<sup>133</sup> Additionally, respect for human rights protections, including those that relate to labor rights, is an important corporate requirement under the *OECD Guidelines*.<sup>134</sup> The abilities of foreign and domestic workers to organize, form unions, and engage in collective bargaining are protected under the terms of the *OECD Guidelines*, as is the enforcement of protections against the worst forms of labor violations, such as child labor and forced labor.<sup>135</sup> As a final point, the *OECD Guidelines* provide for the designation of a national contact person in each signatory state, who is charged with received allegations regarding improper practice of domestic multination

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<sup>129</sup> ORG. FOR ECON. CO-OPERATION & DEV., *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 13* (2011), available at <http://www.oecd.org/dataoecd/43/29/48004323.pdf>.

<sup>130</sup> *Id.* at 13–14.

<sup>131</sup> *Id.* at 14–15.

<sup>132</sup> *See id.*

<sup>133</sup> *Id.* at 19.

<sup>134</sup> *Id.* at 31.

<sup>135</sup> *Id.* at 35.

corporations.<sup>136</sup> While the national contact person is not necessarily a finder of fact, the goal of this position is to bring to light allegations of misdeeds and to provide a forum in which these allegations can be discussed and settled without the involvement of courts.<sup>137</sup> Subsequent reviews of the *OECD Guidelines*, their implementation, and their impact have highlighted their importance and flexibility as soft law tools, particularly in terms of bringing to light potential breaches of corporate social responsibility practices by multinational corporations and working toward a practical solution to these situations.<sup>138</sup>

*b. OECD Principles of Corporate Governance*

Endorsed by the OECD in 1999, the *OECD Principles of Corporate Governance* (“*OECD Principles*”) are geared toward informing states, multinational corporations, and investors as to the importance of good corporate governance, including the principles associated with corporate responsibility.<sup>139</sup>

The *OECD Principles* address many aspects of internal corporate structure and governance that are not relevant to the issues addressed in this article. However, they do state that corporate governance should operate within and in conformity with the rule of law, which would include labor law regimes at the level of the corporate home state and the host state.<sup>140</sup>

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<sup>136</sup> Org. for Econ. Co-operation and Dev., *The OECD Guidelines for Multinational Enterprises: Decision of the Council* (June 2000), [http://www.oecd.org/document/39/0,3746,en\\_2649\\_34889\\_1933095\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/39/0,3746,en_2649_34889_1933095_1_1_1_1,00.html).

<sup>137</sup> *Id.*

<sup>138</sup> For annual reviews of guideline implementation and efficacy, see ORG. FOR ECON. CO-OPERATION & DEV., *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: 2002 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2002); ORG. FOR ECON. CO-OPERATION & DEV., *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: 2003 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2003); ORG. FOR ECON. CO-OPERATION & DEV., *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: 2004 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2004); ORG. FOR ECON. CO-OPERATION & DEV., *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: 2005 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2005); ORG. FOR ECON. CO-OPERATION & DEV., *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: 2006 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2006); ORG. FOR ECON. CO-OPERATION & DEV., *2007 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2007); ORG. FOR ECON. CO-OPERATION & DEV., *2008 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2008); ORG. FOR ECON. CO-OPERATION & DEV., *2009 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2009); ORG. FOR ECON. CO-OPERATION & DEV., *OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: REPORT BY THE CHAIR OF THE 2010 ANNUAL MEETING OF THE NATIONAL CONTACT POINTS* (2010).

<sup>139</sup> ORG. FOR ECON. CO-OPERATION & DEV., *OECD PRINCIPLES OF CORPORATE GOVERNANCE* 3 (2004).

<sup>140</sup> *Id.* at 17, 29–31.

*c. OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*

The *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* (“*Risk Awareness Tool*”) is designed with corporate social responsibility issues in mind.<sup>141</sup> It provides guidance to multinational corporations operating in areas that are either without the rule of law or which are characterized by a very weak rule of law systems.<sup>142</sup> This guidance is important for multinational corporations that find themselves called upon to fill this vacuum in legal regimes.<sup>143</sup> It is also important because the ability of a multinational corporation to run afoul of international law or the laws of its home state is decidedly increased in such situations.<sup>144</sup>

In these situations, multinational corporations must handle many issues that relate to labor concerns, including finding ways to ensure that the labor used at their facilities is in keeping with their other obligations and that it is not abusive or exploitative.<sup>145</sup> Additionally, there are concerns about ensuring the safety of the workforce in these areas, especially during times of conflict.<sup>146</sup> Multinational corporations operating in these situations must also investigate the contractors and sub-contractors with which they are associated in order to assess whether these entities are in compliance with the internal corporate standards and requirements for labor practices, as well as any existing domestic labor law practices.<sup>147</sup>

*d. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*

The *OECD Due Diligence Guidance for Responsible Supply*

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<sup>141</sup> OECD RISK AWARENESS TOOL, *supra* note 17, at 3 (2006).

<sup>142</sup> *Id.* For the purposes of the *Risk Awareness Tool*, the definition of a “weak governance zone” is “an investment environment in which governments are unable or unwilling to assume their responsibilities. These ‘government failures’ lead to broader failures in political, economic and civic institutions that, in turn, create the conditions for endemic violence, crime and corruption and that block economic and social development.” *Id.* at 9.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 3, 15.

<sup>145</sup> *Id.* at 11. For a list of questions corporations may consider when evaluating whether practices are in line with the law and do not cause or contribute to human rights violations, see *id.* at 15–17.

<sup>146</sup> *Id.* at 17.

<sup>147</sup> *Id.* at 21.

*Chains of Minerals from Conflict-Affected and High-Risk Areas* (“*Due Diligence Guidance*”) is an outgrowth of the OECD’s recognition that multinational corporations operating in unstable areas face a different set of risks and responsibilities.<sup>148</sup> In creating the *Due Diligence Guidance*, the OECD involved corporate stakeholders as well as civil society, with a primary focus on the extractive industries that are based on African areas that have experienced or are currently experiencing armed conflict.<sup>149</sup> The risks that the *Due Diligence Guidance* identifies are legal and reputational, or a combination of both, in recognition of the potential damage that can be done to a multinational corporation that fails to ensure its labor practices in these areas are in compliance with legal and corporate social responsibility requirements.<sup>150</sup>

Overall, the *Due Diligence Guidance* provides multinational corporations operating in these areas and industries with an understanding of the intricacies of these operations and methods to use in evaluating whether compliance with legal and internal regulatory mechanisms is occurring on the ground.<sup>151</sup>

### C. *International Framework Agreements*

In essence, IFAs represent a new form of globalization regime under which multinational corporations enter into agreements with large, internationalized unions for the purposes of setting out the labor standards that are to be used between the parties.<sup>152</sup> IFAs are private agreements, although they typically codify the labor rights and protections contained in some or all of the ILO conventions.<sup>153</sup> Rather than appealing directly to a domestic legal regime when violations of agreed-upon labor policies occur, or are alleged to occur, IFAs allow the parties to settle these issues through collective bargaining or other forms of negotiated outcomes.<sup>154</sup>

The merits of IFAs are debatable, as they are often classified as union tools<sup>155</sup> and presuppose the ability of corporate employees to

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<sup>148</sup> OECD DUE DILIGENCE GUIDANCE, *supra* note 17, at 8.

<sup>149</sup> *Id.* at 12.

<sup>150</sup> *Id.* at 13.

<sup>151</sup> *See id.* at 15.

<sup>152</sup> Michael Fichter, Markus Helfen & Jörg Sydow, *Regulating Labor Relations in Global Production Networks: Insights on International Framework Agreements*, 2011 INT’L POL. & SOC’Y 68, 70 (Ger.).

<sup>153</sup> *Id.*

<sup>154</sup> *See id.* at 74.

<sup>155</sup> *Id.*

unionize to the point that they are covered under the terms of an IFA.<sup>156</sup> IFAs have been classified as tools of corporate social responsibility and some do argue that they make for stronger corporate social responsibility regimes than do codes of conduct.<sup>157</sup> However, at their core IFAs seek to contract around the domestic legal regimes in existence in the host state, thus creating meaningful advances in labor rights only for those who work for corporate entities that have signed onto IFAs and are members of the appropriate union.<sup>158</sup> Therefore, while it is important to acknowledge the existence and potential benefits of IFAs, IFAs are not a permanent and meaningful way to transpose the potential benefits of the relationship between globalization, multinational corporations, corporate social responsibility, and labor onto the overall legal regimes of host states.<sup>159</sup>

#### IV. SHARED SPACES FOR LABOR RIGHTS

The previous Parts explained the concept of globalization—focusing on the multinational corporation—and the ties between globalization and corporate social responsibility. They then explained the interrelationship between multinational corporations, corporate social responsibility, and labor issues. What the above Parts have demonstrated is that these issues are directly related and that this relationship can be either positive or negative depending on the actions of corporate actors and the terms of the applicable domestic and international legal systems. In this context the domestic labor law regime of the host state is critical, as it establishes the baseline for corporate conduct.

As stated above, it is perhaps easy to assess this relationship as one of convenience and good public relations for multinational corporations, particularly in host states where the domestic labor law regime is not comprehensive and provides only the basic protections—if any at all—to the workers involved.<sup>160</sup> One could indeed argue that the “clean” images which multinational corporations seek when they engage in positive labor-related acts as part of their corporate social responsibility plans are superficial and thin in terms of practical and legal meaning because they are

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<sup>156</sup> *See id.* at 75.

<sup>157</sup> *Id.* at 74–75.

<sup>158</sup> *See id.* at 79, 80.

<sup>159</sup> *See id.* at 80–81.

<sup>160</sup> *See discussion supra* Parts II–III.

voluntary and frequently well-publicized to their home state constituencies of consumers and investors.<sup>161</sup> Under this type of argument, commitment to the principles of corporate responsibility and to building up the legal position of workers in foreign host states is secondary to the goal of maintaining or increasing the image of the multinational corporation as a good actor in society.

However appealing this view of the relationship between globalization, multinational corporations, corporate social responsibility, and labor might be, it does not provide a robust understanding of this relationship or of the place that law—particularly soft law—has in it.<sup>162</sup> In so doing, the ability to tease out common spaces between the interests involved in this relationship is ignored. This is damaging on a theoretical level and also on a very practical level, as the ability to effect change within the domestic legal systems of the host state will be bolstered by the realization of these shared spaces between business and labor interests.<sup>163</sup>

In the era of globalized media, it is essential that multinational corporations be seen as good corporate citizens, or, at the very least, that they are not viewed as bad corporate citizens. This necessarily requires that multinational corporations adopt corporate social responsibility policies and/or corporate codes of conduct for their internal operations and that they take measures to ensure that their subsidiaries, sub-contractors, and other affiliates overseas follow the same policies.<sup>164</sup> At the very least these policies must reflect the need for compliance with the domestic labor law regimes in the host state, for example in terms of child labor regulations and minimum wage levels.<sup>165</sup> These domestic labor law regimes are often not overly progressive, are not well enforced, or a combination of the two, leaving the multinational corporation in a position to ensure that enforcement does in fact occur on a volitional level and to ensure that its foreign labor practices comply with what international law requires as set out by the ILO and also with voluntary, soft law regimes that are regarded as best practices within the international legal community.

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<sup>161</sup> Matthew Haigh & Marc T. Jones, *supra* note 9, at 19.

<sup>162</sup> See generally *supra* Part III (discussing the relationships between multi-national corporations, corporate social responsibility, and the various internal and external pressures driving the development of the surrounding law).

<sup>163</sup> See *supra* Part III.A.2 (explaining how business and labor interests overlap to develop codes of conduct that can benefit the host state).

<sup>164</sup> See *supra* Part III.

<sup>165</sup> See *supra* Part III.B.1 (discussing the International Labour Organization).

In addition, some multinational corporations operate or use subsidiaries or sub-contractors located in areas that are involved in armed conflict, have recently ceased involvement in armed conflict, or are on the verge of armed conflict.<sup>166</sup> These situations require delicacy on the part of the multinational corporation and also require the multinational corporation to use standards that are at or above the domestic labor law requirements.<sup>167</sup> Where these requirements do not exist, or where there is no governmental entity that can enforce them, a multinational corporation must still enforce them as both a matter of law and as a tenet of corporate social responsibility. In this situation, there is a clearly shared space between multinational corporations seeking to enforce the law and their internal practices and labor interests seeking to ensure that, at a minimum, the domestic labor laws are followed.<sup>168</sup> There is also real potential that corporate and labor interests will intersect here in order to further the labor protections afforded to workers as the domestic legal regime emerges from conflict and seeks to reassert its relevance within society.

Together, these corporate responsibilities, although technically a mix of hard and soft law, create a web of protections for the multinational corporation on one hand and domestic labor interests—ranging from the interests of the individual worker to the trade union—on the other. By complying with internal and external regime-based mechanisms, multinational corporations fulfill their own requirements at the level of law and public relations. They create a space in which labor law and proponents of greater labor law protections in host states have a voice and an influence in corporate practices.

Labor interests are as varied as the interests of multinational corporations and can range from the highly organized, such as those unions that have negotiated IFAs, to the individual worker who has basic interests in decent wages and working conditions.<sup>169</sup> Larger union groups are able to assert a louder voice in globalized society, and have done so with instruments like IFAs, even where the strength of their voices at the domestic, host state level might not be as well established.<sup>170</sup> The ability of an individual to assert her voice in the context of the host state's law-making system is

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<sup>166</sup> OECD DUE DILIGENCE GUIDANCE, *supra* note 17, at 12.

<sup>167</sup> *See id.* at 13.

<sup>168</sup> *See* CONFEDERATION OF SWEDISH ENTER., *supra* note 41, at 12–13.

<sup>169</sup> *See supra* Part II (discussing various workers' issues).

<sup>170</sup> *See supra* Part III.C (discussing International Framing Agreements).

questionable and will necessarily vary depending on the system involved. What brings these interests together is the desire to protect workers and to assert the rights of workers within the appropriate legal system.

There is a clear overlap in interests between multinational corporations and labor interests. While a global lobbying campaign for the enactment of fair working standards as a matter of law would be ideal, it is aspirational at best. Rather, this discrete space in which both interests come together through globalization can be filled with corporate social responsibility principles that establish strong labor practices and protections as a matter of course in labor relations. The benefits of this scheme are that it would serve the purposes of the multinational corporation, the labor interests involved, and the international community which has endorsed the use of these principles through soft law, with the obvious exception of the binding ILO conventions and agreements. Over time, the commonality of these private labor standards would then be a strong source of pressure on domestic lawmakers to bring the domestic labor laws in the host state to the same level as reflected in the applicable corporate social responsibility policy.

## V. CONCLUSION

The goal of this article is to highlight the positive possibilities for the relationship between globalization, multinational corporations, corporate social responsibility, and labor interests. Multinational corporations have had highly visible successes and failures in the realm of socially responsible corporate practices and, in the labor context, international law has provided largely soft law regimes to guide them in these endeavors. At the same time, multinational corporations have embraced the need for their own voluntary corporate social responsibility practices and/or codes of conduct in order to guide the conduct of internal actors and affiliates.

In a highly competitive business world it is easy to let cynicism obscure the lessons that can be learned from the relationship between globalization, multinational corporations, corporate social responsibility, and labor interests. However, this article has argued that corporate social responsibility policies can be used to fill the common space which multinational corporations and labor interests share, ensuring that progressive labor standards that please workers and the public are used even where there is no legal obligation to do so. In this way, corporate social responsibility can

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be used to bridge existing domestic labor laws and higher labor standards, ultimately paving the way for a future revision of the domestic labor law.