

# Corporate social responsibility and codes of conduct

New stakes or old debate?



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"Corporate social responsibility. New stakes or old debate?"

**The World Confederation of Labour -WCL-**



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## Acronyms and abbreviations

<b>ILO</b>	International Labour Organisation
<b>BSR</b>	Business for Social Responsibility
<b>ICC</b>	International Chamber of Commerce
<b>ECOSOC</b>	Economic and Social Council
<b>FAO</b>	Food and Agriculture Organisation
<b>IMF</b>	International Monetary Fund
<b>GRI</b>	Global Reporting Initiative
<b>IIWE</b>	International Institute for Workers' Education
<b>ILO</b>	International Labour Organisation
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>UNIDO</b>	United Nations Industrial Development Organisation
<b>WIPO</b>	World Intellectual Property Organisation
<b>IEO</b>	International Employees Organisation
<b>UNDP</b>	United Nations Development Programme
<b>CSR</b>	Corporate Social Responsibility
<b>UNRISD</b>	United Nations Research Institute for Social Development
<b>WBCSD</b>	World Business Council for Sustainable Development

# INTRODUCTION

For some time now, a number of debates and publications on the international scene have been dealing with corporate social responsibility.

Public institutions (European Union, United Nations and even the ILO), the business world, employers, civil society organisations – at least some of them – seem to agree with the conviction that “corporate social responsibility” is the essential element of current and future social policies, on all the continents and in all sectors.

This strategy is developing at a period when multinational economic and financial groups and the world economic market itself are going through serious internal crisis. The evidence of this is several socially as well as ethically “irresponsible” practices: fraudulent deals, dubious acquisitions, accounting fraud, very high salaries for managers, non-respect for essential values, deregulation or divisions between financial and economic activities.

Instead of laws, international conventions or collective bargaining agreements, the various stakeholders involved speak highly of the codes of conduct, social labels, social sponsoring or other voluntary initiatives.

Paradoxically, authorities at the national and international levels also support the objective of social responsibility. Paradoxically, because this strategy, the outline and definition of which remain vague, questions the regulatory and arbitration role of the State and the authorities.

Through this publication, the World Confederation of Labour – WCL – has decided to carefully analyse this concept, which is not always very precise, according to the view of promoters and users. The aim is to take stock of this debate and to evaluate the consequences on national or international instruments (sectoral and inter-professional), on standards (labour and social rights), on the future of these legislative and contractual rights and on the content of social policies. After two chapters dealing with this debate and one of its forms, namely the codes of conduct, the publication proceeds onto the state of affairs and concludes with the lines of action and recommendations.

We would like to express our sincere gratitude to Beatrice Fauchère, as well as to Gérard Fonteneau, who through their experience with the trade union movement and the United Nations system, have contributed to throwing more light on this extremely complex debate. Our thanks also go to the entire team of collaborators and experts of the WCL, as well as to Frieda de Coninck (Clean Clothes Campaign), who shared their experience in the various fields developed in this study.



**Willy Thys**  
General Secretary of WCL





# CORPORATE SOCIAL RESPONSIBILITY

## *The Enterprise*

*The enterprise must be an association of persons, collaborating in their work to produce goods and services. As the basic unit in the economic structure, it should subordinate its activity to the essential aim of the economy, which is to satisfy the real aims of all by the optimum use of resources, within the framework of plans that are drawn up by democratic means.*

*Since it is an association of persons, the enterprise must allow the real and active participation of all its members in responsibility at all levels of the organization, while at the same time making effective the organization of the enterprise and the whole of its activities. This participation must enable workers to accede to positions where they can regulate the functioning of the enterprise by virtue of their trade union strength present therein.*

*The WCL cannot, in fact, accept that the ownership, management and profits of the enterprise are entirely appropriated by those who provide the capital or their representatives.*

*Article 6, WCL Declaration of Principles*

## **A myth as old as capitalism**

The importance assumed by transnational companies is the result of an old process, which has accelerated and been transformed in recent years.

In the 19th century, workers suffered systematic exploitation (low salaries, inhuman working conditions, military discipline in enterprises, frequent lay-offs and child labour). They were considered as objects of scorn: "toiling classes, dangerous classes", it was said. Thus just towards 1920, the employers association, anxious to forget or to reduce exploitation and social misery, increased the "good works" (private schools, churches, sewing rooms, sports clubs).

From this point of view, the elimination of child labour in Europe from 1850 to 1920 is very significant. Employers and chambers of commerce in France, Belgium or Great Britain were constantly opposed to any regulation (working time, regular inspections, education), which could, according to them, constitute distortions in competition. On the contrary, while blaming parents for this situation, they themselves organised in the workshops classes or recreational times for child workers as well as for their mothers. The wives of the employers themselves frequently coordinated the activities.

It was paternalism that brought up all these realisations, by the way always assessed in terms of profit and loss for the companies.

However, these good principles did not hold for long, once unfavourable circumstances arose, as shown by European social history. Furthermore, good principles were always put forward to mask reality. The more things were managed in the short term, the more some talked about sustainable

development; the more people were stuck in unemployment, the more a good previsionsal employment policy was praised. As the sociologist Michel Vilette emphasises, “one says what those who suffer from what is contrary to such a reality would like to hear”<sup>1</sup>.

### **In spite of some mechanisms of contention, the power of transnationals is strengthening**

By virtue of the law of growing economies of scale, concentration is one of the rules of the game of the capitalist economy.

Since the end of the 19<sup>th</sup> century, the situation of perfect competition, where no stakeholder is capable of exercising alone a decisive influence on a market, was overtaken by events. Anti-trust laws were supposed to stop the excessive power of certain large groups. They still exist, but are hardly effective. Since then, concentration has continued to accelerate, the largest generally absorbing the smallest, beyond borders.

Today, globalisation is marked by the weakening of the power of national and international authorities. Its three key words are liberalisation, privatisation and deregulation. It is the paradise of transnational enterprises, which are operating as they deem fit particularly from the social and human rights point of view.

The consequences of the power that transnational companies accord themselves were often addressed. They were denounced by trade union organisations, NGOs, even certain governments, in international organisations, particularly the ILO, ECOSOC, the Commission on Human Rights and the United Nations Sub-commission for the Promotion and Protection of Human Rights.

### **Ethics: fashion or necessity?**

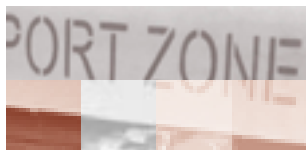
The notion of corporate social responsibility is therefore as old as the enterprises themselves. As we have just mentioned, it simply took on other names at other times: paternalism, charity work or ethics.

For several years, employers, in collusion with some governments, have done everything to deregulate and make flexible the economic and social sphere, putting the defence of shareholders before that of workers, whereas it is the latter who create the wealth of enterprises.

At the national level, this strategy led to a reform of the labour market, resulting in new legislations. These laws were surrounded by a glow of modernity, although deep down, they were often regressive since they worsened working conditions and attacked essential prerogatives for work-

1. *Le Monde, le Monde de l'économie*, 3rd December 2002.





ers (job stability, freedom of association, right to collective bargaining, protection against improper dismissals, etc.).

At the level of international legislation, the revision of existing standards was posed, which, as we observe, does not in any way mean a revision in the direction of improvement. Employers oppose the adoption of new international conventions in sectors of high importance for workers as, for example, that of sub-contracting.

This excessive deregulation encouraged all kinds of abuses. Today, in our globalised society, immorality and amorality have reached heights that the citizen, the political world and even the private sector can no longer tolerate. This is why several enterprises welcome positively, while emphasising the voluntary nature of the measure, the inclusion of their social and environmental responsibility in the agenda.

During the preceding decade, particular emphasis was placed on ethics, and consequently, on corporate social responsibility. One therefore observed a proliferation of codes of conduct. Certain resounding declarations on enterprises, on the subject of their ethics, are in fact mere propaganda, not even hidden, and also serve as a means of manipulation. Enron and Worldcom did not fail to make reference to their ethics charter!

In fact, "considerations linked to image and reputation play an increasing role in the competitive environment of enterprises. Companies are today more and more aware that in the long run, commercial success and profits on shares do not result only from the maximisation of profits in the short term, but require, on the contrary, a behaviour which, so as to be focused on the market, is responsible<sup>2</sup>".

Making profit cannot therefore be achieved without responsibility, which is not only economic. However, for a very large number of enterprises, their only responsibility consists in making profit since "the moral responsibility of the enterprise is fundamentally subversive, it ruins the foundations of the liberal capitalist society" Milton Friedman, Nobel Prize Winner for Economics, affirmed that "the only corporate social responsibility is to increase its profits" for the greatest benefit of shareholders<sup>3</sup>.

Another reason, and not the least, that encourages the private sector to "moralise" its activities a little is the fact that "the financial players, in order to be able to better identify the intrinsic factors of risks and success of an enterprise, as well as their capacity for response to public opinion, request that they be provided with information that goes beyond the traditional financial reports<sup>4</sup>". After giving greater importance in the time of Golden Boys to speculation and the creation of value in the short term, the market, used to a persistent trend of accentuated reduction due to some dismal disasters, is rediscovering the virtues of the long term and the famous adage "ethics pays": with time, a responsible enterprise would be more profitable than an enterprise with neither faith nor law.

2. European Commission. "Corporate social responsibility. A contribution of enterprises to sustainable development" July 2002.

3. Albert, Michel. "A new social market economy". In: *Futuribles*, N° 287, 2003.

4. *Op. Cit.*

Moreover, the growing importance given to corporate social responsibility also reflects the decline in influence of the State advocated and introduced by the international financial institutions (IMF, World Bank).

Voluntary private initiatives can also lead the State to renounce the adoption of new regulations by showing that industry already respects for the best, the interest of the population. Thus, in certain cases, it could be that the State encourages company initiatives by considering that the latter exempt it from any regulation.

### **Ethics on etiquette: a self-defence strategy of capitalism**

In the past, just like today, if ethics penetrates companies, it is mainly to preserve capitalism.

Do charters and other codes of conduct formulated unilaterally by company managers contribute to increasing the protection of wages or, on the contrary to the reduction of the latter and to weakening labour rights? These initiatives yield binding obligations to the goodwill of heads of enterprises. They constitute a privatisation of the law that poses important legal problems. In fact, the unacknowledged aim of hindering legal intervention which would have become supposedly useless, results in reality in privatising the rule of law and in transforming the manager or director concerned as a potential justiciable individual, into a legislator, policeman or judge, to the scorn of the most elementary separation of powers<sup>5</sup>”.

“Faced with the proliferation of voluntary initiatives, the ILO is increasingly called upon, some inviting it to act, others to abstain from acting<sup>6</sup>”. However, for the moment, this Organisation does not really act, due to great pressure from employers, especially their international organisation IEO.

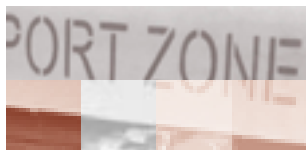
### **The majority of governments wanted as a first step a public monitoring of international investments ...**

The years that followed the end of the 1940-1945 War saw the establishment of various international organisations to regulate the monetary system and international trade. The international organisations initially went in the direction of a better framing of trade and financial policies.

It is in this climate that at the end of the United Nations Conference on Trade and Employment, which was held in Havana from 21st November 1947 to 24th March 1948, on 24th March 1948, the Havana Charter was signed. This created the International Trade Organisation and deals in Articles 16 and 40 to 54, with international investments and restrictive trade practices. The American Congress did not ratify it. Consequently, GATT was established in its place as a “temporary solution”, thus leaving international trade activities outside the framework of the United Nations, activities that were regulated by strict rules on trade, and also on labour rights.

5. Mireille Delmas-Marty. In: *Le Monde*, 27th November 2001 - free translation

6. International Labour Office. GB.273/WP/SDL/1 November 1998.



The Bandung Conference (1955) gave birth to the Non-Aligned Movement six years later. When it was organised, developing countries then questioned the international economic rules at stake and proposed structural reforms, especially concerning international trade.

1964 saw the creation of the United Nations Conference on Trade and Development (UNCTAD), the main aim of which was to establish more equitable trade relations between the North and the South and to encourage South – South exchanges, in short, to reconcile international trade and development. Developing countries hoped thus to influence “a new international economic order, and especially a “new trade order” which would consider better their economic interests in international institutions and fora.

#### **...hence a public control of all multinational companies**

Already in 1962, the United Nations Resolution 1803 for the Permanent Sovereignty over All Natural Resources included several principles referring to transnational companies, especially because two thirds of their activities in developing countries was concentrated in the exploitation of natural resources.

Then in 1974, the Economic and Social Council of the United Nations ECOSOC created both the Centre for transnational companies and the Commission on transnational companies with the aim of formulating a “series of recommendations which, taken together, would represent the basis of a code of conduct for transnational companies”. This decision responded to a recommendation of the Group of personalities appointed by ECOSOC, which had given its report a few months earlier, and considered that a code of conduct could act “as an instrument of moral persuasion strengthened by the authority of international organisations and public opinion”. The conviction that had motivated this report was also that a “code of conduct of the United Nations constituted a unique opportunity that transnational companies would not let go of.” During its second session, the Commission on transnational companies set the goal of proposing a code of conduct for the spring of 1978. The news was not well received by the business world.

At the same time, in December 1974, the United Nations adopted the Charter on the economic rights and duties of States, which stipulated in its preamble that, it “should constitute an effective instrument in view of establishing a new international system of economic relations”.

#### **But the transnational companies did not understand it this way and retorted**

Rapidly, the transnational companies penetrated the United Nations system, by co-operating in an institutionalised manner with the FAO and the UNDP and by participating in governmental delegations, with technical justifications, in negotiations that took place at UNCTAD, UNIDO, WIPO,

FAO, etc. In this way, they were defending their interest, although diametrically opposed to those of countries in the South.

In 1972, the International Chamber of Commerce (ICC) published its "Guide for international investments", in which it emphasised among others the harmful effects of a binding code, which would be an obstacle to international investments.

Almost all transnational companies had their headquarters in industrialised countries and three quarters of commercial activities and investments operating in the OECD zone. Since the industrialised countries were the minority at the United Nations, they decided to set their policies regarding transnational companies within the framework of the OECD. Defending the interests of their transnational companies ("what is good for Ford is good for the USA"), they did not want a binding code and adopted in June 1976, still within the OECD, the "Guideline principles on international investments and multinational enterprises". Even if the states were responsible for their application, they were dealing with voluntary and non-binding principles. By this they made it known that they were not ready to accept that activities of multinational companies "be controlled in an excessive manner".

What happened at the OECD had a deciding influence at the ILO during the "Tripartite Consultative Meeting on Relations between Multinational Enterprises and the Social Policy of the ILO" (meeting of experts), which was held for the first time in May 1976, and concluded with the need to formulate an ILO Declaration of Tripartite Principles on Multinational Enterprises and Social Policy.

"The consensus of the OECD was imposed on the ILO by the American delegation (employers, workers and government, together)<sup>7</sup>". In fact it was in April 1977, during the session of the tripartite consultative meeting, that the Declaration of Principles on Multinationals and Social Policy was adopted. The votes were as follows:

- 22 votes for, including six trade unionists;
- 1 vote against, including one trade unionist, and;
- 1 abstention, from 1 trade unionist<sup>8</sup>.

The Governing Body of the International Labour Organisation (ILO) then approved this Declaration in November 1977<sup>9</sup>.

The OECD Code of conduct and the ILO Declaration of Principles – both intentionally and by omission – gave satisfaction to all the priorities of employers<sup>10</sup>.

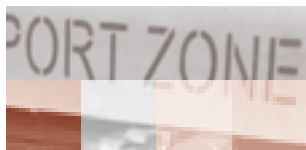
7. Gérard Fonteneau. In "A propos de la responsabilité sociale des entreprises". March 2003.

8. Gérard Fonteneau. *Op. cit.*

9. This Declaration is available at the following address:

10. <http://www.ilo.org/public/french/employment/multi/download/french.pdf>

WCL "For renewed trade union action in the face of multinationals", 19th WCL Congress, 1977.



### **To date, the United Nations has never adopted a code of conduct on transnational companies**

During the restructuring of the United Nations in 1993, the Centre for Transnational Companies was closed, and in February 1995, the United Nations General Assembly decided that the Commission on Transnational Companies should become a Trade and Development Advisory Commission and be re-named Commission for International Investments and Transnational Companies.

It is also worth noting that the United Nations Secretary General recalled on 17th July 2000 that the private sector played an active role within the United Nations Organisation, that co-operation and partnerships between the Organisation and stakeholders other than states, especially the business world, should be strengthened. In this direction, the Global Compact, launched in 1999 by the UN Secretary General himself, was to constitute an appropriate general framework for co-operation with the business world.

The subject of a code of conduct was discussed at length among the Working Group on the working methods and activities of multinational companies of the UN Sub-commission for the promotion and protection of human rights. The Sub-committee adopted, during the August 2003 session, the "Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights".

This text was submitted to the Commission on Human Rights of March 2004, for the establishment of a working group responsible for their examination. But the initiative did not succeed at the time due to the enormous pressure exerted by certain organisations representing the private sector.

This proposal for a code deals with the right to equal opportunities and to non-discriminatory treatment, the right to the safety of the individual, the rights of workers, the respect of national sovereignty and human rights, obligations aimed at protecting the consumer, the environment and general provisions aimed at implementation.

The following chapter will deal in more detail with the issue of codes of conduct, which express one of the reactions to this debate on corporate social responsibility.

### What is the meaning of the expression “corporate social responsibility”?

According to the European Commission, “the concept of corporate social responsibility means essentially that enterprises decide on their own initiative to contribute to the improvement of society and to make the environment cleaner (...). This responsibility is expressed on wages and more generally, on all stakeholders who are concerned with the enterprise but who want in turn to influence its success” (*European Commission, Green Book 2001*)

For others, corporate social responsibility involves “taking into account the consequences of activities of limited companies on the human being, society and the environment, in particular, thanks to the maintenance by the enterprise of “loyal and equal relations with all partners: shareholders, other donors, employees, trade unions, suppliers, clients, competitors, public communities and all persons or communities affected by the activities of the enterprise”. (*Actionnariat pour le développement durable –ACTARES-, Charter and Statute of the organisation*).

The Chief Executive Officer of Pricewaterhouse Coopers, S.A. Dipazza, defines social responsibility as “alternative globalisation” in the face of the conflict between pro and anti globalisation. (*Economic and Social Forum, New York, February 2002*)

Under this terminology, in fact, very diverse things are regrouped: charters, social labels, ecolabels, socially responsible investments, codes of conduct, etc.

For the WCL, “corporate social responsibility consists in the unilateral and voluntarily definition by the company of, social and environmental policies with the help of alternative instruments that are neither collective agreements nor laws, providing multistakeholders’ partnerships, in order to realise these objectives.”





## CODES OF CONDUCT

### *Working conditions*

*The WCL rejects any economic system which tends to use man as a tool. The fact is that man is the essential element of production, being at one and the same time the originator of it and the purpose for which it exists. Every man, therefore, has the right to working conditions that enable him to achieve the normal development of his personality. Consequently, any system organizing or tolerating forced labour is to be rejected.*

*In all cases where the conditions of production do not allow this normal development of the worker's personality, the WCL intends to strive for as complete a transformation of these conditions as is necessary to ensure a better organization of employment, of production methods and economic structures, with a view to attaining better conditions of life, fair shares in responsibilities and in the fruits of productions. These transformations must be achieved, not by systematically developing class antagonisms, but by encouraging the workers to be aware of the conditions necessary for their emancipation and participation and by advocating an economy organized in such a way that the dignity of the workers and the independence of their groups be fully respected.*

*Article 5, WCL Declaration of Principles*

### **Advancing towards company codes**

In the past, the pressure exerted for the formulation and adoption of binding codes came mainly from governments in the South. Today, on the contrary, it finds its origin essentially in countries in the North (NGOs, associations, etc.), which want in most cases, the adoption of voluntary codes. This makes them accomplices to the evolution towards more voluntarism and with those who advocate this approach.

Draft codes of conduct on transnational companies formulated within the United Nations made provision for a broad framework of regulations by the international structures of transnational companies and of their branches. This framework also encouraged the strengthening of national legislations.

After succeeding in getting the regulations and the control of their activities to fail, transnational companies saw in the approach a voluntary initiative, a possibility to go forward in a way that was more favourable to them. They unilaterally began to establish their own codes, to decide on their application and methods of follow-up, if there is. It is not rare either for a multinational company to formulate several codes of conduct.

They therefore have total control over the codes of conduct, which in effect, are tools that they have fabricated to defend their interests and not necessarily those of workers and populations.

The codes are generally applied only in the enterprise itself, and at times only, in its branches. It is very rarely that they cover suppliers (except for distribution) or other sub-contractors.

The limitations of the trade union movement also opened the door to the initiative of multinational companies. Enterprises write codes of conduct in which they talk about workers' rights, while at the same time they deny the latter the power to involve themselves in the implementation of the code, to join a trade union organisation of their choice and to negotiate collectively on their conditions of work.

### Meeting the concerns of civil society

Transnational companies, which are known to the public, quickly understood that if they adopted codes responding to the concerns of NGOs, not only would they remove the risk of adoption of codes of conduct within the framework of the United Nations, but they would also certainly improve their brand reputation. These codes could have positive effects on their activities.

They also drew lessons from scandals on various affairs, which led some of them to be prosecuted. Moreover, at the time when they adopted a code of conduct, they did so with a lot of publicity, especially in the importing countries, not skimping on the resources and amounts spent. "The publication of a code of conduct can improve the reputation of an enterprise before its clients (...). It contributes to enhancing the image of an enterprise (particularly if it is specialised in up-market products<sup>11</sup>."

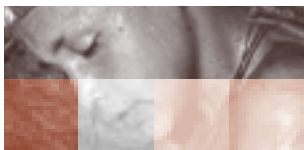
What is important is to make known, or rather to make consumers in Western countries believe that their products are manufactured in conditions that respect the dignity of workers and the environment. It is also for this reason that populations in exporting countries where transnational companies operate are unaware, most of the time, of the existence of such codes, which furthermore are not necessarily available in the languages of the said countries. Sometimes even the workers of the said enterprises are not aware of the existence of such codes which are written in a language that they do not know and in a style that is very foreign to them.

A binding regulation at the international level – within the framework of the United Nations – would apply to all transnational companies whereas private codes of conduct only concern a very small number of them. According to the United Nations Research Institute for Social Development (UNRISD) there would probably be only a few hundred codes of conduct.<sup>12</sup> UNCTAD, for its part, points out that there exist today some 65,000 transnational companies that have about 850,000 foreign branches in all the countries of the world.<sup>13</sup> These figures indicate quite well the extent of the problem.

11. International Employers Organisation, IEO. "Codes of conduct, position taken by the International Employers Organisation", June 1999.

12. UNRISD "CSR and Development: Is a new agenda needed?" Peter Utting. November 2003.

13. UNCTAD. "Report on investments in the world 2002".



### **“Voluntary initiatives” cannot be a substitute for a real national and international legislation**

Several research studies reveal that “an increasing number of stakeholders think that the responsibility of the business world in certain global stakes (quality of employment, contribution to the greenhouse effect...) is a public good and cannot be content with limited initiatives. Self standardisation is not enough and the State must take over again this domain.”

#### **A code of conduct is:**

“A written document expressing the policies or principles that enterprises undertake to follow. By their very nature, voluntary codes contain the commitments that enterprises make, especially to respond to the expectations of the market, without being obliged by the legislation or regulation. However, since it is a question of public declarations, one considers it normal that these codes have legal implications, taking into account the laws that govern declarations of enterprises, advertising and competition (in the case of joint action of several enterprises).” (*ILO. Governing Body. GB 273/WP/SDL/1, November 1998*)

According to the International Employers Organisation – IEO –, “the code of conduct is an operational declaration of policies, values or principles which guide the operations of an enterprise according to the development of its human resources, management of the environment and interaction with consumers, clients, governments and the community where they operate”. The IEO adds that, “enterprises and their organisations are free to choose whether or not to develop, to establish, adopt, make known and follow a code of conduct. They are free to decide whether or not to develop a code of conduct within the enterprise, on their own or with a third party.” (*IEO, June 1999*)

For the OECD, “the code of conduct is a commitment made voluntarily by enterprises, associations or other entities which set standards and principles for the conduct of activities of the enterprises on the market”. (*OECD, Corporate Social Responsibility, 2001*)

For the WCL it is a series of indicative prescriptions or rules that persons or groups of persons could establish together in order to improve their relations or to attain the objectives of their association or grouping.

This term, which is used in the private sector, is also common practiced in the economic and social areas.

For example, it could be:

- Code governing a sector of production or trade in order to signing avoid making contracts with sub-contractors employing children;
- Code specifying the fundamental social rights that a sub-contractor undertakes to respect;
- Code on occupational health and safety or working conditions in a sector;
- Code specifying the objectives to be attained to advance equal treatment (employment, wages, qualification) between men and women;
- Code in the area of environment to avoid pollution of streams, rivers and waterways.

### At the beginning, they dealt mainly with illicit payments

The first lot of codes dates back to the 70s and emerged after the "Securities and Exchange Commission" started to investigate illicit payments and after the United States Congress adopted the "Foreign Corrupt Practices Act of 1977".<sup>14</sup> They mainly dealt with questions related to corruption. Besides, the codes were also a sort of element of the Washington Consensus formulated in the 1980s by the international financial institutions, which advocated among others, the disengagement of the State, flexibility on the labour market, social safety nets and corporate governance.

### Later, the codes integrated social and environmental issues

It was only in the 90s, after the Earth Summit (Rio, 1992) and under pressure from civil society, that social and environmental issues became the object of several codes. An OECD study emphasises that out of the existing 246 codes, 60 % refer to the issues of labour standards and 59 % concern environmental issues.

The World Bank, in its analysis of 107 codes<sup>15</sup>, reveals that codes, coalitions or fora that have most influence on the practices of multinationals are in order:

- ISO standards 14000 (standard on environmental management) for 48% of enterprises;
- Global Reporting Initiative (GRI) for 40 %;
- World Business Council for Sustainable Development (WBCSD) for 37 %, and,
- ILO Fundamental Conventions for 36 %, that is for less than 40 multinational companies.

### Most existing codes are developed and written in countries in the North

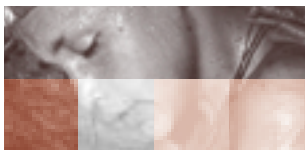
These codes very often take little account of the issues that preoccupy the stakeholders in the South.

They are generally drawn up in general terms, which leaves moreover room for their stakeholders to interpret them in the way they want. They very often make reference to national laws and rules, which in a lot of cases were reviewed downward under pressure from international financial institutions and/or are inferior to the demands of the law and rules of the countries of origin of multinational companies. Furthermore, concerning freedom of association (C.87) and the right to collective bargaining (C.98), many are the national laws, that limit these rights. In their report to the International Labour Conference, the ILO experts do not fail each year to expose several of these cases.

And, here too, it is not the revisions of the different labour legislations advocated particularly by the international financial institutions that have improved the situation. Furthermore, these rights

14. Foundation of Southwestern Graduate School of Banking. Investigation.

15. World Bank. "Race to the Top: Attracting and Enabling Global Sustainable Business". October 2003.



are not recognised in most of the export processing zones. Today, there are about 850 of them and they are the strongholds of multinational companies. So many cases of refusal of access to the EPZ to trade union organisations or labour inspectors have been made known to us.

The majority of codes do not make any reference to international labour standards and do not cover domestic workers. In agriculture, they are applied to only certain groups of workers. Not more than one third of the codes examined make reference to international labour standards, in general terms, or quote the principles of a convention or of a specific recommendation of the ILO.<sup>16</sup> Enterprises considered by certain circles as pioneers in corporate governance do not include any reference to international labour standards (Levi-Strauss, Liz Clairbone).

### There are several categories of codes of conduct

We can classify codes of conduct into three categories:

- **Codes internal to enterprises**, employers association, those formulated within the enterprise itself and put into practice without the intervention of a third party;
- **Codes which are formulated and written by the enterprises with the participation of a third party** (trade union organisations, NGOs);
- **Codes formulated by NGOs**, foundations or independent bodies, of the Social Accountability 8000 type, **or by NGO coalitions** that grant labels (including trade union organisations).

### Codes of conduct are particularly concentrated in certain sectors of activity

They are found particularly in the textile, chemical and extractive industries. Codes that refer to labour are particularly concentrated in clothing, (essentially branded clothes), footwear, sporting articles and toys whereas those that integrate environmental issues are found in trade, chemical industry, forestry, oil and mining. Not only are they limited to specific sectors, where corporate image plays an important role, but they also affect enterprises geared towards exports. Companies that are not in contact with consumers would have little reason to adopt a code of conduct.

Others see the codes of conduct as “a preventive medicine” so as to forestall the problems before they set in publicly. One of the very sensitive points on this issue is that of equal treatment between men and women in the codes of multinational companies, especially in Great Britain.

Some enterprises also see the adoption of codes of conduct as a competitive advantage, a trump card for the export of their products to Europe and North America and as a means of giving a good

16. ILO, GB273/WP/SDL/1 November 1998

image of an exporting country. This is particularly the case of Thai enterprises established in Vietnam.

### And what do these codes contain?

According to an ILO study, “relatively little mention is made of fundamental international labour standards in the codes and policies of enterprises<sup>17</sup>.” Less than 20% of enterprises made reference to it. On the contrary, when these codes are formulated by several stakeholders, references to international labour standards are much more. However, they hardly go 50%.

In its analysis of 239 codes, the ILO<sup>18</sup> points out that subjects covered by the codes of conduct refer, with regard to labour issues, to the following areas:

- Forced labour
- Child labour
- Freedom of association and the right to collective bargaining
- Non-discrimination at work
- Occupational health and safety
- Minimum wage, social advantages and duration of work
- Job security
- Monitoring the application of the code

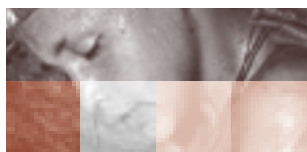
The first six areas make reference to rights guaranteed in the ILO conventions, including the eight fundamental conventions. The monitoring of the application of the codes is another area that the ILO has retained in its research and that also worries us. We will deal with this question at the end of this chapter.

The fact that these eight points are incorporated into our study does not in any way mean that all the codes deal with all these issues at the same time. Besides, when they are mentioned, the references are often limited to generalities. Only in some cases are they detailed. Meanwhile, no code out of the 239 analysed by the ILO, deals with all these points simultaneously.

17. ILO, GB288/WP/SDG/3, November 2003.

18. Codes of Conduct and Multinational Enterprises, ILO.





### Are the workers' rights taken into account in company codes and in the codes of NGOs and other organisations?

Rights targeted	Company codes	Codes of NGOs and other organisations
Forced labour	32%	47%
Child labour	35%	54%
Freedom of association	24%	54%
Collective bargaining	hardly mentioned	hardly mentioned
Non-discrimination	50%	69%
Health and safety	71%	74%
Minimum wage, social advantage and duration of work	45%	49%
Job security	5,7%	20%
Application of codes	69%	/
Monitoring their application	few	
Anticipation of external monitoring	rare	

Source: Own elaboration based on ILO information, 2003.

### How are the ILO Conventions considered in these codes?

An analysis of 140 codes (out of those reviewed by the ILO) was undertaken by the WCL in order to monitor the reference to these various aspects in the company codes of conduct and in those that are promoted by NGOs and other organisations.

#### **The area most covered by the codes is health and safety (74% of codes established by NGOs and other organisations and 71% of codes of multinational companies).**

The dramatic events that occurred in Bhopal (India) and in Thailand certainly led a lot of multinational companies, employers' organisations and NGOs to give particular attention to this subject. As a reminder, let us recall that several tens of thousands of people died in Bhopal, in December 1984, in an American Union Carbide pesticide factory and 200 workers also lost their lives in 1993, in the manufacture of Kader toys in Thailand.

This concern for health and safety is particularly real for chemical industry organisations in Canada, United States, Great Britain, India, Japan, Portugal, Sweden and even in Zimbabwe, which only deal with this subject (and, on the contrary ignore other issues). It is the same for Barclays Bank, General Motors, Petro Canada, Xerox and still others.

However, one must not be mistaken by it. Several codes are very vague and laconic on these subjects. They aim at ensuring that their operations do not constitute a level of unacceptable risk to their employees, clients, public or the environment (Canadian Chemical Producers' Association - CCPA) and at guaranteeing their employees good working and safety conditions (Shell).

**The issue of non-discrimination comes in second place for multinational companies (69 %) and in the fourth position for NGOs and organisations (50 %).**

By looking a little closer at this issue, one sees that all the codes mention that in one way or another non-discrimination does not refer to the definition of discrimination as it appears in ILO Convention 111. On the contrary, some codes merely affirm that they encourage equal opportunities (Canadian MNEs) or individual rights to equal opportunities (Body Shop, Motorola). Other codes only mention that the enterprise recruits, employs and gives promotion to their employees only on the basis of qualification and the ability to execute the work (Unilever, Duke University). Other organisations are more sensitive to religious discrimination and desire a balance between the different religious groups (Sean Macbride).

**Only 24 % of the codes of enterprises mention freedom of association, putting this segment in the 5th position. 54 % of codes formulated by NGOs and various organisations make reference to freedom of association, which places these segments in the second position.**

Concretely, this does not mean that these codes, principles and rights guaranteed by Conventions 87 on freedom of association and 98 on collective bargaining are recognised, even if they express the right of workers to organise themselves independently and the right of collective bargaining. Codes that mention these two Conventions are in fact very rare. Besides, several codes mention the right to organise but forget that of collective bargaining (Christian Aid, Starbucks, Vivendi/Compagnie générale des Eaux).

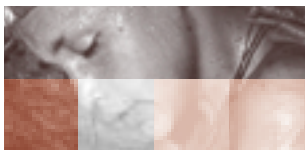
Certain organisations or multinationals have a strange way of approaching freedom of association and collective bargaining. For example, the Federation of Korean Employers (KEOs) mentions that "KEOs should continually make efforts to maintain relations of collaboration based on confidence and mutual respect between workers and employers." Toyota promotes "a culture of enterprise that enhances individual creativity and teamwork while respecting confidence and mutual respect among workers and employers." Caux Round Table talks about entering into negotiation in good faith when a conflict is raging<sup>19</sup>.

**Only 32 % of enterprises make reference to forced labour and 35 %, to child labour. NGOs and various organisations, though they pay it greater importance, are not all concerned by these subjects. 47 % of these mention forced labour and 54%, child labour**

One would think that multinational companies, which in general are very sensitive to public opinion, would reserve an important place to forced labour and child labour in their code. This is not the case.

However, one notices that when child labour is mentioned, the terms used are in general stronger than those used in other chapters. It is true that child labour is always a very sensitive issue on the international scene. "Resorting to child labour is strictly forbidden" (Avon Products). "The Wal-Mart group opposes child labour in the manufacturing process of the product it sells. It does not accept products offered by associates to providers who resort to child labour in sub-contracting or in other types of work to produce their goods."

19. Caux Round Table is a network of leaders of enterprises who desire to promote moral capitalism



The sectors most involved with forced labour are trade, textile, clothing, footwear and agriculture. Most multinationals who deal with this issue speak clearly against this (Alcan, C&A, and Nike) and affirm that they will stop all relations with sellers or sub-contractors who would resort to such methods (Wal-Mart Stores). Others are more evasive and ask that such practices be avoided (Polaroid) or limit themselves to forced labour in prisons (Alvon).

**Minimum wage, social advantages and working time: 45 % of codes of multinationals analysed by the ILO mention in one way or another the issue of salaries, social advantages and working time and 49% for NGOs.**

Regarding wages, most codes of multinational companies make reference to national legislations, even local, and are in general very laconic. Some merely talk about equal treatment for employees regarding salaries, working conditions and social advantages. Others only say that wages and social advantages must cover the fundamental needs of workers, without any reference to families.

The codes that make reference to working time often talk about a 48-hour week and a maximum of 12 additional hours. In commerce, it is at times stipulated that the working time must be at least 60 hours a week or between 40 and 60 hours (Business for Social Responsibility-BSR).

On the contrary, there is complete silence on the payment of wages in case of illness, holidays, social security, etc.

**Job security is the issue that preoccupies the least number of multinational companies (5,7 %) and NGOs and other organisations (20 %).**

It is very often generalities that are stated, like that of Johnson & Johnson that assesses: "we are responsible towards our employees regarding their job security". At times one comes across the notion of work contract; "All workers should have the right to a work contract." (Hennes & Mauritz).

**One of the essential criteria for the credibility of codes of conduct is the issue of their application and particularly the monitoring of their implementation.**

Though nearly 70% of the codes make reference to their application, few include internal monitoring and very rare are those that include provisions for the effective monitoring by independent persons outside the enterprise. When the enterprises mention internal monitoring, they are very discrete on the procedures to follow. Transparency is not necessarily their primary concern. A fortiori, there is no mention there of the link between this monitoring and labour inspection.

The language used is general, which hardly allows for an evaluation of the implementation of the codes. With a few exceptions (7 companies out of 156), no monitoring, independent or external to the enterprise, is provided for. The monitoring bodies internal or external to the enterprises most of the time collect their information from the directors rather than the workers. At times, workers are consulted but the conditions of the meeting are not adequate for them to talk in con-

fidence. The reports that are consequently written could have very negative effects on workers and their families by giving a false image of the enterprise and of the working conditions there.

Current discussions at the ILO have shown that the employers' representatives are formally opposed to any involvement of persons outside the enterprise in the application of codes and their monitoring.

The International Chamber of Commerce, through the voice of the General Secretary, recalls: "It is up to enterprises to formulate their principles and ensure their application (...). Enterprises do not want third persons using codes or guiding principles as non-binding rules to judge the operation of each enterprise. Any attempt to impose a universal code of conduct on multinationals is doomed to failure."<sup>22</sup>

*In conclusion, as can be observed, it is essentially enterprises that choose the standards, or rather the subjects that they want to see in their code. This strategy enables them, in particular, to be committed in areas where it will cost them nothing. Very few companies make reference to international labour standards or even to core labour standards. And when they do, they choose them to improve their brand reputation instead of respecting the spirit and the letter of these conventions. NGOs themselves are far from incorporating all the core labour standards in their proposals of codes.*

*Areas such as domestic work, job security and payment of wages in case of illness, maternity, etc. are hardly ever treated.*

*Do multinational enterprises really want to modify their behaviour or on the contrary, do they only want to legitimise their actions through a code of conduct for their clients, suppliers, NGOs and governments?*

### What is therefore the value of these codes?

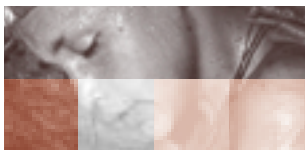
### What is their impact on the practical life of workers?

The codes, as we have pointed out, are often mere creations of the companies. To evaluate them more objectively, one must assess their practical impact on the living and working conditions of the populations concerned.

In several countries in the South, some years ago, workers thought that codes of conduct could bring about considerable improvement in their living and working conditions. Transnational companies tend to deny all responsibility on the negative attitude of sub-contractors towards workers.

Today, apart from a few examples that received excessive media coverage and thus spread around the world, working conditions have not only been maintained at the 1997 level, but have

22. The OECD Observer, "Responsible behaviour of enterprises in a world economy" 7th December 2000.



deteriorated. Wages continue to decrease and dangerous working conditions still exist. These same workers fear today that codes of conduct are only an instrument to privatise labour standards. For many workers, codes of conduct are a smoke screen for “poor” labour standards. There is a widening gap between code and conduct.

In formulating their code of conduct, several enterprises certainly thought and still think today, that they have thus marginalized trade union organisations. Some have even affirmed it publicly during the forum organised within the framework of the Global Compact. “A North American company even stipulated that it will resort to all means within the law to discourage its personnel from joining trade unions<sup>23</sup>”.

In adopting a code of conduct, some companies hope to avoid expensive legal actions, even penal or civil sanctions and harm to their reputation, especially after some international procedures are used. They promote these codes as instruments of communication to manage their relations with civil society. For enterprises listed on the stock market, the adoption of codes of conduct enables them to give a positive image of the enterprise to shareholders who increasingly have the tendency to raise questions affecting ethics. Meanwhile, the adoption of such initiatives “has served to appease the fervour of the authorities in favour of regulations<sup>24</sup>”.

### Monitoring the implementation has given rise to new private expertise

Some research made by international organisations on several companies give evidence that the verification of the effective application of codes of conduct is often done by the company itself. The publication of reports – when there is one – only reveals partial information on the situation prevailing in the company. The report gives a positive image of the company that applies or progresses in the application of the code. We do not know of reports that refer to dismissals or strikes. Besides, they do not necessarily raise or analyse the real problems that workers face.

Trade union organisations, NGOs and various stakeholders henceforth demand and with increasing insistence that independent monitoring bodies check the effective implementation of codes.

This is what led to the emergence of a whole lot of experts and new professions. Many people from various backgrounds (human rights, environment, universities and others) and not necessarily having the experience or competence required in the area of workers’ rights and labour standards are involved in this new market. The latter now employs tens of thousands of people.

Private monitoring is undertaken at various levels:

- In checking the application of codes of conduct. Generally, this verification is undertaken by NGOs active in the formulation of the codes and includes on-the-spot investigation missions. Some private companies specialise today in this area.

23. OECD “Responsibility of enterprises – private initiative and public objectives”. 2001.

24. OECD “Responsibility of enterprises – private initiative and public objectives”. 2001.

- Through audit companies or social notation. There are about a dozen today. In principle, their role is not to certify the respect of one or another code or directive. They function on the basis of their own criterion or indicators and publish reports at the end, the use of which will depend on their recipient (the enterprise that requested the study and that moreover will pay for it) or the stakeholders (trade unions, local communities or NGOs for example). Concerning procedures, the investigations do not necessarily involve missions to the enterprises concerned. They could be based on a mere analysis of documents and information placed at their disposal, especially by the enterprise (declarative notation).

Regarding monitoring of working conditions, these persons or organisations operating on the fringes of the labour inspection system, even contribute to weakening it further, in countries where workers rights are largely flouted.

Historically, American companies were the first concerned with issues of ethics. Since 1913, the Penney Company has had a code of ethics<sup>25</sup>. At the end of the 1930s, several companies have adopted codes aimed at advertising activities. "In the 1960s, 1970s, and 1990s there was a new upsurge, focused on the practices of corruption, trusts and internal management of personnel.<sup>26</sup> Since then, they have been greatly promoted by enterprises as well as by NGOs and some trade unions. After so many years, no in-depth evaluation has however been undertaken on their credibility and their impact on the world of work.

### These new monitoring procedures raise several essential questions

Does monitoring result in an improvement in the working conditions in the enterprise? Does it help in strengthening the internal position of independent trade unions? Does it contribute to social dialogue? To collective bargaining agreements? Is it renewed frequently enough to ensure constant vigilance? Do the auditors enter into contact with the labour inspectors of the country concerned? Are their strategic actions sustainable? So many questions often remain unanswered.

Meanwhile, who has the legitimacy to monitor, determine the procedures of control and to issue certificates to companies?

Currently, there is no rule in the area of auditing of multinational companies having adopted or not codes of conduct at the social level. Nothing was codified on this subject. Each enterprise institute or NGO does so according to the reference criterion that they have established. The value of this varies greatly.

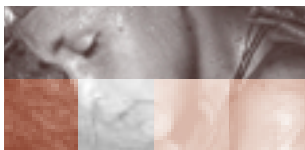
At the international level, initiatives like the Global Reporting Initiative, which involves several stakeholders, enable the development of a framework for reference considering various indicators that each organisation can use voluntarily when "reports on the economic, environmental and social dimensions of activities, products and services<sup>27</sup> are produced."

25. Ballet, Jérôme and De Bry, Françoise. "Enterprise and ethics". Ed. du Seuil. December 2001.

26. Brugvin, Thierry. "Codes of conduct: a double-edged instrument". In: *Economy and Humanism*. January 2002.

27. Global Reporting Initiative –GRI-, in: <http://www.globalreporting.org/about/brief.asp>





There are other questions on various aspects relating to the content of these controls:

- The lack of reference to labour standards in the codes of conduct and in the basic indicators used by audit companies cast serious doubts on the credibility of their evaluation. Besides there is no uniformity in criteria enabling all ILO Fundamental Conventions as basic principles to be at least considered. Transparency is neither often present.
- Is the methodology used reliable? Is it transparent? Does it truly respond to the interests of workers? Has the voice of the latter as well as their trade union organisations been duly heard and translated in the approach and in the results?

It is of public notoriety that the auditing practised by the large firms generally tend to favour the administration and gives a distorted image of the company. It lays aside the serious and important problems concerning health and safety, freedom of association, collective bargaining, and discrimination. Very often, it does not even see – or does not want to see – that companies violate the regulations on wages, that the time clock cards have been falsified, etc.

The auditors collect information from the company managers and rarely from the workers. And if they interview the latter, it is very often under bad conditions: they do so in the presence of their hierarchical superiors and at the work place, which influences the responses given. For fear of losing their job, the workers say what the managers want to hear or else fearing reprisals, they even refuse to talk. At times they have even been asked to keep silent about their working conditions.

The reports that are thus presented cannot in any way reflect the reality of what is going on, nor of what is happening in the enterprise. This has serious consequences for the workers.

This observation raises in particular the question of the credibility of auditing and the training of auditors. Auditing an enterprise is a complex area and requires on the part of those who do it multidisciplinary training: social, environmental, economic and financial.

How can such firms claim the right to issue “certificates of good conduct” to enterprises? What is the value of these certificates?

If the company has not fulfilled its obligations arising from the code of conduct, what sanction will it undergo? Those who are very well known to the public could be the object of a media campaign for having violating “sensitive” standards. And what happens with the others?

For auditing firms as well as for some NGOs, it is often very difficult to show their real independence from the enterprise that is the object of the notation. Besides, it is the same company that often pays them (in the case of NGOs, systematically; and in the case of the audit firms, at times). It is also worth noting that at the borders of these controls, companies, through their initiative or on the basis of legal obligations imposed by the legislation of their country (in France, in particu-

lar), are invited to present social balance-sheets. The data that come out of them are often general, including for the aspects relating to the fundamental rights of their workers.

### Social label: from the producer to the consumer

Other practices such as labelling certain products add to these various practices. Initiatives of this kind were launched in the 1990s (Rugmark for example, which undertook to certify carpets produced in the presence of child labour and exported to Europe and the United States).

They are extended to the public sphere. In Belgium, for example, the Belgian government on 21st January 2003 officially launched a social label:

"A law has in effect created a social label intended to combine the criteria of liberty and uniformity. Liberty because it offers a new enterprise the possibility of – but without obligation – demanding a label for products that indicate that they have been manufactured in accordance with the ILO core labour standards. And uniformity because the criteria for the attribution of this label are identical for all enterprises, as opposed to the codes of conduct. The consumer will then know what the label covers. It is then up to the consumer to pay attention to it or ignore it. The advantage of this system is that it calls for responsibility on the part of the stakeholders: responsibility of the enterprise, first, to demand the label by committing to supply products that are socially proper (and to accept the control); then the responsibility of the State to be serious and honest in the control and granting of the label; finally and especially the responsibility of the consumer. In effect it is the consumer who will influence the failure or success of the system. If buyers – us – are numerous and opt for products with the social label, demand will increase and companies will be tempted to demand the label, thus transforming the working conditions in the sense of respect for minimum standards. Until the day when – one can dream – labelled products will no longer be sold and all enterprises will have adapted to it<sup>28</sup>."

Any enterprise that does not respect the label faces a sanction "that could go up to 2.5 million Euros and, for those responsible, up to 5 years in prison<sup>29</sup>."

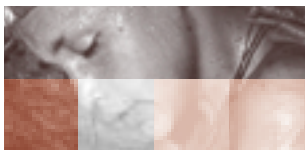
Trade union organisations, including the Confederation of Christian Trade Unions – ACV-CSC – Belgium, in collaboration with the WCL, are directly involved in the monitoring and follow up of this label.

### Shareholders in CSR: towards more ethical movements

Reminding citizens of their responsibilities and mobilising them, especially shareholders, is one of the other pillars of CSR. Financial flows abruptly increased during the last ten years. Today, private groups recognise that their shareholders need security. They also want to be increasingly assured

28. In: [http://mineco.fgov.be/redir\\_new.asp?loc=/protection\\_consumer/social\\_label/home\\_fr.htm](http://mineco.fgov.be/redir_new.asp?loc=/protection_consumer/social_label/home_fr.htm)

29. In: <http://fr.prevent.be/p/53EE80ADC973FC30C1256CC300526638>



of the ethics of their investments. Security and ethics join together in the face of glaring financial scandals and quite dubious practices which go beyond working conditions.

The challenge is at various levels:

- The monitoring of the ethics of investment funds obeys multiple criteria, varied methodologies and rules that are not always transparent. The stakeholders involved in this domain are from the private sector. The same questions posed earlier in this document on the criterion and the ethics are still relevant. Likewise, the consultation (of trade union organisations or works councils) by those in charge of the assessment is not always systematic.
- From the financial point of view, ethical movements have had a boom during recent years. The legislation of some countries was adapted to oblige investment funds to declare whether they have resorted or not to ethical criterion. However, some countries continue not to monitor this sector.
- We have mentioned the content of reports meant to guarantee an ethical criteria to an investment. At times also, shareholders themselves are not trained to assess the legitimacy, a fortiori on markets where the competition between investment funds is very high and where all types of marketing strategies are used to attract new clients.
- The link between ethics, transparency and sustainability is not automatic. Proofs of this are the financial scandals that are caused by enormous financial losses for thousands of shareholders throughout the world and the loss of employment for thousands of workers in the enterprises concerned. In this field of regulation of financial capital, there still remains a lot to be done...

### **Towards regional works councils and towards framework agreements**

Since 1980 more than 24 skeleton agreements have been signed between multinational enterprises and federations of trade unions. Other discussions relating to this kind of initiative are ongoing.

They deal with agreements between trade unions (international trade union trade federations) and enterprises operating at the international level. They constitute a more appropriate solution to our principles, aspirations and claims. Besides, they escape the unilateral and voluntary control of the private sector. They come moreover, between collective bargaining agreements signed at sectoral level of an enterprise at national level (which they do not claim to substitute), and codes of conduct, with the peculiarity of being contractual and negotiated. The rights contained in the ILO conventions are also better represented there.

In continuing to put the representation of workers' organisations and their legitimacy first, they could in the short term also have as partners other stakeholders than the enterprise and trade unions (for example, specialised social organisations, consumer and environmental organisations, etc.).

The multiplication in the last few months of the number of agreements signed evidences the interest of workers as well as enterprises.

The adoption of framework agreements goes hand in hand today with the creation and strengthening of regional works councils.

The European works councils have existed for several years and are probably the most advanced<sup>30</sup>. Their consolidation in other regions of the world constitutes a challenge for the world of work and for a better coordination of information and solidarity between workers of the same multinational enterprise. Today already, these regional works councils are developing solidarity links and exchanges with national trade union trade organisations and their action has enabled some progress in the area of workers rights. The action carried out within Total-Elf-Fina regarding its investments in Burma is a concrete example of the importance of these structures.

Some multinational companies already have their international works councils and sponsor their meetings.

The framework agreements and the works councils at the regional or global level, constitute relatively new responses to the globalisation of companies and to their integration into complex networks.

30. For more information on the European works councils within multinationals, you can consult the data base available on the website of the European Trade Unions Confederation ETUC at the following address: <http://www.etuc.org/etui/databases/EWCNov03.pdf>



## THE REAL STAKES

### *The Economic Regime and the Responsibility of the State*

*Since economic activity is the fruit of man's common labour, the whole economic process must be thought of and carried on in accordance with the needs of men and their way of life, so that men do not become the slaves of what they themselves have initiated.*

*The economic regime should give all individuals and all peoples the real possibility of self-development and of steady and rapid progress towards a higher social and economic level. Thus, work, like all economic activity, will contribute to the establishment of a more just and more humane society, and will be the expression of a true solidarity between all men. (...)*

*Article 7, WCL Declaration of Principles*

### **What are the real stakes behind the strategies pointed out earlier?**

#### **Weakening, or else eliminating, legislative and contractual rights**

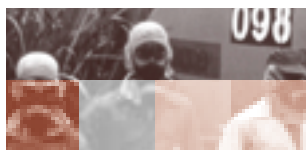
- This strategy aims at weakening or else eliminating legislative and contractual rights by substituting them with non-binding instruments without legal value (the zero level deregulation)
- The concept of corporate social responsibility does not make reference to a new debate. It is rather a resurgence of an old concept that puts forward non-binding mechanisms and skews, by so doing, a system based on rights and regulations.
- During the past thirty years, binding legal standards protecting investors were formulated and came into force. During the same period, the business world used all the means possible to refuse the establishment of binding regulations on the duties and obligations of investors. Multinational companies thus have rights guaranteed through binding mechanisms arising from an authority and would only have moral duties that are suggested to them and do not come from any external authority, if it is not from their own conscience. However, the State has the legal power to put in place binding codes of conducts. It is true that governments preferred to conclude bilateral investment agreements or regional agreements that satisfy the objectives of the dominant class or the dominant States.
- Initially, the codes of conduct intended to regulate the behaviour of multinational companies. Today the codes serve to legitimise the practices of the latter. We witness the introduction of private regulations of public scope and marketing effect. The sovereign State transfers its role to private stakeholders.

## Weakening, or else eliminating, the regulatory and arbitration role of national and international authorities

- This strategy contributes to weakening or else eliminating the regulatory and arbitration role of national and international authorities, by substituting it with the unilateral voluntary regulation of companies.
- It is a question here of a reversal of democracy: private enterprises claiming to know and ensure the general interest in the place of national and international authorities.
- Codes of conduct contribute to the weakening of the State promoted for more than 20 years by international financial institutions, especially through the structural adjustment programmes:
  - Public budgets were largely reduced, particularly those of the ministries of labour, which resulted in particular in dismantling labour inspection and in weakening the administration and labour courts.
  - Labour codes and laws were all revised downward, also in industrialised countries;
  - The opening of borders and free competition combined with the deregulation of labour codes, left thousands of workers in a precarious situation, even in the informal sector. This situation exerted and continues to exert a downward pressure on the working conditions.
  - The few mentions to labour standards in the codes of conduct also cast doubt on the reference indicators and on the credibility of the evaluation, especially if the latter really responds to the interests of workers and if the voice of the latter (and their trade union organisations) was duly heard and translated in the results;
  - Moreover it is difficult to evidence systematically their independence in relation to the company that is the object of the notation or in relation to other interests.
  - For 20 years now, the private sector has also largely questioned the excess of regulation and the poor functioning of the State.
- Following the weakening of the state, private international procedures of the ISO type of standards, for example in areas like the environment, health, safety, have been developed. ISO is currently studying the viability and usefulness of standards in the area of corporate social responsibility. Up until now, the ISO has been limited to the production of technical standards, but several stakeholders envisage today a standardisation in the social domain. The ISO (International Standardisation Organisation), which includes a network of standardisation institutes in 148 countries (one per country), is one of the largest bodies in this field.
- All this also affects national and international authorities (ILO, Council of Europe) in their role of monitoring the application of standards, by substituting them by private organisations.
- They also contribute to the weakening of the standard-setting system of the ILO. For several years now, the latter has come under repeated attacks from a number of governments and the employers group, who want less binding standards, revision of existing standards and a less independent monitoring system<sup>31</sup>.
- Is it a known fact that the United Nations Secretary General participated in this weakening of the standards system by proposing, in January 1999, to the business world meeting in Davos, the Global Compact, which is a voluntary procedure with neither monitoring nor follow-up? By promoting it, international organisations of the United Nations system – which at the international

31. For further information, consult: WCL. "International Labour Standards at the Service of Social Justice". Brussels. 2002.





level are public authorities – would be encouraging private voluntary regulations, to the detriment of binding public regulations.

### Choosing suitable partners and setting aside others

- Due to the multidimensionality of the problems, strategies relating to CSR intend to offer multiple stakeholders partnerships (stakeholders: NGOs, human rights, consumer organisations, development and environmental organisations, etc.). Furthermore, the new instruments tend to replace collective agreements. The numerous stakeholders become more amenable competitors and more malleable than trade unions, and gradually these new stakeholders replace trade unions that have gained both the collective representation of workers and the legal recognition of collective agreements after more than a century of struggles. The companies can choose the partners that they want and set aside the others.
- The promotion of private regulation aims at further dispossessing the State and also trade union organisations, in the application of international labour standards. It also leads to the reduction in the number and the effect of existing collective agreements. This evolution comes about while the exercise of freedom of association becomes increasingly difficult. Each day, the WCL is informed about cases of dismissals, disappearances or assassination of trade union leaders. Meanwhile, how many cases of hindrances to the signing of collective agreements are denounced to the Committee on the Freedom of Association of the ILO? In the same vein, exercising the right to strike is threatened, be it in practice or in the law. Thus a two tiers system is established. A number of governments are accomplices to their own weakening and by so doing have a suicidal attitude.
- These enterprises have also penetrated the NGO world and also finance the latter. This situation certainly limits the autonomy and the scope of operation of these organisations. They also put NGOs under pressure in using a “win-win” strategy to lower the content and the effect of the codes.
- Codes of conduct continue to be widely promoted and supported by several stakeholders. From a practical point of view, certain codes have probably had a positive effect on workers. However, too many workers still say they are unaware of their existence, their monitoring mechanisms, do not have them in the local language and have not participated in their formulation. Too many also point out that their code of conduct was imposed on them while they were fighting for the recognition of their independent trade union organisation or for the signature of a collective agreement formulated according their reality and legitimate claims. The evaluations on the current impact of these codes of conduct and a fortiori, their consequences on working conditions, are also very rare
- The chain of sub-contracting escapes the application of several codes of conduct. The latter remains moreover quite obscure. During a seminar organised by the WCL, in collaboration with the International Institute of Workers’ Education, IIWE, in 1998, a representative of a multinational enterprise in the textile sector was invited as speaker. Participants from all the continents asked him about the existence of sub-contractors in each region. In spite of a speech based on

corporate social responsibility, the responses were for the least evasive. Meanwhile this situation is also found in most enterprises. Why is there so much obscurity whereas they claim noble principles and presume to have codes of conduct?

### Avoiding real progress in the justiciability of human rights

- Faced with so much violation of human rights related to the conduct of companies, we referred earlier to the fact that the control of private actors is weakened to the benefit of initiatives depending on their goodwill. Control and sanctions however go hand in hand. This evolution takes us further from the possibility of coming up with sanctions.
- The international system has its inadequacies, limits and weaknesses in the legal aspects. Codes of conduct appear however in part as a response to these problems. However, in skewing the international institutions in charge of monitoring of the implementation of international rights, they weaken them. Are the problems not aggravated while being skewed? Would it not have been preferable to strengthen these organisations by highlighting their problems and by bringing about concrete solutions?

### Corporate governance at the heart of CSR

- The evolutions reflected in this study evidence strategies focused on the private and not on the general interest. What is good for the enterprise is also good for the whole society. Corporate governance, which in itself does not involve a project of society, but a project of the private sector, by and for itself, would thus progress. Meanwhile, and in the same vein, a form of governance by the, civil society the outline of which remains quite vague would be promoted. In this multi-stakeholders' model the State, which defends the general interest, would only be a stakeholder among others. It would be weakened whereas private forms of corporate governance that distort it progress. Would such a trend lead to a better governance at the local or international level? Is it synonymous with sustainable development? Is it possible to regulate people outside the sphere of the state? If yes, who would be responsible? It is favourable for all? The growth of poverty, social disparities and the progression in violation of workers rights seems to evidence that a reversal of the trend is necessary and very urgent.
- It is worth noting some progress. The signing of framework agreements is an example of this. The strengthening of works councils, essentially at the European level, also proves this. These evolutions would enable progress towards more governance within the enterprise and society. We must reflect further on these initiatives and continue to go forward in this direction.
- In the areas of trade union co-operation with non-governmental organisations, progress has also been accomplished, be it at the level of discussion, participation and monitoring of codes of conduct or other initiatives. Moreover we must take note that awareness-raising campaigns for consumers on multinational companies' conduct regarding social rights like the Clean Clothes Campaign went ahead. It is also worth pointing out an evolution in the debate on social labels,



especially in Belgium where the CSC (Confederation of Christian Trade Unions) participates actively in this initiative launched by the authorities. To this, we must add a growing sensitisation of the public, essentially consumers (social labels, labelling of products) or shareholders (socially responsible investments).

# POSITION OF THE WCL



## *The Economic Regime and the Responsibility of the State*

*(...) Social, political and economic regimes which are based on private or public monopoly of the economy, or on dominant minorities who reserve for themselves the economic, social and political decisions which affect a whole community, must be fought against and replaced. Consequently, the WCL condemns all forms of Capitalism, as well as Marxist state Socialism because they prevent the achievement of a humane economic system. The State must respect the specific roles of the groups and communities that make up society, but it must guide and co-ordinate economic activity according to a plan drawn up with these groups and communities and ratified by the political institutions representative of the people, in order to ensure, if need be in co-operation with the appropriate international institutions, the speedier development of all countries, a stable policy of full employment and the steady rise of the standard of living.*

*Article 7, WCL Declaration of Principles*

### The three illusions

As the ETUC remarked in a note on CSR, we must denounce three illusions:

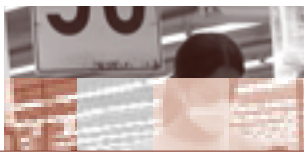
- the illusion that power struggles no longer exist and that there is a consensus without divergent interest between stakeholders;
- the illusion that all partners of the enterprise have equal knowledge and power: management, shareholders, trade unions, consumers, NGOs, authorities. Social history has greatly evidenced the fact that power is not shared in the enterprise. At least on the essential. It is shareholders and management who make define, policies, make decisions and do not share them;
- the illusion that the voluntary method is the most pertinent and effective, since it is based on the goodwill and knowledge of the enterprises.

### Corporate responsibility, battle horse of trade unions

Corporate social responsibility as many stakeholders define it, seems to focus essentially on initiatives and strictly voluntary commitments.

Making companies responsible and accountable, at the social level and also at other levels (environment, development ethics) have been the warhorse of the WCL trade union action since its creation in 1920. Enterprise must not only play a fundamental role at the economic level. It has also a role at the social level.

The WCL Declaration of Principles, which dates back to this same period, places the worker at the centre of corporate responsibility. More than a century later, its call remains more than ever updated. CSR cannot replace the role of workers organised in trade unions. It cannot have as objective avoiding or weakening the social partners, through public relations and marketing strategies that are often insidious, aimed solely at the consolidation of economic or financial gains.



CSR, as it is understood and controlled today, cannot substitute the law for rights, nor social dialogue or free organisation of workers and negotiation of decent work conditions. It cannot be an instrument aimed at imposing consensus in an open or indirect way. Each initiative must therefore respond to certain ethical criterion and aim at strengthening a true State of rights. Thus it could be legitimised.

Where necessary as we will see from now on, it will turn against its own instigators, proving that the private markets cannot be self-regulated efficiently outside all regulation, without dialogue, negotiation or agreement with the parties concerned. It will also undermine the functioning of the whole of society.

### Codes of conduct: a Resolution of the WCL

The WCL clearly defined its position on codes of conduct during the meeting of its Confederal Board in October 2000, in Asuncion (Paraguay). Here are a few extracts<sup>32</sup>:

- The Codes cannot be voluntary; companies must commit themselves to this.
- They must be negotiated with trade unions. Framework-agreements of enterprises or groups constitute a negotiated and contractual alternative to the unilateral and voluntary responsibility of enterprises. In certain pertinent cases, the agreements could have as partners contractors other than the enterprises and trade unions (for example specialised social organisations, consumer and environmental organisations, etc)
- The codes must incorporate ILO Conventions:
  - The fundamental Conventions of the ILO: C. 87 on freedom of association, C. 98 on the right of organisation and collective bargaining; C. 29 on forced labour, C. 105 on the abolition of forced labour; C. 100 on equal remuneration, C. 111 concerning discrimination (employment and profession); C. 138 on minimum age and C. 182 on the worst forms of child labour;
  - The conventions on occupational health and safety;
  - The conventions on the duration of work;
  - The conventions on wages.
- The codes must be contractual agreements with the mother company and its suppliers, contractors and sub-contractors. This way of proceeding is important since it enables the company to take to court suppliers who would not respect the standards specified in the codes.
- The codes must be translated into local languages and their application must be transparent.
- The companies must:
  - ensure the application of the codes at all levels and introduce mechanisms for information and training for workers;
  - institute a system to monitor the implementation of the codes at all levels, including suppliers, sub-contractors;
  - set up an independent appropriate monitoring body to deal with complaints in case of violation of the code and to impose sanctions. The sanctions must have as an aim the improve-

<sup>32</sup>. For more information, you can obtain this Resolution by consulting the WCL website ([www.cmt-wcl.org](http://www.cmt-wcl.org)) - Publication entitled: "International labour standards at the service of social justice" or by contacting us.

ment of the situation, including the case of sub-contractors, since breaching the contract means the loss of employment for workers and for the enterprise, the delocalisation of sub-contracting;

- establish a procedure for complaints.
- In the area of monitoring, there should be:
  - periodic checks on the application of codes by third parties;
  - these third parties must come from credible and independent organisations.
- The companies must also:
  - finance the monitoring and control procedures put in place within the framework of the code of conduct;
  - respect fully all the provisions of the code during all the stages of its production activities;
  - produce an annual report on the respect of the code of conduct and make it public;
  - put at the disposal of trade unions regular indications on any of its activities relating to the code of conduct.

The WCL must therefore:

- follow very closely the debate on corporate social responsibility and codes of conduct;
- place expertise and institutional support at the disposal of affiliates who are called upon to negotiate such codes;
- continue to train trade unionists in the area of monitoring codes of conduct and new ways of controlling private enterprises, especially multinationals;
- collaborate with organisations with similar vocation in order to promote and defend workers rights through codes of conduct.

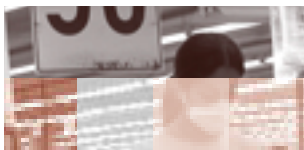
### What is the situation of framework agreements?

Framework agreements have emerged in recent years. These agreements are signed between the enterprises themselves and workers' organisations, generally international trade federations.

These agreements do not replace collective conventions signed at the national, sectoral or local level. However, it is clear that at the international level, and it is precisely at this level that measures should be introduced, they constitute a step ahead towards better guarantee and protection of workers' rights.

For the WCL, it is imperative to:

- strengthen the reflection, dissemination of knowledge and training on these agreements;
- encourage international trade federations to participate more actively in negotiations with multinationals;
- insist more on the establishment of trade union networks within multinationals, which should work more on the control of the application of framework agreements and codes of conduct;
- strengthen inter trade union co-operation to share ideas and experiences;



- request the ILO to pursue its work of analysis and systematisation of framework agreements;
- insist that framework agreements are in future the object of certification by the ILO, in such a manner as to cover all the rights guaranteed in the Conventions that this organisation defends.

### What is the role of the ILO?

The role of the ILO in this debate has already been mentioned or dealt with in this document.

- The ILO through the International Labour Office should ensure the most extensive and detailed monitoring of corporate social responsibility through databases, thematic analysis, and comparative evaluations with its standard-setting system. Without deciding on the value of such activity or experience, the International Labour Office should provide elements for analysis and debate, taking as criteria its standard-setting system, reports on the application of standards by the Committee of Experts and jurisprudence of the Governing Body.
- The ILO must also extend its technical co-operation activities to its members, in particular all trade union organisations.
- The ILO, the only tripartite organisation of the United Nations system, must strengthen the discussion and follow-up of this debate with its members :
  - by launching a high-level debate on the issue of corporate social responsibility and related areas;
  - by taking advice before decisions;
  - by improving the monitoring tools and procedures;
  - by supporting sectoral operations, including those involving the chain of suppliers;
  - by strengthening technical assistance for the rehabilitation of labour administration services
- The ILO should increase its educational activities for economic and social stakeholders on the legislative and contractual methods of regulation, including At the global level.
- Following the example of national labour administration, the ILO should be the place of registration of framework agreements of enterprises or groups. This registration would mean that the agreement is in conformity with the ILO standards system. At least once a year, the ILO would publish a list of registered framework agreements by situating their geographic and legal scope, as well as their social and environmental criterion. Regular monitoring of these agreements and their implementation would be ensured through decentralised bodies (a region) and through joint bodies. In case of dispute or difficulties in monitoring, the ILO would serve as the body of appeal. The Governing Body would appoint for this purpose a tripartite committee which opinion would be sent for the appreciation of the Governing Body.
- A similar reflection should guide the system of labour inspection. The absence of integrated systems of labour inspection at the regional, or even international level, is probably one of the reasons why the civil society tried to monitor through private mechanisms.  
The ILO must strengthen the reflection on this point and the general survey scheduled for the International Labour Conference in 2006 could constitute an opportunity to Assess the situation in this field.

### And that of the business world?

Strengthening dialogue, negotiation, improving working conditions and promoting freedom of association, are the aspects on which CSR must focus more.

To this end, the WCL exhorts ILO members, including the private sector, to undertake today more than ever to guarantee a strengthened ILO more efficient, more modern, better consolidated around more binding and better standards, capable of guaranteeing a world of labour with decent living and working conditions.

In this regard, dialogue with trade unions, especially in a field as crucial as CSR, is fundamental. Through this aspect, the business world must also promote further the role of workers' organisation in the monitoring and evaluation of framework agreements, even codes of conduct. Training workers to be better able to challenge this bet is fundamental and enterprises should play an active role at this level.

In this same vein, promotion by the business world of framework agreements or works councils at regional and international level is of singular importance. Therefore, multinationals must strongly commit themselves in favour of social dialogue, and of discussions through these structures. The quality and effectiveness of dialogue imply that the company provides a constant training to workers and their representatives.

### What about NGOs ...

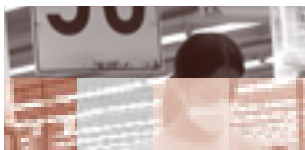
The WCL advocates a strengthening of the collaboration with non-governmental organisations. During the last Congress (Bucharest, 2001), it was agreed that:

- The WCL and its affiliated organisations should strongly support the international campaigns for the welfare of all populations. These campaigns could involve trade union organisations, an appropriate United Nations organisation and stakeholders in civil society to defend together the common good.

One could very well envisage larger negotiations including various stakeholders. In recent years, new forms of negotiation were experimented :

- Expanded partnerships between managements, company trade unions, local trade unions, local authorities, NGOs and specialised organisations, public labour administrations developed and proved to be effective to provide a job to people or groups that face problems;
- For problems relating to the environment or sustainable development (companies throwing away toxic substances into the air or water, major risks of accident), negotiations between the management of these companies, and the trade union, the organisations concerned, local





authorities and the competent public services, resulted in measures or arrangements for cleaning up or elimination of risks.

In these multistakeholders' operations,, the responsibilities of each party must be identified(nature of the commitment, deadlines) and the collective agreement should be presented before a public institution.

Contractual management of life in society (management of buildings, of equipment, I development of areas and territories , urban or rural mobility, access to public services, educational services, health, transportation, energy services, etc.) is certainly the most promising way for the democratisation of societies, including companies.

For future years, the emphasis should therefore be placed on:

- Strengthening dialogue and reflection with these organisations, especially for discussion on CSR and on instruments relating to it (including an evaluation of their impact). This dialogue must provide for a discussion on the types and modalities for partnerships to be established in future ( educational activities, common campaigns, promotion of countervailing powers in the area of consumption or sustainable development, etc.).
- Strengthening this collaboration, in the direction of alliances with organisations that share the same principles and values on specific issues.