



CAPTURING THE GAINS



*economic and social upgrading
in global production networks*

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Back to the Future?

A critical reflection on Neil Kearney's
mature systems of industrial relations
perspective on the governance of
outsourced apparel supply chains

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Abstract

As the auditing model for assuring social compliance in apparel commodity chains is called into question, the global quest continues for institutions, policies and governance structures which can contribute towards the protection of worker rights, the promotion of decent work and an upgrading of working conditions and competencies. One such model, promoted by Neil Kearney, the late General Secretary of the International Textile, Garment and Leather Workers' Federation, calls for the implementation of mature systems of industrial relations (MSIR) based on trade union recognition, procedural agreements and collective bargaining. This working paper charts the origins of MSIR, deconstructs the approach into its constituent elements and critically assesses these against the backdrop of governance debates in outsourced apparel production. Some conclusions and recommendations are drawn for a future research agenda.

Keywords: social upgrading, trade unions, mature industrial relations, social auditing, governance

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1. Introduction

The existence of private voluntary governance initiatives to uphold worker rights in outsourced apparel supply chains is, historically speaking, still very much in its infancy. By now, 20 years have passed since Levi Strauss took the first steps in 1991 to publish a set of global sourcing and operating guidelines for its supplier firms. Looking back over this period, many observers, both inside and outside the industry, have tended to conclude that the private voluntary route to supply chain governance, via assessment (social audit) against a corporate code of conduct, is largely unsustainable. Critics continue to focus on the inappropriate qualifications of auditing personnel, weaknesses in audit methodology, duplication of effort, cost ineffectiveness (O'Rourke, 2000; Ascoly and Zeldenrust, 2003; Esbenshade, 2004) and, more recently, on the endemic nature of audit deception in some countries (Harney, 2008). Moreover, corporate social responsibility (CSR) managers of some of the leading multinational buyers in the industry have also acknowledged the weak nature of this approach. They have embarked on more fundamental examinations of the root causes of poor compliance with labour standards in their efforts to improve supply chain governance (Nike, 2010; Adidas, 20011; Gap, 2011).

Against this background, an alternative paradigm has been suggested and implemented by trade unions (TUs), workers and a few lead firms. In a series of public speeches and press releases, Neil Kearney, the late General Secretary of the Brussels-based International Textile, Garment and Leather Workers' Federation (ITGLWF), under the rubric "life beyond codes", adopted the term "mature systems of industrial relations" (MSIR) to describe a preferred pathway to global social compliance in the sector:

"Given the results to date ... We see the traditional application of codes of conduct through auditing as being merely diagnostic with the enterprises involved requiring support to develop mature industrial relations systems and training for both management and workforce to make them function effectively. We believe that this will be a much more efficient use of resources than the current obsession with policing through inadequate social auditing" (ITGLWF, 2007)

The MSIR approach has arguably found its highest expression in the signing of an international framework agreement (IFA) between the ITGLWF and the Spanish multinational enterprise, Inditex, in October 2007. Prior to, and after the signing of the IFA, officers of the ITGLWF and managers from the corporate social responsibility (CSR) department of Inditex began to intervene jointly at the multinational enterprise's supplier facilities in various countries around the world, in an attempt to resolve a number of trade union and worker rights violations. These activities aimed to introduce systems of industrial relations management that consist of a series of procedural agreements, underpinned by industrial relations training (Miller, 2008).

The concept of "mature systems of industrial relations" has also started to feature in the vocabulary of a number of CSR managers representing the brands of major multinational enterprises (Nike, 2007:135; 2010:60, 162; Adidas, 2011:45; Gap, 2006:26; 2009:46), and multi-stakeholder initiatives, including the Multi Fibre Agreement Forum¹ (MFA Forum, 2005) and the Ethical Trading Initiative.² It is much too early to undertake an impact assessment of the MSIR approach as implemented through the application of the IFA with Inditex (for a discussion, see Miller, 2011;

¹ Now rebranded as SAFI – the Sustainable Apparel and Footwear Initiative.

² <http://www.ethicaltrade.org/about-eti/our-strategy> (last accessed 8.3.2011).

Gregoratti and Miller, 2011), or via relationships which the ITGLWF may hold with other multinational enterprises.³ Nevertheless, there is clearly a need at this juncture to examine the MSIR paradigm, as this has become a frequent element in contemporary CSR discourse. In this paper, we chart the origins and deconstruct the approach of MSIR into its constituent elements. We critically assess these against the backdrop of governance debates in outsourced apparel production. Finally, we draw some preliminary conclusions and recommendations for future research.

2. Conceptual origins of MSIR

The use of the concept “mature” in an industrial relations context can be traced back to attempts to theorize the US labour movement in the first quarter of the 20th century. Building on the work of John Commons (1919), Selig Perlman (1928) made reference, in his *Theory of the Labour Movement*, to a degree of maturity in trade union mentality as a key factor in any contemporary labour situation. “Mature” was a characteristic which he ascribed to the printers’ and clothing workers’ unions, which he had observed in the USA at the time, as “stable” organisations “led by men risen from... (their)... own ranks” (Perlman, 1928: 299), who applied “a scientific rationalism...” to industrial relations and who had turned their “efforts not to fighting capitalism in (their) industry, but to securing a thorough-going job control” (op. cit: 278).

This apolitical connotation of maturity was later applied to industrial relations more generally by Morton J. Baum, in his case study of the Amalgamated Clothing Workers of America and their efforts to establish collective bargaining at the Hickey Freeman Company in Rochester, New York, during the first quarter of the 20th century. Baum was writing at a time (1951) when Harry Overstreet’s work on the “Mature Mind” (1949) was beginning to make waves beyond the psychology community. His model drew on a set of inter-related behavioural characteristics. These comprised a sense of realism, the presence of a long-term perspective and “grown up” conscience, the exertion by individuals of an element of control and delineated spheres of activity, and a more reasonable use of discipline in the industrial sphere (op. cit.: 260-262). His somewhat normative description of “maturity” in industrial relations resonated at a time when industry was deemed to be enjoying a degree of industrial peace and reasonable prosperity, and where there appeared to be an “unqualified acceptance of the collective bargaining process by management and full acceptance by the union of its responsibilities” (op. cit.: 259).

The centrality of collective bargaining, a common ideology and shared contexts of the market were also recurring features in John T. Dunlop’s efforts to make sense of industrial relations in the USA in the 1940s and 1950s. Dunlop’s “systems” approach emphasized at any one time:

“certain actors, certain contexts, (and) an ideology which binds the system together and a body of rules and regulations created to govern the actors at a workplace and work community” (Dunlop, 1958: 7).

Dunlop’s analysis focused primarily on the network of rules which govern a workplace and the work community, and the manner in which they are negotiated, administered and altered. This also

³ The ITGLWF is currently engaged in a “Project Autopilot” with Next plc, in efforts to develop a systems approach in two key Indian suppliers. Cf: http://www.investis.com/nextplc/crr/cr_report_2010.pdf (last accessed 8.3.2011).

became the preoccupation of those scholars – Hugh Clegg, Alan Flanders, Arthur Marsh and Alan Fox – who formed what was commonly referred to as the Oxford School. Their positivist description of what were termed the “institutions of job regulation” (Flanders, 1970) was pivotal, not only in attempts to theorize industrial relations, but also in the development of conventions in the way that industrial relations *were to be managed and reformed*. For a while, industrial relations were viewed through a “pluralist” lens, or frame of reference (Fox, 1966), in which the conflict of interest between capital and labour was acknowledged as given, but was managed through the processes of collective bargaining. National industrial relations systems which manifested sophisticated frameworks of conflict management could therefore be described as advanced, and therefore “mature” (Blanpain, 1998:41). By the end of the last century, the pluralist frame of reference had given way to a more “unitarist” perspective (Fox, 1966), with the rise of human resource management and a preoccupation on both sides of industry in some countries with notions of “social partnership”. This coincided with a retreat of trade unionism and either decline in, or decentralization of, collective bargaining across many industrialized economies of the West and the North (Towers, 1997).

Two crucial observations are necessary at this point. First, by this time, developments in industrial relations practice were being driven by profound changes in industrial structure brought about by accelerated globalization (Froebel et al., 1980; Munck and Waterman, 1999). In textiles, clothing and footwear, in particular, a major migration of production was underway – from North to Central America and, latterly, Asia and Sub-Saharan Africa, and from Europe to North Africa, Central and Eastern Europe and Asia – mirroring and reinforcing the development of *buyer driven* commodity chains (Gereffi and Korzeniewicz, 1994). Second, industrial relations theory – itself a product of Western thinking – was also proving incapable of engaging widely in this emerging context:

“...with the challenges posed by economic internationalisation, trade integration and supra national regionalisation. Industrial relations theory’s locus in national systems, or in national and sub-national job regulation (or control) ordained an inward and downward emphasis, rather than an outward, expansive development.” (Haworth and Hughes, 2002:68)

As Vosko (2011) has argued, the standard employment relationship (SER), predicated as it was on gender and citizenship contracts, was literally blown wide open by the globalization of global production networks (GPNs) and the expansion of migration to the North. The challenge of rebuilding an SER at the global scale is significant. Given such developments, why might such a paradigm, which had failed to hold its own against the onslaught of human resource management in the 1980s and 1990s, resurface in global corporate social responsibility (CSR) discourse in the first decade of the new millennium?

3. ITGLWF’s approach towards mature systems of industrial relations

As one of the 10 members of the International Trade Union Confederation (ITUC) Global Council, the ITGLWF continues to inform and be informed by the ITUC’s policy unit. However, the MSIR approach has evolved theoretically and practically as a distinctive response to outsourced garment and footwear manufacture. In a series of press releases and speeches from late 2004 onwards, Neil Kearney, General Secretary of the ITGLWF, began to articulate the core elements of this paradigm. As former research officer with the British National Union of Tailor and Garment Workers Union (later merged with the General Municipal, Boilermakers and Allied Trades Union

(GMBATU, now GMB), Kearney was a product of the Anglo-Saxon approach to industrial relations, itself informed by and reflected in the writings of the Oxford School mentioned above.

Kearney delineated six key elements of this mature industrial relations approach. These are:

- i. Recognition of the need to rationalize the plethora of codes of conduct governing the sector into: “a *single code* which encompasses the key conventions of the ILO, including freedom of association, the right to collective bargaining, as well as the payment of a living wage and reasonable working hours”. For Kearney it also meant opposing any initiative to establish any new multi-buyer code of conduct (ITGLWF, 2007).
- ii. Acknowledgement of *the limitations of social auditing* (ITGLWF, 2006).
- iii. MSIR *ruled out any significant role for an NGO*⁴ at the level of the workplace, which for Kearney was an actor whose involvement was likely to hinder improvement in the long term, since “only pressure from workers through their trade unions can effectively ensure that problems are uncovered and remedied” (ITGLWF, 2008).
- iv. Recognition of the “enabling rights” of freedom of association and collective bargaining; such rights facilitated by the creation of a positive environment for trade union organizing and recognition, and management systems based on standard procedural agreements designed to deal with both individual grievances, disciplinary issues and collective disputes.
- v. The substitution (more medium to long term) of social auditing by a “mature system of industrial relations where managers and workers, through their trade union representatives become the permanent monitors and regulators of factory working conditions” (ITGLWF, 2005).
- vi. Acknowledgement of the primacy of the employment relationship: “where the supplier, as employer, takes responsibility for those employed and where the exercise of that responsibility is regulated by a mature⁵ system of industrial relations at workplace level, involving management and trade union representatives” (ITGLWF, 2008).

In the following section, we consider each of these elements in turn.

i. **Code rationalization**

In the same way that the governance deficit (Gereffi and Mayer, 2004) has generated a surfeit of governance innovations (Mayer and Pickles, 2010), so too is there a proliferation of voluntary ethical statements of principle throughout the textile, clothing and footwear sector. In addition to multi-stakeholder instruments which exist at a global level (e.g. Global Compact⁶), sectoral level

⁴ In an industrial relations context, an NGO can be defined as a civil society organization, which is not based on the principle of voting membership drawn from the working population and, more specifically, the workforce it purports to represent, and/or which eschews the principle of ongoing social dialogue. (For a discussion, cf. Eade and Leather, 2005).

⁵ Arguably, the use of the term “mature” in this context is problematic. Whilst it can be argued that maturity is not a function of chronological age (cf. Overstreet: 19), “maturity” in trade union representation would require a degree of sophisticated workplace organization, knowledge and skill which may not be available in newly elected trade union workplace representatives. This is a point not lost on the ITGLWF, whose regional staff has been engaged in capacity building programmes with the newly elected trade union representatives and management at a number of Inditex suppliers involved successfully resolved trade union recognition disputes.

⁶ Approximately 100 companies in textiles clothing and footwear have signed up to the Global Compact (ITGLWF figures as at November 2007).

(e.g. Business Social Compliance Initiative [BSCI] and the Global Social Compliance Programme [GSCP], for clothing and home textile retail⁷) and regionally (e.g. Euratex Agreement for European members in the textile and clothing industry), it is accepted business practice for companies – particularly those which outsource their production – to have a code of conduct for suppliers and/or to adopt that of a multi-stakeholder initiative (MSI), if they are a member of the same. Even where companies have opted to join an MSI, in the absence of a universally applicable code, each company continues to reserve the right to retain its own code language. Even the GSCP, inaugurated to provide a common framework of social and environmental standards for the global retail sector, does not demand that its members adopt the reference code or guarantee its immediate implementation on the ground.⁸

The upshot is that brands and retailers have been faced with multiple industry standards, and suppliers are confused by a plethora of codes and initiatives to which they must comply if they wish to retain these clients. Similarly, MSIs have become quite protective of their own respective codes and approaches to implementation. In 2003, six organizations (i.e., the Ethical Trading Initiative; the Fair Labor Association ([FLA]; the Clean Clothes Campaign; Social Accountability International; the Fair Wear Foundation; and the Worker Rights Consortium) sought to collaborate in a joint initiative to “maximize the effectiveness and impact of multi-stakeholder approaches to the implementation and enforcement of codes of conduct” – the so-called Joint Initiative on Corporate Accountability and Workers’ Rights.⁹ As part of the Jo-In collaboration, the parties attempted to harmonize their respective codes and, after a lengthy consultation process, drafted a Joint Code, although each organization insisted on appending its own approach to code implementation. The difficulties encountered with implementing such a general code are illustrated by the continued existence of each collaborating organization’s codes (Maquila Solidarity Network, 2008: 4-6). Whilst in many cases there is alignment of principle, so that there is little substantive difference in content across existing codes, the picture does remain a confusing one, particularly for suppliers and for stakeholders wishing to hold such companies accountable for infringements of such norms. There do, however, remain contested areas of either content or interpretation in relation to freedom of association, wage standards and hours of work (e.g. Miller and Williams, 2009; Maquila Solidarity Network, 2008: 9-11).

So how realistic is the prospect of code rationalisation in line with an MSIR approach? As we have seen, multinationals treat their codes very much as corporate property and are unlikely to abandon these readily. Moreover, whilst the ITGLWF position is to oppose any new codes and to posit IFAs as alternatives, (Kearney and Justice, 2001), corporate codes of conduct were still deemed valuable documents of reference, particularly in holding buyers and their suppliers to account in relation to code violations in poorly organized supply chains.

ii. Limitations of social auditing

Given the aforementioned global governance deficit, and related issues, such as the difficulty of attaining agreement for the ILO to take on a regulatory role in the form of a global social label backed up by ILO inspections in the mid-1990s,¹⁰ a privatized system of social compliance filled

⁷ By the end of 2008, approximately 171 mainly medium-sized European retailers are members of this initiative.

⁸ Global Social Compliance Programme Reference Code Version 2 April 10:2. http://www.gscpnet.com/gscpfiles/GSCP_Reference_Code_V2_April_2010.pdf (last accessed 4.3.2011).

⁹ http://www.jo-in.org/english/resimler/080623_JO-IN_Final_Report.pdf (last accessed 4.3.2011).

¹⁰ In the mid-1990s, the International Labour Organization considered the possibility of creating a global social label to be awarded to countries which could demonstrate comprehensive respect for fundamental

the void, involving an industry of social auditing, certification and accreditation organizations. By the middle of the first decade of the new millennium, Kearney and the ITGLWF had taken the position that the social auditing system was not working. As Kearney argued:

“Clearly the codes process didn’t deliver that, because the audits were a snapshot of the conditions at the moment, on the day the audit was undertaken, no guarantee the situation was the same the day before or would be the day after, and that’s when we began to looking at, well, if auditing isn’t working – and it isn’t working because the monitoring element is missing – how do we get the monitoring element there.clearly you would have to have a permanent presence within the factory, to observe and anticipate and if you look again at the shoe factory with 60 thousand workers how many monitors would, say, Nike needed to put in, ..., maybe 250-300, clearly not an option. So when you look at it, the best monitors are the people in the factories, because they are there every micro-second, of every minute, or hour or day that is worked.”¹¹

The primary responsibility for monitoring working conditions thus rested, according to Kearney, with the employer; and the exercise of that responsibility was to be undertaken by management and trade union representatives dealing proactively and reactively with workplace problems on a day-to-day basis (ITGLWF, 2007). This situation raises at least two immediate and quite fundamental empirical questions. First, how reliable are workplace systems of industrial relations based on trade unions and collective bargaining as a model of sustainable social compliance? Second, what are the prospects for the substitution of social auditing by MSIR, or can it be possible for a system of social auditing to complement and even augment trade unions and collective bargaining? We return to these questions below.

iii. **Limited role for NGOs**

Dunlop’s systems model made no provision for a fourth “actor” – the NGOs – in a campaigning, advocacy, advisory and service providing role (Heery and Frege, 2006: 602). Many NGOs, e.g. Oxfam, predate codes of conduct, and focus on issues such as aid, famine and disaster relief. But as multinationals sought to manage their reputations by engaging in dubious, “quick-fix” responses to reported violations (Compa, 2004: 213-214), labour rights NGOs began to proliferate – some drawn in as part of the quick fix, others maintaining a critical campaigning stance (Braun and Gearhart, 2004: 184) but drawing on funding from donor organizations eager to support activities for the working poor in a sector bereft of trade union organization and collective bargaining. Many NGOs are loosely organized together with some trade unions internationally, in what is known as the Clean Clothes Campaign (CCC) (Sluiter, 2009). Headquartered in the Netherlands, the CCC is a European network in the first instance, but also seeks to coordinate action more widely through global campaign forums (e.g. Barcelona 2001, Bangkok 2007, Gonen [Turkey] 2010). Some partner organizations associated with the CCC engage in campaign and advocacy work. Other trade union partners engage in bread-and-butter organizing and bargaining work. In North

rights and principles, and agreed to submit to reliable and legally autonomous international inspections. However, developing countries criticized the initiative as a protectionist measure. See ILO (1997).

¹¹ Interview with Neil Kearney, 29.11.2008.

America, leading NGOs in the sector include the Maquila Solidarity Network, the United Students against Sweatshops/Worker Rights Consortium and the International Labor Rights Forum, which, in turn, have relationships with numerous NGOs active in the industry in Central America. In Asia, the CCC collaborates with the Asia Monitor Resource Centre and numerous nationally-based labour support organizations, including the Indian New Trade Union Initiative, the Bangladesh Alternative Movement for Resources and Freedom Society, the Thai Labour Campaign and the Cambodian Women's Agenda for Change. Working in parallel, but focusing more on research and media work, is Oxfam, which more recently has published global reports on the industry and sought an alliance with CCC and the Global Unions in the Playfair Campaign of 2004.¹²

In an earlier paper, Kearney attempted to delineate the role for NGO efforts to address worker and trade union rights in global supply chains in the industry (Kearney and Justice, 2001). Acknowledging their role as leading organizations in campaigns for code compliance, he stressed the importance of continued NGO pressure on both governments and business to behave responsibly. Although some unions sought collaboration with NGOs, it has been their advocacy mantle which has often brought them into conflict with the trade union movement (Spooner, 2004: 21). As Kearney argued in his paper with Dwight Justice:

“There is a big difference between speaking out on behalf of workers who are not represented and seeking to negotiate on their behalf. To say that it is possible to negotiate for unorganised workers is to say that workers can be represented without their own trade unions.” (Kearney and Justice, 2001: 136)

Kearney thus saw no role whatsoever for an NGO in the workplace, where the focus is on the negotiation of terms and conditions of employment through democratically elected workplace trade union representatives (Braun and Gearhart, 2004: 188-189). However, there are at least three scenarios where roles can become blurred and where, in future, guidelines for collaboration between trade unions and NGOs may be required: where workers wish to organize, but there is no union on the ground; where auditors may wish to engage in a “perimeter survey” of a factory to elicit a more realistic set of worker evidence on compliance issues; and where, as in the case of China, worker rights training may be the only avenue by which support for independent worker representation can be developed.

iv. Freedom of association and collective bargaining as enabling rights

One of the problems of the “arrested development” of industrial relations, in the apparel industry in particular, is that the union representation gap has become enormous. In the debate over the introduction of the Designated Supplier Programme in 2006, the FLA drew attention to a Worker Rights Consortium list which identified only 62 licensed university suppliers where they were aware of the existence of a trade union.¹³ Accurate figures on trade union membership, recognized workplaces, and collective bargaining agreements negotiated at plant level do not yet exist for the sector. One can only estimate a union density figure of between five and 10 percent (Miller, 2008:

¹² This brief overview is explicitly US- and EU-centric, since these remain the major markets for apparel exports and the sites of the corporate headquarters of the major brands and retailers – key targets for NGO and labour group campaigners. There are of course numerous key NGOs in the supplier countries and regions.

¹³ Worker Rights Consortium, 2006. Issues and Comments on the Designated Supplier Program (DSP) Proposal. Comments from the FLA, 16 February.

163).¹⁴ This is in part the result of quite virulent anti-trade unionism, coupled with a blind spot on the part of many buyers and suppliers in relation to the ILO Conventions 87, 98 and 135, relating to freedom of association, collective bargaining, and workplace representation. Thus we have a situation in which buyers seeking training material to address freedom of association often ask for the business case, whereas this is never discussed in relation to other core fundamental rights conventions relating, for example, to the elimination of child labour.

Low union density also results when national legislation has been relaxed in export processing zones as part of investment incentives aiming to attract foreign direct investment (FDI) in the apparel sector. Furthermore, the absence of trade union penetration must also be ascribed to a failure on the part of trade unions to keep in touch with the changing composition of the working class in key sourcing countries (Hyman, 2005: 149). The typical clothing worker in an outsourced supply chain is likely to be female, aged between 16 and 25, either rural migrant or foreign migrant, in some cases illiterate and keen on earning as much money as possible to remit to a dependent, possibly extended family. In some countries, as in China, Malaysia and Jordan, such workers may be on short-term contracts of varying duration and prone to switching employers (Harney, op.cit; Singleton, 1997: 29).

The organizing task is immense, particularly when key manufacturing sites are geographically at some distance from a cash-strapped, urban-based union office. Organizing thus requires sensitivity to this situation – something which existing unions continue to ignore (Kabeer, 2002; Brien, forthcoming) – sometimes reinforced by existing stereotypes relating to women workers. However, the organizing issues of low wages, work intensification, excessive if not forced overtime, and harassment – both verbal and physical – remain as relevant for these workers as ever, before gender-specific issues are even taken into account. For these reasons, the ITGLWF insisted on ILO Conventions Nos. 87, 98, 135 and Recommendation 143 as a central provision of the IFA with Inditex:

“as the key to ensuring the sustainable and long-term observation of all other International Labour Standards throughout the Inditex ‘supply chain’ because they provide workers with the mechanisms to monitor and enforce their rights at work.”

In the implementation of the IFA, the activities of both parties in relation to the promotion of freedom of association and collective bargaining have thus far been confined to robust interventions (in some cases involving other multinational buyers), where core ILO conventions have been violated by suppliers. Inditex has publicly reported on the implementation of the agreement (Inditex, 2009: 88-93) in this respect and both parties succeeded (after conclusion of the IFA) in facilitating the reinstatement of over 200 dismissed trade unionists in Peru (Topy Top)¹⁵ and Cambodia (Gold Fame, River Rich, Terratex and latterly E-Garments). Following the reinstatements at River Rich, membership of the Coalition of Cambodian Apparel Workers’ Democratic Unions (CCAWDU) increased five-fold in the factory, thus allowing the union numerically to gain most representative status at the plant (Gregoratti and Miller, 2011).

¹⁴ Even the authoritative study by the ILO 2000 could not categorically map the sector. Affiliation figures for the ITGLWF stood at 1.5 million, as at 2010 (Source: ITGLWF Executive Papers 2011). With a global workforce in excess of 30 million, and allowing for trade union membership in non-affiliated organizations (since 2009 the Christian unions have been absorbed into the ITGLWF), a figure of between five and 10 percent would appear to be a reasonable estimate.

¹⁵ The ITGLWF also involved Gap, another major buyer, in resolving this dispute.

In resolving the above recognition disputes, the joint approach has been to apply a root cause analysis, which invariably resulted in facilitating a series of negotiated procedural agreements for handling grievances, collective disputes and disciplinary matters. These agreements were supplemented by company handbooks and training for both the union representatives and management (Inditex, 2009). ITGLWF regional staff have been involved in delivering this training. More recently, however, the ITGLWF in a more proactive approach has pushed the twin devices of (i) a guarantee of the right to unionize and (ii) an access agreement, in an effort to move buyers into a more positive stance vis-à-vis their responsibilities, which derive from Conventions 87 (the freedom to associate) and 135 (protection of workers' representatives from dismissal and other forms of victimization in particular).¹⁶

Due to systematic union avoidance in the sector, there is little empirical evidence which can shed light on the benefits of collective bargaining to the sector. This is of course a contentious area, as higher wages will incur a cost to either consumers, buyers or the supplier. As Nova has argued:

“The failure of corporate codes of conduct and monitoring programs is a product of the industry’s refusal to acknowledge and act on a simple reality: it costs more to produce under good conditions than bad conditions. If factories are going to start paying workers properly, protecting their safety in the workplace, providing legally mandated benefits that were previously denied, letting workers go home at a reasonable hour, and so on, the factories’ labor costs are going to go up.”¹⁷

For MSIR to have a business benefit, day-to-day collective bargaining would have to obviate the need for, and therefore transaction costs of, social audits in the first instance. For this to occur, factories governed by an IFA, for example, would need to have installed a fully functioning industrial relations system capable of satisfying a number of buyers, often with different approaches to compliance and differing views on the merits of trade unions as key workplace institutions in such a system (Miller, 2004). Trade unions are often reluctant to focus on a second rationale for their presence in the workplace which relates to productivity – not only because productivity improvements can have detrimental effects on working conditions and job security, but also because freedom of association is a fundamental, not a conditional, right.

Quite apart from the issue of low union density, the more serious question relates to the ability of workplace trade union representatives, once elected, to discharge their functions and engage in the daily monitoring activity that an MSIR approach would demand. Here, arguably, the use of the term “mature” in this context becomes problematic. Whilst Overstreet (1949) has demonstrated that maturity is not a function of chronological age, we would nevertheless argue that the use of the term “mature” may be inappropriate to describe what exists immediately following trade union recognition and the establishment of collective bargaining machinery. Certainly, from the trade union side, “maturity” in this sense would require a degree of sophisticated workplace organization, knowledge and skill which may not be available in newly elected trade union workplace representatives. This is a point not lost on the ITGLWF regional staff who engaged in a capacity-building programme with the newly elected trade union representatives and management with Inditex in Peru, following a major violation at their supplier, Topy Top (cf. Miller, 2011a).

¹⁶ ITGLWF (2009): 2.

¹⁷ Nova, S. (2010): 3.

Questioning the reliability of workplace systems of industrial relations based on trade unions and collective bargaining as a model of sustainable social compliance raises the possibility of alternative forms of workplace representation, which might satisfy freedom of association and collective bargaining principles enshrined in corporate codes of conduct. This has indeed become an issue in the sector as the concept of “parallel means of representation”¹⁸ is increasingly seen as permission for some brands and retailers to condone the establishment of management-sponsored “worker committees” or works councils. Significantly, following criticism along these lines, the revised relevant SA 8000 code provision now reads:

4.2 In situations where the right to freedom of association and collective bargaining are restricted under law, the company shall allow workers to freely elect their own representatives. (SAI 8000, n/d: 7)

Works councils may indeed be permissible under national law, but these bodies have narrowly defined responsibilities that generally lie outside the remit of collective bargaining, which is essentially viewed as the sole prerogative of a trade union. In a factory context, a collective agreement could only be signed by one or more representative workers' organizations, independently elected and not established, dominated or financed by employers or their representatives.¹⁹

There is an additional question often raised in NGO and academic circles, concerning the effectiveness of trade union representation (Ledwith and Colgan, 2003). This brings us to the central principles of freedom of association and governance within a freely elected trade union, namely that it is not the role of an external NGO, or company representative, to interfere in the processes of trade union workplace representation, even if such representation has degenerated. This should fall to the workers, who may choose to elect new leadership or establish new organization where the existing union officers have totally compromised a union's independence. Strict adherence to the principles of freedom of association can at times lead to a debilitating proliferation of worker organizations, as has been the case in Cambodia (see Arnold, 2010). This has been addressed by an ILO project to establish “*most representative status*” (MRS) in multi-union factories, leading to the issue of a new regulation in 2008 designed to facilitate the certification of MRS unions, standing at 202 in 2010 (International Labour Office/Cambodian National Institute of Statistics, 2011: xi).

v. **Substituting social auditing with MSIR**

We turn now to the question of compatibility between MSIR and social auditing. For reasons outlined above, it is unlikely – certainly in the short to medium term – that any widespread uptake of an MSIR approach would lead to a reduction in social audits. Auditing is an industry with a vested interest. Although brands, retailers and MSIs are overhauling the use of their audits to place more emphasis on root cause analysis, rather than highlight areas of non-compliance, workplace inspections remain the primary tool by which a company can obtain a snapshot of industrial relations at any given time. One observer estimates the global ethical auditing industry to be worth \$80 billion a year.²⁰ Little is known about the extent of trade union involvement in factory audits. A

¹⁸ Initially coined in the Social Accountability Standard on Freedom of Association for countries such as China, in which the right to freedom of association is restricted under the law.

¹⁹ See, for example, ILO Collective Agreements Recommendation 1951. Available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R091> (last accessed 4.10.2011).

²⁰ Wilshaw (2011).

classic trade union view might be that a social audit might of itself be a disenfranchising process, particularly if a number of corrective points are raised by workers without the involvement of the union officers in the workplace. There is, however, another perspective. Keaney was involved in the successful negotiation of an International Framework Agreement (IFA) on behalf of the ITGLWF with Inditex SA, the Spanish multinational fashion retailer in 2007.²¹ This IFA takes as its core reference point the Inditex Code of Conduct for Suppliers and External Manufacturers.²² Moreover, while the agreement was being finalized, CSR and ITGLWF staff were revising the guidelines for auditors to inform the audit methodology from a trade union perspective (Inditex, 2007a). Although the code of conduct remained the normative heart of the IFA, the process of negotiation led to a reformulated version of the code, making it much more explicit on corruption with regard to audit fraud on the part of suppliers and audit personnel and freedom of association (Inditex, 2007b).²³ Since the company is still very much wedded to the use of social audits to build a preliminary picture of its supply base, the ITGLWF took the view that it would be beneficial to review the methodology from a trade union point of view. Accordingly, whilst the ITGLWF refrained from designating any existing trade union in any supplier facility as the lead audit body, it was nevertheless jointly deemed of value for a trade union representative or representatives to be encouraged to compile an overview of industrial relations in the factory to augment any external evaluation (ibid). A system could then be established whereby corporate codes/norms established in international framework agreements were legitimized through the endorsement of the workers, which might be useful in any communications by the company to its customers. Such an approach, however, would require widespread disclosure of factory locations (Doorey, 2008; Miller, 2008).

Whilst constituting enabling rights for the delivery of all other code elements, greater implementation of freedom of association and collective bargaining would not in themselves lead to a demise of corporate codes in the medium term. While the current crisis in social auditing does provide an opportunity for an MSIR approach, it is unlikely that the practices of codes and auditing will desist in the foreseeable future.

In developing labour management systems – which may be defined in this context as the formal and informal rules and structures that regulate how workers are hired, paid, organized and supervised (Frazier, 2002) – it is necessary to acknowledge that such systems are likely to be functions of their own culture and most certainly shaped by the national social, political and legal

²¹ International Framework Agreement between Industria De Diseño Textil, S.A. and the International Textile, Garment and Leather Workers' Federation on the Implementation of International Labour Standards throughout the Inditex Supply Chain, 5.10.2007.

²² Although the International Organization of Employers considers agreements based on existing codes of conduct to constitute “no significant leap” (International Organisation of Employers 2007, p. 9) it nevertheless observed that the Inditex IFA might be a trendsetter in three key respects:

- The application of International Labour Standards throughout the company's “supply chain”.
- The extension of the terms of the agreement to all “workers, whether directly employed by Inditex or by its external manufacturers or suppliers”.
- The scoping of the agreement to include workplaces not represented by the ITGLWF.

²³ With reference to the buying off of sacked trade unionists, the code's provision on freedom of association includes the following: “No retaliation may arise from the exercise of such right and no remuneration or payment whatsoever may be offered to the employees in order to hinder the exercise of such right”.

Implementing this core provision of the agreement requires *absolute* support on the part of Inditex management (Inditex, 2007b)

frameworks in which they function.²⁴ As buyers begin to apply root cause analysis, it is the absence of such systems, whether through culture, or through lack of managerial capacity, which is often cited as an underlying cause of non-compliance. As the industry consolidates into “full package” contractors, served by a second tier of cut, make and trim (CMT) factories (Impactt/Traidcraft, 2008), one might expect larger, first-tier supplier firms to have established such systems. However, the push by MSIs, such as the Fair Labor Association, to “coach” rather than police the suppliers of its major sportswear members (FLA 3.0), and the introduction of a major initiative to establish and monitor individual grievance procedures in China and Thailand, would seem to suggest otherwise.²⁵ One of the implications of a focus on the absence of labour management systems as a root cause of non-compliance is that it shifts attention away from trading conditions and the commercial practices of the multinational buyers in the sector (Impactt/Traidcraft, 2008). Instead, it focused attention on the managerial deficiencies of suppliers, and reasserts the primacy of responsibility for the employment relationship. This focus upon the responsibility of suppliers to comply with labour standards reveals a tension between the roles and responsibilities of different actors in supply chain governance.

vi. **Primacy of the employment relationship**

In employment relations, the central contractual relationship has always been viewed as that which exists between the individual worker and their employer. Determining the parties to the contract of employment is of course crucial in any national system of industrial relations for the resolution of disputes over rights and interests. Applying this view to internationally outsourced garment manufacture, Kearney argued:

“...the element of responsibility for the retailer or the brand is only to source from employers who are exercising their responsibility correctly. Governments also have the responsibility to legislate to ensure that employers shoulder their responsibility... and then you can take it on to the stage of the consumer having the responsibility to ensure they are buying from brands or retailers where, along the line, responsibility has been exercised”.²⁶

Thus, in the MSIR frame of reference, emphasis is placed on the primacy of the employment relationship between management and worker in the supplier facility, with the ultimate responsibility resting on the employer and the buyer’s responsibility being to procure from employers who fulfil their responsibilities in line with universally accepted labour standards. This is very much in line with the early 20th century British trade union approach of seeking “fair lists” of employers who had collective agreements with their workers. However, the unravelling of the post-Second World War consensus in the Northern earlier industrialized (i.e., consumer market) countries, coupled with the rise of global buyers and distance sourcing and, in some cases, ruthless purchasing practices, has changed the relationship between buyers, manufacturers and their workforce. This has placed the standard model of the employment relationship under strain,

²⁴ It is argued, for example, that some Asian management systems are based on Confucianism, in which it is part of the very social fabric to respect and obey superiors, with the understanding that superiors will protect the wellbeing and interests of their subordinates (Chang and Chang, 1994: 3).

²⁵ Fair Labor Association 2008 Survey Report: First Round of SCOPE Surveys as Part of FLA 3.0.

²⁶ Interview with Neil Kearney 29.11.2002.

leading to major code non-compliances (Vaughan-Whitehead, 2010; Miller 2011b), including “wage theft” (Bobo, 2008) and precarious forms of employment (Vosko, 2011).

Moreover, changes in the structure of the global apparel industry – with the rise of full package operations and the emergence of the Far Eastern manufacturing giants – do nevertheless point to the importance of the primacy of the employment relationship between a supplier and their workforce. Although global value chains in textiles and clothing are primarily buyer-driven, in many developing countries, foreign transnational companies with their headquarters in East Asia dominate exports or coordinate the production of export goods. Furthermore, some producers have emerged as highly profitable major global players in their own right, controlling production plants in several countries (UNCTAD, 2005: 8; Sklair and Robbins, 2002).

Both the ITGLWF and NGOs in the sector found it necessary to turn their attention to these Asian TNCs (Playfair Alliance, 2008). In the former case, this has involved trade union networking activity and dialogue in those companies with union presence (Miller, 2008). For the NGOs, this has essentially been confined to research and campaigning (SOMO 2003; Sluiter 2009). Thus far, both the trade union and NGO responses have remained underdeveloped – hampered in the union case by an absence of any organizational presence in the headquarters of these companies (see Miller, 2007) and by the continued need for campaigners to rely on media exposés in the buying countries to address non-compliances. (See, for example, the annual “Let’s Clean up Fashion” reports of the UK NGO, Labour Behind the Label.²⁷)

Nevertheless, the potential for public relations damage to the Northern retailers and brand owners has required them to undertake corporate social responsibility activities to address violations of worker rights in their supply chains. Social compliance has thus become an additional managerial function. While buyers are ready to intervene in matters of quality, delivery period and price – usually with some form of financial penalty – interventions in the area of social compliance appear to be more problematic, particularly in regard to wages, hours and job security,²⁸ despite the fact that such workplace outcomes can be – and often are – the direct or indirect results of specific sourcing decisions and buying behaviour (Oxfam, 2004a & b; Impactt/Traidcraft, 2008; Miller, 2010). These aspects of the employment relationship in outsourced manufacturing have comprised a legally-contested terrain in national law.

For example, although the US Fair Labor Standards Act (FLSA) of 1938 was originally implemented to address inter-state competition on wages, working hours and the terms of employment at the national level, this law extended liability for non-compliance with its terms beyond the bounds of ordinary employment, introducing the notion of “joint employment” of subcontracted workers and thus the extension of liability for wage and hour law violations to a contractor (Burch, 2002).²⁹ The FLSA continues to have great relevance today in the USA and has been applied by the US Department of Labor to prosecute “joint employers” (see Doherty, 2009). Efforts to extend the principle of “joint liability” to international outsourcing, however, has been

²⁷ <http://www.labourbehindthelabel.org/component/k2/itemlist/category/220> (last accessed 20.9.2011).

²⁸ In some instances, inability to meet higher volumes imposed by buyers as part of a negotiated reduction in price has resulted in cases of illegal subcontracting, where compliance systems are unable to pick up child labour and forced labour practices.

²⁹ Nevertheless, some of the tests of the principle of “economic reality” which are applied to determine joint responsibility (applied in the seminal *Zheng vs Liberty Apparel* case in 2003) provide interesting yardsticks against which the current economic reality of internationally outsourced apparel manufacture might be measured: a) the workplace and equipment belong to the client; b) work performed is integral to the client company’s product; c) the client company supervises work; and d) the subcontractor works almost exclusively for the client company.

much more problematic in the absence of extensive jurisprudence in this area and, crucially, in the absence of an International Labour Court. Thus, few cases exist in which multinational buyers have been held legally accountable for back payments, or to pay what has been judged a living wage to subcontracted workers.³⁰ There have been signs of an acknowledgement on the part of a number of members of the Ethical Trade Initiative (ETI) of their joint responsibility for poverty wages in the Bangladesh apparel sector, in their efforts to mount a multi-stakeholder wages project, which would address freight on board (FOB) payments. Perceived legal complexities in relation to EU competition law hampered effective collaboration in this area. Some participating companies have sought to unilaterally address the issue, via the path of productivity improvements (Miller, 2010).

Only a handful of buyers would appear to insist on their suppliers maintaining a full-time permanent workforce, a situation perpetuated by the existence of a “fast fashion” industry model and the volatility of orders fuelled by the current economic crisis. Consequently, the common practice of employing short-term casual labour has become a major issue, central in the breakthrough trade union recognition dispute at River Rich in Cambodia (cf. Gregoratti and Miller, 2011). Similarly, the joint efforts of the Spanish multinational, Inditex, and the ITGLWF to negotiate with Topy Top, a vendor in Peru, were undermined by the supplier’s decision – entirely legitimate under Peruvian law – not to rehire the reinstated trade union activists when their contracts of employment expired after three months.³¹ In the case of closures and redundancies, most buyers have been reluctant to accept responsibility for payment owed to the workers. When the Evergreen factory in El Salvador closed in 2005, Columbia Sportswear agreed to divert payment owed to the supplier company to the workers instead, to cover part of their compensation (Maquila Solidarity Network 2007: 4). Generally, however, workers have received additional support only in cases where the buyers (as with Hanes brands and Gildan), actually owned the factories in question (Maquila Solidarity Network, 2007: 5-6). In another case, with the company Hermosa, the Fair Labor Association agreed to intervene on behalf of the brands and establish an emergency fund, following a third party complaint.³²

Thus, the complex and ever-changing supply chain relationships, coupled with persistent low levels of trade union organization and collective bargaining, mean that the primacy of the employment relationship between employers and workers in manufacturing entities in the apparel sector will continue to be strained, even where collective bargaining is established in a supplier factory – hence, the persistent calls by civil society for increased brand involvement in determining workplace outcomes. Such intervention will of course remain entirely voluntary and piecemeal until new labour market institutions for a globalized industry can be conceived.

4. Conclusion

This paper has examined the mature systems of industrial relations (MSIR) paradigm advocated by Neil Kearney, the late General Secretary of the International Textile Garment and Leather Workers Federation (ITGLWF), as a more sustainable model of social compliance for apparel and footwear global commodity chains. Taking as its point of departure the inherent weakness in social auditing

³⁰ Belgium (2008). See also: “Hayward vs Cintas”. Available at: http://www.just-pay.org/news/article.198350-Court_Rules_Cintas_Corp_Ignored_Hayward_CA_Living_Wage_Law (last accessed 7. 4.2009).

³¹ Letter from Neil Kearney to Alan Garcia, President of Peru, 18.6.2008.

³² <http://en.maquilasolidarity.org/currentcampaigns/Hermosa/Background?SESS89c5db41a82abcd7da7c9ac60e04ca5f=mrdrvpcufw> (last accessed 11.12.2009).

and the plethora of codes of conduct, Kearney had called for a more streamlined approach, based on recognition of the “enabling rights” of freedom of association and collective bargaining and a restatement of the primacy of an employment relationship between manufacturers and their employees, regulated via a set of systems which involve trade unions in processes of factory management.

One of the major early critiques of a “systems” approach was the absence of a framework for addressing those processes which generate the potential for sweatshop conditions in the first place (Hyman, 1975: 11). Ongoing restructuring in the sector – resulting in price deflation and value chain consolidation, the persistence of poverty wages, work intensification and job losses – will inevitably call forth sustained monitoring and campaigning efforts from that part of civil society which has no place in the MSIR framework. The paramount need on the part of multinational retailers and brand owners to maintain corporate reputation, and the imaginative efforts of the NGO community to remind them of this fact, will continue to push against the existing boundaries of supply chain governance and call forth continued buyer involvement in aspects of workplace industrial relations. This not only has implications for ongoing trade union/NGO collaboration. Arguably, it has the benign potential to challenge the primacy of the employment relationship in outsourced apparel and footwear production, and to open up space for creative approaches in labour administration and workplace industrial relations in the future.

Sadly, Neil Kearney passed away prior to the 9th World Congress of the ITGLWF in 2009. His two successors since that time have been absorbed by the concerted efforts on the part of the ITGLWF, ICEM and the International Metalworkers’ Federation to merge into new Global Union. As a new Manufacturing Global Union emerges in 2012, it will be interesting to track whether and how his paradigm for addressing supply chain governance is pursued in the ongoing struggle to contain an industry which continues to be the epitome of in-decent work in the world today.

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