

Institutional Change in Transnational Labor Governance: Implementing Social Standards in Public Procurement and Export Credit Guarantees

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1. Introduction

When more than 1000 workers died and more than 2000 workers were left wounded in the collapse of a factory building in Bangladesh on April 24th 2013, an engaged discussion on labor exploitation started around the world. Media coverage, politicians and firms agreed that conditions in the garment industry in Bangladesh were unacceptable and had to change.¹ A flurry of activity consequently erupted culminating in a new labor accord that was signed by major brand firms headquartered outside Bangladesh.

Neither the press coverage nor the activities by civil society, government agencies and global firms on fixing labor standards in Bangladesh make any sense without an understanding of global justice. In the last two decades a new and lively concept of global justice has evolved that has changed the traditional understanding of social justice as being bound to local area and the nation state. Whether global justice is based on social relations (O'Neill 1996), interdependent institutional arrangements (Barry and Pogge 2006), political responsibility (Young 2004) or shared responsibility (Dahan, Lerner and Milman-Sivan 2011), the claim is that consumers and firms in the developed North bear some responsibility for labor standards in the global South.

Global justice theories do not provide a straightforward answer on how to implement measures to address injustice and inequality in the sphere of labor (Dahan, Lerner, Milman-Sivan, 2011, 118). Iris Young gives one answer on how to deal with implementing global justice through political responsibility. Acknowledging political responsibility for global supply chains implies that consumers and firms “contribute by their actions to perpetuating the structural conditions, incentives and constraints that the actions of the owners and managers whose actions are the most immediate cause” (Young 2004, 383). She gives a two-

¹ U.S. Retailers offer Plan for Safety at Factories. In: New York Times 11th July 2013. http://www.nytimes.com/2013/07/11/business/global/us-retailers-offer-safety-plan-for-bangladeshi-factories.html?_r=1&.

step response which addresses the structural imbalances: firstly, “Each of us must look to our own institutional positions, skills and capacities, and the other responsibilities that come to us, to assess our tasks that will most effectively coordinate with others to help bring about more just outcomes” (p. 384). Secondly, in order to overcome the institutional hurdles of our assigned roles in the economic sphere, institutions need to be transformed to be able to more actively protect those who strive for justice. “While the performance of certain institutionally defined tasks contributes to the perpetuation of injustice, at the same time there may be tasks that could be performed for which there is no place in existing institutions” (p 385).

Institutional change is, therefore, at the heart of enforcing political responsibility in cross-border economic activities, as it equips individuals with new tasks and resources to strive for justice.

There are already many real world examples of initiatives that pursue not only the identification of political responsibilities but also of institutional change. We will argue that the transnational business governance literature, as well as the global justice literature, has so far not focused on one important part of transnational labor governance: the implementation of transnational standards into public policy. This integration of voluntary standards in public policy in OECD countries marks a new development in the transnational standard diffusion. Public policy actors engage in private standards and encourage or formally bind companies, who have their production in developing countries, to transnational social and labor rights standards.

Along with a new debate on global justice, a plethora of multi-stakeholder and private initiatives have developed in the last two decades in the realm of global labor standards. The aim and focus of self-regulatory standards is to bind firms in their business activities to take into account and actively promote minimum standards regarding working arrangements and trade union representation. As self-regulatory mechanisms, enforcement of these standards is dependent on the voluntary participation of firms in multi-stakeholder and private initiatives. However, enforcement has been a highly controversial issue. Firstly, auditing and monitoring the standards along the supply chain has been riddled with problems (Barrientos and Smith 2006; Prieto-Carrón 2008). Suppliers, in particular, have become more organized themselves and often resist tight supervision. Secondly, the voluntary nature of these initiatives has led to a bifurcation of the transnational firms: the socially conscientious firms participate in self-regulatory initiatives at their own expense, while other firms choose to ignore the diffusion of global standards (Bartley and Child 2008, p. 3).

At the same time, civil society organizations have realized these shortcomings and have actively campaigned to include social and labor standards in regulatory tools of transnational economic governance, in particular those that are not transnational instruments themselves but rather domestic policy tools regulating cross-border economic activities. OECD countries indirectly regulate the labor standards of developing countries by binding transnational firms to labor standards throughout their supply chain. Labor standards in the global South would, therefore, be regulated by the requirements of governments in the global North through transnational firms.

The regulation of multinational companies in the area of social and labor rights is a patchy, multi-level governance endeavor that includes transnational voluntary standards, such as the Global Compact, standards by international organizations such as the International Labor Organization (ILO), as well as national law and practices (Hassel 2008). As a result of an increasing globalization in the 1980s and 1990s, nation states as well as international organizations face strong challenges to regulate transnational business and their global supply chains. Transnational social and labor standards, as well as environmental standards, have gained importance over the last two decades (Auld et al. 2009; O'Rourke 2006). Transnational voluntary labor standards are set by transnational public-private or private-private initiatives, such as the Global Compact, Social Accountability International and the Business Social Compliance Initiative (Brühl 2006; Dingwerth 2007; Hurd 2003). The standards include enabling rights, such as freedom of association and collective bargaining, at supplier factories of multinational corporations, as well as protecting rights, such as no child labor, no excessive overtime and no forced labor (Barrientos et al. 2010, p.7; O'Rourke 2006, p. 811).

This chapter will look at the process of institutional change for global justice through private and public regulation. Based on the analysis, we will assess whether, and to what extent, incorporating global labor and social standards in domestic policy tools is an effective way to overcome the weaknesses of transnational voluntary standards. We will focus especially on two policy fields in which transnational voluntary standards are increasingly used (although in varying degrees) in European countries: public procurement and export credit guarantees.

Sustainable Public Procurement (SPP) has become an important topic within the EU member states since the adoption of the EU directives 2004/17 and 2004/18, that open up the

possibilities of including social and labor rights standards, as well as environmental standards, into public procurement (Reinhard Steurer et al. 2007, p.8). Governments in the EU are encouraged to include not only green requirements but also social and labor standards in procurement decisions. These labor standards increasingly derive from transnational standards. There was a lively discussion within the OECD on the inclusion of social standards as a precondition for national Export Credit Guarantees (ECG) schemes that resulted in the strengthening of social standards in the OECD Common Approaches² in June 2012 (OECD council 2012). The increasing use of transnational non-technical standards in public policy in OECD countries is an important but understudied aspect in the literature.

2. The nature and emergence of global labor governance as part of transnational governance

The international labor regime is a prime example of the shift from international to transnational governance. During the post-war period of “embedded liberalism”, (Ruggie 1983) international labor regulation was formed primarily through ILO conventions. The ILO’s regulation itself did not involve hard sanctions but was based on the approach of international conventions and recommendations which would be transformed into national legislation. The prime addressee of ILO conventions, even though negotiated in a tripartite setting, was national governments who bore sole responsibility for transposition and enforcement. Transnational governance, in contrast, describes policy-making not only as cross-boundary policy-making but as interactions which take place between state agents and non-state agents.

Transnational governance is a result of increasing globalization and heightened pressure by global social movements, which put the issue of social and labor regulation along the value chain on the agenda (O’Brien 2007; Smith, Chatfield, and Pagnucco 1997). In 1994, a report by the then Director-General of the ILO, Michel Hansenne, proposed a differentiation between a set of core labor rights on the one hand and the need for soft law on the other. It presented a missing link between the efforts to include labor clauses in the WTO negotiations, the wish of the ILO to move back to center stage and the newly emerged activism by global NGOs on labor in the supply chain (Hassel 2008).

² The full name is Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence

Thus, by the end of the old millennium, the discussion about labor regulation at an international level had changed in three important ways (Hassel et al. 2010): firstly, there was an increasing awareness that the ILO's traditional hard law approach was unable to keep up with global production processes. This was underlined by the failure to include a social clause into the WTO. Secondly, the ILO responded to this development in 1998 by establishing a set of universally accepted rights. They consist of the Core Labor Standards, as laid down in the Declaration on Fundamental Principles and Rights at Work. The change of approach by the ILO took place in the context of numerous activities by trade unions, NGOs and firms (Hassel 2008; Papadakis 2008). Thirdly, the perspective on soft law changed in the growing (academic) debate on new forms of global governance, which now systematically included non-state actors and new modes of soft regulation (Held et al. 1999).

This was accompanied by a lively debate about the future role of traditional forms of global labor regulation. New ways of regulation were called for to meet the new challenges. Codes of Conduct (CoC), International Framework Agreements (IFA), the introduction of a social clause in WTO trade agreements and new forms of global unionism (e.g. through European or World Works Councils) are the most prevalent among them (Fichter et al. 2011; Kolk and Van Tulder 2005). Criticism, in turn, was targeted primarily at the ILO, which was deemed a toothless tiger, providing insufficient means to address global problems. In this context, the ILO reacted by adopting the Declaration on *Fundamental Principles and Rights at Work* and the definition of core labor standards (CLS).

The rise of non-state actors and private regulatory initiatives was polycentric and took place in various arenas involving many actors. While on the one hand, these standards draw, in principle, on the same type of norms as the traditional legislative model of labor standards, developed by the ILO and the European Union (Block et al. 2001), particularly the CLS, they differ with regard to procedures and actors. The institutional mechanisms, through which social rights and the rights of citizenship in the workplace are to be implemented, (Dombois et al. 2003, 422) are a long way from the traditional ILO regime. Even though the CLS of the ILO are a cornerstone of the new transnational labor governance, the ILO has found it difficult to redefine its role within the new framework. It still focuses on the large number of conventions and its tripartite structure and has not found a way to include the many civil society groups that are active in the field of labor rights. As hard clauses, such as those in WTO agreements, were not attainable, a voluntary regime was better than nothing and an opportunity for trade unions, social movements and some governments to keep labor issues

on the agenda. Voluntary norms can be seen, moreover, as a complementary option to implement ILO rules (Scherrer and Greven 2001; Murray 2004). Soft law arrangements are also said to include lower contracting costs, lower sovereignty costs, are better at dealing with situations of uncertainty and are better at enabling compromises. They are also more flexible and add additional legitimacy by including bottom up approaches (Kirton and Trebilcock 2005: 5).

Table 1: Characteristics of Three Regulatory Regimes of Labor Standards

Traditional regime of labor regulation	Transnational private labor governance	Transnational labor governance: Public policy framework for private standards
Hard law provides hard sanctions	Soft law provides incentives and information	Soft and hard law interact with and reinforce each other.
Compliance by governments	Compliance by business	Business compliance in the context of public and private norms
Regulated access of private actors: employers' confederation and trade unions	Unrestricted access of private actors: business, NGOs and trade unions	Unrestricted access of private actors: business, NGOs and trade unions
Authority oriented	Market oriented	Mixed orientation

Source: based on Hassel (2008).

The focus on the emergence of a new (private) global labor governance regime, however, continues to shape the current discourse on global labor and its regulation (Hassel 2008). While some claim that the traditional labor regime, with the state as its classical locus, has long been outdated, others call for a strengthened role of established means of regulation within the ILO. Recent discussions on the labor regime seem to suggest a move towards a two-tier system: hard contractual law is supplemented by new forms of cooperation which “require continuing governance of deep uncertainty rather than periodic adjustment of an enduring body of rules, in global supply chains and developing countries no less than in the advanced economies” (Sabel 2006: 270).

The role of public policy for transnational governance is also emphasized by the literature on “new transnational governance”. Abbott and Snidal (2009) map public, private and public-private institutions on a “governance triangle”, defined at its three vertices by Firms, NGOs and State institutions and place transnational regulatory standards within the triangle. They highlight the move from the ‘old governance’, which was based on public authority and bureaucratic control, to ‘new transnational governance’, which includes private actors and decentralized decision making.

The effectiveness of transnational governance arrangements is disputed. These governance arrangements set transnational standards and aim to bind business to them, but they cannot enforce the application of these standards. They depend on the willingness of transnational corporations to incorporate and apply these standards voluntarily. As international law still does not apply to private actors such as firms, but only binds governments, norms ultimately have to be translated into domestic legislation. However, soft law has its advantages: responsive regulation can support and supplement the efforts by under-resourced state agencies. Self-regulation is often seen as increasing legitimacy and effectiveness in monitoring compliance (Conzelmann and Wolf 2007; Cutler et al. 1999; Hall and Biersteker 2002). These processes may lead, moreover, to a spiral of upward regulation, as firms that are being monitored pressurize regulators to look at others as well (Börzel et al. 2011; Fung et al. 2001; Vogel 1995).

Public agencies have increasingly found ways, however, to influence, steer and coopt transnational governance mechanisms into fostering their effectiveness. Abbott and Snidal (2009) coined the role of public actors as an “orchestration” of the process. In order to minimize complexity and to retain the benefits of diversity, governments orchestrate standard setting by establishing criteria and publishing results to consumers and helping firms to comply with transnational standards. They also give preferential access to loans, grants and contracts if firms meet certain practices. Directive orchestration by states includes government sponsoring of labels and certification schemes but also mandatory disclosure of environmental and social information. A “potentially powerful directive approach” is to condition public benefits for firms, particularly government procurement opportunities when the standards are satisfied (Abbott and Snidal 2009, 569).

We find many examples for directive orchestration: many western governments have contributed to the creation of transnational private or public-private institutions. Great Britain

supported the creation of the Ethical Trading Initiative, the United States the creation of the Fair Labor Association and the German government the creation of the Business Social Compliance Initiative (O'Rourke 2003). Also, the relatively new trend of government regulation of Corporate Social Responsibility is a case in point (Brown and Knudsen 2012; Moon et al. 2012; Reinhard Steurer 2010). The regulation of the individual firm to make businesses apply social standards transnationally is a common theme in various forms of public policy on Corporate Social Responsibility (CSR). While CSR was, for a long time, almost by definition, a voluntary contribution by firms to local communities and wider society, it has, during the last decade, become increasingly subject to government intervention. Public sector engagement can take the form of indirect and soft regulation, through different modes of public sector engagement in Corporate Social Responsibility such as mandating, facilitating, partnering and endorsing (Fox et al. 2002). The pressure on firms has started to increase, particularly in the EU, where the EU Commission has been actively promoting mandatory reporting on CSR activities. In some EU member states reporting on CSR has already been part of a wider CSR strategy of governments that already includes mandatory reporting and extensive soft policies.

Governments have also recently started to incorporate transnational standards into public policy areas, such as public procurement and export credit guarantees, as well as through the creation of national contact points for the OECD Guidelines for Multinational Enterprises (Knigge et al. 2004; McCrudden 2007). In the following, we will concentrate on the intersection of transnational standards and public policy tools that help to enforce these standards domestically at the level of the multinational firm. We will use the example of Export Credit Guarantees and Social Public Procurement.

We will show that there is a top down integration of and orientation towards transnational labor standards. At the same time, there is a bottom up push for a stronger implementation of transnational standards. Civil society is pushing public policy actors to increase the obligation of companies, that do business with the public sector, to comply with transnational social and labor rights standards. Practically this can mean asking companies that produce work uniforms or electronic equipment for the public sector to comply with standards such as no child labor, no slave labor and no discrimination at their own production sites and at the production sites of their suppliers in developing countries like Bangladesh.

3) Putting socially responsible public procurement into practice

Public procurement is the “process whereby government bodies purchase from the market the goods, works, and services that they need” (Arrowsmith and Kunzlik 2009, p.9). Public procurement made up about “17% of the EU’s gross domestic product” in 2010 (European Commission 2010, p.10) and “between 8% and 25% of the GDP of OECD countries” (Brammer and Walker 2007, p.4). Due to its economic importance and the “fact that it is one of the few areas of national policy that remains outside the reach of liberal trade and investment regimes” (Woolcock 2012, p.10), public procurement forms an important policy area for binding multinational companies to green and social criteria when selling their goods and services to the public sector.

The literature distinguishes between green public procurement and socially responsible public procurement. During the last few years, the role of socially responsible public procurement has increased in many OECD countries (Kahlenborn et al. 2011, p. IX-X). Socially responsible public procurement means “procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labor rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues (6) and wider voluntary compliance with corporate social responsibility (CSR), while observing the principles enshrined in the Treaty for the European Union (TFEU) and the Procurement Directives.” (European Commission 2010, p.7).

Top down: providing a framework and transnational standards

The process of implementation of transnational social and labor rights standards is a top down as well as a bottom up process. In the top down process private regulatory initiatives, as well as the European Union, play an important role in creating the framework for socially responsible public procurement and providing transnational standards.

Private regulatory initiatives or so called multi-stakeholder initiatives, such as Social Accountability International or the Ethical Trading Initiative, set standards in the area of social and labor rights, binding companies to end child labor, sexual harassment and discrimination in their supply chains, binding their suppliers to respect freedom of association, collective bargaining and facilitating health and safety standards in the

workplace. Private regulatory initiatives with strong obligations usually refer to, or align, their code elements with the ILO core labor standards.

In the area of public procurement, public authorities draw on transnational private standards in the area of fair trade, ethical trade in the supply chains of companies and environmental standards. A common way to include ethical standards into the procurement process is through asking the bidder³ to sign a so-called graduated bidder declaration⁴. To demonstrate that the bidder upholds social and labor rights in its supply chain, the company has three choices: firstly, it can provide the procurer with a certification, a label by a multi stakeholder initiative or a membership in such an initiative⁵. Secondly, the company can provide the public authority with an equivalent certificate, label or membership in other multi-stakeholder initiatives. Thirdly, the company can undergo an external audit by an independent auditing company to prove social and labor rights compliance in its supply chain. The bidder declaration is accompanied by a market dialogue with the bidders to ensure that they understand and improve their corporate social responsibility performance. In the case that no suitable certificate or label exists for the products the procurer wants to purchase, ILO core conventions can directly be included into the tender.⁶ Subsequently, the bidder company signs a qualified self-declaration, stating that it will aim to comply with social and labor rights standards in its supply chain, agree with the public authority on targeted measures as to how to achieve its aims and report back to the public authority on its progress.

Within the European Union, there is a common regulatory framework for public procurement with the Public Sector Directive (Directive 2004/18/EC 2004), the EC Utilities Directive (Directive 2004/17/EC 2004) and their amendment through the Commission Regulation No 1177/2009 (Commission Regulation 1251/2001 2011). If countries incorporate social and labor standards in the procurement process, they can be used “in the form of technical specifications, selection criteria and award criteria, or once a tender has been selected, in the contract clauses” (Kahlenborn et al. 2011, p.29). Even though the EU

³ The company that will provide goods and services to the public authority.

⁴ For example the Barcelona city government and the Bremen state government use this tool to assure verification of social and labor rights standards of their bidders in the procurement process.

⁵ Social Accountability International issues certifications. The Fair Labelling Organization issues fair trade labels. Other transnational private regulatory initiatives such as the Fair Wear Foundation, the Ethical Trading Initiative or the Fair Labor Association monitor and audit the social and labor rights compliance of its member companies regularly.

⁶ The State of Bremen used this proceeding for a car leasing tender in 2012. Other difficult cases are computers and technical equipment: *Verifying Social Standards in Public Procurement* (ICLEI Europe, 2012), The Landmark Project (dir.).

has created a regulatory framework for including social criteria in procurement, it remains voluntary and non-binding for the EU member states. The EU also funds public-private initiatives that promote green and socially responsible public procurement (SRPP), such as ICLEI Local Governments for Sustainability⁷ or LANDMARK⁸ and RESPIRO⁹.

An EU wide comparison shows that socially responsible public procurement is gaining ground (Kahlenborn et al. 2011), but EU-member countries vary significantly with regard to the degree of SRPP incorporation. Including social criteria in public procurement at a national level is rather new. The Dutch government was the first to use socially responsible public procurement for all product groups in national tenders (European Commission. Swedish Presidency 2009). Countries such as Denmark, the Netherlands, the United Kingdom and Norway are forerunners in this policy area (Brammer and Walker 2007; Kahlenborn et al. 2011). Examples from the middle field are Spain, Germany and Sweden. Interestingly, the first two are not using social criteria in public procurement at a national level but only at a subnational level. Laggards are Eastern European countries such as Hungary, Slovenia and Poland. The latter has foreseen socially responsible procurement in the national action plan but has not yet put it into practice (Kahlenborn et al. 2011; Steurer 2011).

Bottom up: local use of transnational standards

Important advances in the area of socially responsible public procurement (SRPP) came so far mainly from a bottom up process. Two developments are important here: firstly, civil society, including non-governmental organizations and unions, are powerful actors at all governance levels (international, transnational, regional and local) who can promote transnational social and labor rights standards and SRPP in general. Secondly, the incorporation of transnational standards mainly starts at a subnational level, and then works its way up to a national level. The subnational levels are leading in regard to the

⁷ This initiative was founded in 1990 as the International Council for Local Environmental Initiatives and is a network of sustainable cities operating worldwide. It consists of 1200 local governments and focuses mainly on sustainable government and green procurement. See <http://www.iclei-europe.org/about-iclei/>, last accessed January 10, 2013.

⁸ The LANDMARK project is an ongoing European project including NGOs and state representatives from the subnational level to use social criteria in the public procurement process as well as create verification criteria. See <http://www.landmark-project.eu/>, last accessed January 10, 2013.

⁹ The RESPIRO project was led by NGOs and unions and piloted the use of socially responsible public procurement in building construction works, textiles and clothing. The project ended in 2007 with guidelines for procurers on how to implement social and labor rights standards in the procurement process in these two policy areas. For more information see <http://www.respiro-project.eu/en/welcome/>, last accessed January 10, 2013.

implementation of transnational social and labor rights standards in SRPP and push national governments from bottom up to increase their engagement and use of SRPP.

In 2011 civil society consolidated its individual national efforts and launched a European project called LANDMARK, to promote the use of socially responsible public procurement in Europe (The LANDMARK Project 2012a). The NGOs in the LANDMARK project are the main drivers for SRPP implementation. With their guidelines and expertise they train public procurers on how to use social criteria in the procurement process.

Subnational units, such as the German Bundesländer or the Spanish Autonomous Communities and regional and city governments are the most important drivers with regard to the incorporation of socially responsible public procurement (interestingly, this development also holds for green public procurement). Local and regional governments in Spain and Germany, for example, bind business in their procurement process to fair trade and to social and labor rights standards (CIR et al. 2011; ISEAL Alliance 2008; Vives et al. 2009). The region Groningen in the Netherlands promotes fair trade and demands that coffee vendors in public buildings buy coffee according to fair trade standards, such as Max Havelaar. Barcelona City Council incorporates ethical criteria in the procurement of work wear, coffee and timber and promotes the Fair Wear Foundation and Social Accountability International as good transnational standards in this area (European Coalition for Corporate Justice and Center 2007; Vives et al. 2009). In Germany the City of Düsseldorf incorporates, in its procurement contracts, that companies have to bind themselves to an independent certification such as the Transfair seal or Rugmark, to prove that they do not use any child labor in the production of their goods (European Commission 2010, p.32). 232 German municipalities have implemented the ILO convention 182, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, as well as the ILO Core Labor Standards¹⁰. In sum, social labels, certifications and transnational voluntary standards are “a key part of many SPP strategies, and suppliers are increasingly aware of their value in objectively verifying performance” (Semple 2012).

Regulation of socially responsible public procurement at a national, regional and local level can be found in procurement law, guidelines, action plans and best practices. Socially responsible procurement objectives are usually integrated in national action plans that

¹⁰ See earthlink e.V. Aktiv gegen Kinderarbeit: Kommunen aktiv gegen Kinderarbeit, <http://www.aktiv-gegen-kinderarbeit.de/deutschland/kommunen/>, last accessed January 10, 2013.

primarily set out goals for sustainable governance and green public procurement as can be seen in Austria, Belgium, France, the Netherlands, Norway, Poland and the UK. “Legal approaches to SRPP are present in ten Member States (Austria, the Czech Republic, Belgium, France, Germany, Italy, Slovakia, Spain, Sweden and Norway); in most cases, however, laws refer to highly specific considerations, the most prominent being the inclusion of people with disabilities and respect for labor rights (ILO core conventions)” (Kahlenborn et al. 2011, p. X).

There are three main challenges regarding the implementation of socially responsible public procurement: firstly, there is a lack of knowledge and a lack of guidelines for procurers in the procurement process. Therefore, since 2008, NGOs and unions do not only campaign for the use of social and labor rights standards in tenders but provide procurers with guidelines, training and capacity building. A second challenge is the lack of infrastructure in the form of public information centers and websites, to provide the public authority and the public in general, with ongoing information on recent developments at subnational levels and in other countries. Thirdly, monitoring and reporting tools in socially responsible public procurement are currently weak. Public procurers seem to first implement SRPP and, only at a later stage, actually start using monitoring and reporting tools to verify whether companies actually comply with social and labor rights standards.

4) Social and labor standards applied by Export Credit Agencies (ECAs)

All countries in the OECD have Export Credit Agencies (ECA) as part of their industrial policy for export promotion. They are either public or semi-public financial institutions that provide credit guarantees and insurance under certain conditions to exporting firms. ECAs provide export credits to national companies investing in developing or emerging countries. [In 2002, approximately](#) US\$50 billion were covered by export credit agencies (OECD 2012c). In comparison, the “total foreign aid from all sources amounted to only US \$55 billion annually, and World Bank lending amounted to a little over US\$17 billion” (Halifax Initiative 2012).¹¹ Since the conditions under which ECAs insure exports shape the competitive position of those firms, they have attracted international scrutiny, which was eventually picked up through the development of the Common Approaches by the

¹¹ According to the Halifax Initiative, export credit agencies as a whole play a more important role in providing credits than the World Bank Group Halifax Initiative, 'FaQ Answers: Export Credit Agencies. Revised June 2008', <<http://halifaxinitiative.org/content/faqs-ecas-and-edc>>, accessed Last accessed March 19, 2012.

OECD. In 1963 the Export Credit Group was established as a forum in which governments define common policies and discuss emerging issues on export credits.¹²

How exactly ECAs monitor and enforce social and labor rights standards is not very transparent, and most ECAs do not have a monitoring system in place. The incorporation of transnational social and labor rights in the practices of the export credit agencies is generally less advanced than in public procurement. Social standards in ECA decision-making are, moreover, markedly weaker compared to environmental standards (Knigge et al. 2004). In the 1990s environmental and social concerns in export credits were very low (Eberlein et al. 2010, p.12; Knigge et al. 2004, p.12). This has, however, changed over the last decade.

Top down: providing a framework and transnational standards

When export credit agencies incorporate and report on social and labor standards they mainly originate from transnational or international voluntary standards, such as the OECD Common Approaches¹³, OECD Guidelines for Multinational Enterprises and the UN Global Compact. Socially responsible export credit agencies encourage companies to apply social and labor rights standards and are themselves active in initiating standards such as the UN Global Compact and in CSR reporting. Some countries such as France and Denmark bind their ECGs to social and labor rights standards. The French agency, COFACE, has been a member of the United Nations Global Compact since 2003. The Danish agency, EKF, binds business to social and labor rights standards from the Global Compact and the Equator Principles.

As in the case of public procurement, a transnational top down framework coincides with a bottom up process of civil society mobilization. The transnational framework is located primarily at the level of the World Bank and the OECD and therefore, compared to the European Union, weaker. The sources for the framework are the following two arenas:

¹² There are 24 Participants, including Australia, Canada, the Czech Republic, the European Community (15 countries), Japan, Korea, New Zealand, Norway, Switzerland and the United States. The European Commission negotiates on behalf of the EU Member States. Observers to the negotiations typically include the Berne Union, the WTO Secretariat and the European Bank for Reconstruction and Development, as well as non-OECD members that have ECAs, such as India and Brazil. The ECG houses the Consensus Arrangement guidelines. These guidelines set out the broadest terms and conditions governing export credit business in an effort to standardize the conditions through which governments can promote their exports. Halifax Initiative FAQ, last accessed March 19, 2012.

¹³ Full name: Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence

Within the OECD there is a regulatory framework that stipulates guidelines for the use of export credit guarantees, the Common Approaches.¹⁴ They are the most immediate and, therefore, the most important basis for assessing the impact of exports and investments on the people affected. The Common Approaches are themselves based on criteria that were developed by international financial organizations; particularly the Safeguard Policies of the World Bank and the Performance Standards of the International Finance Corporation (IFC).¹⁵ While the Safeguard Policies are used primarily by ECAs, the Performance Standards are the more comprehensive standards, compared to the Safeguard Policies. They include, for instance, the Core Labor Standards of the ILO. A recent revision of the Performance Standards has tightened some of the criteria and, in particular, focuses on the labor rights of migrant workers, responsibility in the supply chain and human rights (Hamm et al. 2011). The Performance Standards have, moreover, been adopted by a consortium of private banks that are part of project financing as the Equator Principles. They are therefore applied in the project financing of big infrastructure projects. They are, however, not the standard set of criteria of the Common Approaches yet.

Even though most export credit agencies bind themselves to the OECD Common Approaches as well as the OECD Guidelines for Multinational Enterprises, the degree of standard incorporation into their practices, as well as their monitoring, remains rather low. Since 2005, ECAs that implement the OECD Common Approaches have to report annually on their progress. ECAs that are members of the UN Global Compact are also obliged to report regularly. Some export credit agencies actively encourage companies to bind themselves to social and labor rights standards such as the Global Compact.¹⁶

Since the 2000s, a further push occurred with the initiative by John Ruggie under the ‘Business and Human Rights’ label. In June 2012, the new OECD Common Approaches strengthened social standards and human rights. This revision “sets common approaches for undertaking environmental and social due diligence to identify, consider and address the potential environmental and social impacts and risks relating to applications for officially

¹⁴ The name for the Common Approaches changed from “Common Approaches on Environment and Officially Supported Export Credits” to “Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence” to reflect the inclusion of environmental and social factors. See: Oecd, 'Oecd Common Approaches', <<http://www.oecd.org/trade/exportcredits/commonapproaches.htm>>, accessed Last accessed December 1, 2012

¹⁵ The International Finance Corporation is a subsidiary of the World Bank.

¹⁶ See for example the Danish, Swedish and French export credit agencies websites.

supported export credits as an integral part of Members' decision-making and risk management systems" (OECD 2012b).

Bottom Up use of local standards

ECAs were regularly targeted by NGO campaigns when it came to large infrastructure projects such as dams and nuclear power stations. In the mid-1990s, national NGOs, such as the Canadian Halifax Initiative and Urgewald and Weed in Germany, pressured for a reform of export credit guarantees and the inclusion of human rights, as well as a stronger implementation of international environmental and social standards in export credit guarantees. This resulted in the Jakarta Declaration signed by over 300 NGOs in May 2000 (Declaration 2000; ECA Watch 2012). One effect of this was that the OECD Common Approaches integrated environmental standards in 2003 for the first time (Hunter 2008).

In the late 1990s and early 2000s, the importance of environmental and social standards has slightly increased due to strong international campaigns by NGOs against dam projects such as the Ilisu Dam Project in Turkey (Atzl 2009, 2010; Keenan 2008). The Ilisu Dam Project was the first project "where ECAs tried to implement specified social and environmental project conditions" (Eberlein et al. 2010, p.291). The Turkish government invited European companies to join the construction consortium for the dam in 2005. The companies applied for export insurance cover at their national ECAs (German, Swiss and Austrian) and for export loans with various banks.¹⁷ The ECAs decided to request that certain conditions had to be met. The planned dam had an enormous impact: displacing up to 78.000 inhabitants of villages, cultural heritage, biodiversity and cross-border impact in Syria and Iraq. In the context of the Ilisu dam, the ECAs agreed that the Safeguard Policies of the World Bank applied. Moreover, the ECAs made reference to the recommendations of the World Commission of Dams and conducted further multi-stakeholder meetings on the issue. As Turkish laws did not meet international standards, the Turkish ministry for energy and the ECAs signed a common agreement, in which 150 conditions were stipulated. 27 of those were to be met before the start of the project. The NGOs became very active on comparing the terms of the agreement with international standards, lobbying the ECAs to fill the gaps, mobilizing the public on the issue, as well as organizing fieldtrips to gather evidence that the construction had started without having met the conditions. Eventually, in October 2008, the ECAs announced the start of exit proceedings; the German and Swiss firms cancelled their

¹⁷ The description of the case of the Ilisu dam is based on the analysis of Eberlein et al. 2010.

contracts, while the Austrian firm remained in the project. The Turkish government made it clear that it would continue the project without the involvement of European firms.

The case of the Ilisu dam is extreme because the preparation of the project was particularly poor on the Turkish side. However, it shows how the pressure by NGOs to first expand the regulatory framework of ECAs, to cover not only Safeguarding Principles but also the WCD recommendations, could be used strategically when mobilizing against the project. It remains to be seen how standards can be enforced in less prominent projects and in export insurance.

6) Conclusion

The two policy areas of socially public procurement and export credit guarantees present important policy fields in European countries to study the institutional changes that are currently evolving in the context of the enforcement of transnational labor standards. An institutional analysis enriches the literature on global justice, especially the strand dealing with political responsibility (Young 2004), as it highlights concrete mechanisms with which individual and political responsibilities in the Global North are ascribed for situations in the Global South. In the context of transnational labor governance, we have moved from a completely state-based system of ILO conventions to a new private governance system and are now observing a synthesis in which public and private norms and enforcement mechanisms interact (see table 1).

In particular, we are witnessing the incorporation of ILO core labor standards in areas that regulate cross-border economic activities, both in the framework of private standards as well as in national law and practices. This recent phenomenon of transnational labor governance takes place on multiple levels and through a mix of voluntary and binding standards. As a result, there is an increasing multi-level and multi actor interdependence which, in theory, can both enhance and diffuse the functioning of this transnational labor governance. We claim that the complex set up of private and public norms at a global, national and company level also contributes to an ever tighter web of rules and might combine to present a normative foundation of corporate responsibility vis-à-vis labor that is hard to circumvent, precisely because the same issues have been addressed at so many levels. No actor in the supply chain can avoid addressing fundamental labor rights if they are part of

the Global Compact, the privately run GRI and, moreover, included in procurement regulations.

The two cases we looked at in this paper illustrate the new public-private mechanism. In both cases, the implementation of labor standards follows a two pronged approach: transnational regulatory frameworks, such as EU policy frameworks and the OECD Common Approaches, are targeted by civil society groups which lobby for the inclusion of social and labor standards in regulatory frameworks. The same groups are often active in using cases and examples to push for their implementation. The novel aspect in terms of labor governance is that, unlike public policy actors, civil society groups can use both the transnational regulatory as well as the local arena to press for change. They mobilize further pressure through lobbying at the level of implementation. Top down and bottom up approaches are driven not by states or international organizations but by civil society, who use public policy as a tool to reinforce and harden voluntary standards. In the field of labor standards, orchestration in transnational governance takes place through the adoption of the CLS by the ILO, which then travels through various private regulatory initiatives, such as the Global Compact and GRI, to become a core reference point in non-labor arenas. These are the policy guidelines of the IFC, SPP or the Common Approaches of the OECD. It is important, however, to realize that very little would have been orchestrated if civil society had not put labor standards as an integral part of social regulation in a global economy. While public policy increasingly plays an important role in transnational governance, the “significant orchestration deficit” that Abbott and Snidal (2009, p.512) observed, due to the unwillingness of international organizations or states to act as facilitators or directors, is unlikely to disappear. Orchestration is much more likely to be carried out by civil society groups with public policies as private tools.

The process of establishing normative foundations of global justice and labor standards is still in flux. Much will depend on the details of implementation and enforcement. If adherence to labor standards in SPP and ECA remain a box ticking exercise, as it is in so many auditing procedures these days, not much will develop. If it is, however, used by an active civil society to demand and press for better conditions, they can become another building block towards global justice.

References

- Abbott, Kenneth W. and Snidal, Duncan (2009), 'Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit', *VANDERBILT JOURNAL OF TRANSNATIONAL LAW*, 42, 501-78.
- Arrowsmith, Sue and Kunzlik, Peter (2009), 'Public Procurement and horizontal policies in EC law: general principles', in Sue Arrowsmith and Peter Kunzlik (eds.), *Social and Environmental Policies in EC Procurement Law. New Directives and New Directions* (Cambridge, New York Cambridge University Press), 9-54.
- Atzl, Andreas (2009), 'The Role of Transnational NGO-Networks in the Implementation of Social and Environmental Standards. The Ilisu Dam Project in Turkey'.
- (2010), 'Sustainable Dam Development. Transnational NGO-Networks advocate for international norms: The Ilisu Dam, Turkey ', in German Development Institute. Bonn: DIE-GDI. (ed.), *Discussion Paper*.
- Auld, Graeme, et al. (2009), 'The Emergence of Non-state Market Driven (NSMD) governance: A Cross Sectoral Assessment', in Magali Delmas and Oran Young (eds.), *Governing the Environment: Interdisciplinary Perspectives* (Cambridge University Press), 193-215.
- Barrientos, Stephanie and Smith, Sally (2006), 'The ETI code of labour practice: Do workers really benefit?', in University of Sussex Institute of Development Studies (ed.).
- Barrientos, Stephanie, Gereffi, Gary, and Rossi, Arianna (2010), 'Economic and Social Upgrading in Global Production Networks: Developing a Framework for Analysis', *Working Paper 2010/03*
- Bartley, Tim and Child, Curtis (2008), 'Shaming the Corporation: Globalization, Reputation, and the Dynamics of Anti-Corporate Movements. Working Paper'.
- Börzel, Tanja A., et al. (2011), 'Racing to the Top? Regulatory Competition among Firms in Areas of Limited Statehood', in Thomas Risse and Ursula Lehmkuhl (eds.), *Governance without a State? Policies and Politics in Areas of Limited Statehood* (New York: Columbia University Press), 144-70.
- Brammer, Stephen and Walker, Helen (2007), 'Sustainable procurement practice in the public sector: An international comparative study ', *University of Bath. School of Management. Working Paper Series* 16.
- Brown, Dana and Knudsen, Jette Steen (2012), 'Visible Hands: Government Policies on Corporate Social Responsibility in Denmark and the UK', *CES Conference. Panel: The Welfare State and Social Stratification*.
- Brühl, Tanja (2006), 'The privatization of governance systems : on the legitimacy of international environmental policy ', in Arthur Benz and Yannis Papadopoulos (eds.), *Governance and democracy : comparing national, European and international experiences* (London [u.a.]: Routledge), 228 - 51.
- CIR, Christliche Initiative Romero, et al. (2011), 'Sozial-ökologische Beschaffung als Innovationstreiber – Was geschieht in Europa?'
- Commission Regulation 1251/2001 (2011), 'Commission Regulation (EU) No 1251/2011 of 30 November 2011 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the awards of contract Text with EEA relevance. OJ L 319, 2.12.2011, p. 43–44 '.
- Conzelmann, Thomas and Wolf, Klaus Dieter (2007), 'The Potential and Limits of Governance by Private Codes of Conduct', in Jean-Christophe Graz and Andreas Nölke (eds.), *Transnational Private Governance and its Limits* (London: Routledge), 98-114.

- Cutler, A. Claire, Haufler, Virginia, and Porter, Tony (eds.) (1999), *Private authority and international affairs* (SUNY series in global politics, Albany, NY: State Univ. of New York Press) XI, 389 S.
- Declaration, Jakarta (2000), 'Jakarta Declaration for Reform of Official Export Credit and Investment Insurance Agencies'.
- Dingwerth, Klaus (2007), *The New Transnationalism. Transnational Governance and Democratic Legitimacy* (Transformations of the State; Houndsmills: Palgrave Macmillan).
- Directive 2004/17/EC (2004), 'Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. OJ 2004 L134/1.'
- Directive 2004/18/EC (2004), 'Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. OJ 2004 L134/114'.
- Dobusch, Leonhard and Quack, Sigrid (2012), 'Framing standards, mobilizing users: Copyright versus fair use in transnational regulation', *Review of International Political Economy*, 1-37.
- Eberlein, Christine, et al. (2010), 'The Ilisu dam in Turkey and the role of export credit agencies and NGO networks', *Water Alternatives*, 3 (2), 291-312.
- ECA Watch 'ECA Watch Campaign Goals ', <<http://www.eca-watch.org/goals/index.html>>.
- European Coalition for Corporate Justice and Center, Fair Trade (2007), 'Linking CSR to Public Procurement in the EU. Report from an ECCJ seminar and workshops 3 October 2007. Stockholm, Sweden'.
- European Commission (2010), 'Buying Social. A Guide to Taking Account of Social Considerations in Public Procurement', in Social Affairs and Equal Opportunities Unit D.2 and Directorate-General for the Internal Market and Services Unit C.3 Directorate-General for Employment (ed.), (Luxembourg: Publications Office of the European Union).
- European Commission. Swedish Presidency (2009), 'First step for social criteria in procurement. The Netherlands'.
- Fichter, Michael, Helfen, Markus, and Sydow, Jörg (2011), 'Employment relations in global production networks: Initiating transfer of practices via union involvement', *Human Relations*, 64 (4), 599-622.
- Fox, T., H. Ward, and Howard, B. (2002), 'Public Sector Roles in Strengthening Corporate Social Responsibility: A baseline study', (Washington, D.C.: World Bank Group).
- Fung, Archon, O'Rourke, Dara, and Sabel, Charles F. (2001), *Can we put an end to sweatshops?* (New democracy forum series; Boston, Mass.).
- Halifax Initiative 'FAQ Answers: Export credit agencies. Revised June 2008', <<http://halifaxinitiative.org/content/faqs-ecas-and-edc>>, accessed Last accessed March 19, 2012.
- Hall, Rodney Bruce and Biersteker, Thomas J. (eds.) (2002), *The emergence of private authority in global governance* (Cambridge studies in international relations ; 85, Cambridge: Cambridge Univ. Press) XVII, 248 S.
- Hassel, Anke (2008), 'The Evolution of a Global Labor Governance Regime', *Governance. An International Journal of Policy, Administration, and Institutions*, 21 (2), 231-51.
- Hunter, B. David (2008), 'Civil Society Networks and the Development of Environmental Standards at International Financial Institutions', *Chicago Journal of International Law*, 8 (2), 437-78.

- Hurd, Ian (2003), 'Labour Standards through International Organisations: The Global Compact in Comparative Perspective', *Journal of Corporate Citizenship*, 11.
- ISEAL Alliance (2008), 'Governmental Use of Voluntary Standards: Innovation in Sustainability Governance'.
- Kahlenborn, Walter, et al. (2011), 'Strategic Use of Public Procurement in Europe – Final Report to the European Commission', in adelphi (ed.), (Berlin).
- Keenan, Karyn (2008), 'Export Credit Agencies and the International Law of Human Rights', (Halifax Initiative Coalition).
- Knigge, Markus, et al. (2004), 'The Use of Environmental and Social Criteria in Export Credit Agencies' Practices. A Study of Export Credit Agencies' Environmental Guidelines with Reference to the World Commission on Dams', in Frauke Neumann-Silkow (ed.), (Eschborn: Gesellschaft für Technische Zusammenarbeit).
- Kolk, Ans and Van Tulder, Rob J.M. (2005), 'Setting New Global Rules? TNCs and Codes of Conduct', *Transnational Corporations*, 14 (3), 1-27.
- McCrudden, Christopher (2007), *Buying Social Justice. Equality, Government Procurement, and Legal Change* (Oxford: Oxford Univ. Press).
- Moon, Jeremy , et al. (2012), 'Analysis of the National and EU Policies Supporting Corporate Social Responsibility and Impact. Working Paper 2. Deliverable to “IMPACT Project” funded by Directorate General for Research, European Commission (Framework 7 Program)'.
- O'Rourke, Dara (2003), 'Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring', *Policy Studies Journal*, 31, 1-29.
- (2006), 'Multi-stakeholder regulation: privatizing or socializing global labor standards?', *World Development*, 34 (5), 899-918.
- OECD 'OECD Common Approaches ',
<<http://www.oecd.org/trade/exportcredits/commonapproaches.htm> >, accessed Last accessed December 1, 2012.
- 'OECD Environmental and Social Due Diligence',
<<http://www.oecd.org/tad/exportcredits/environmentalandsocialduediligence.htm>>,
accessed Last accessed December 1, 2012.
- 'OECD Adopts Stronger Environmental Common Approaches for Export Credits ',
<<http://www.oecd.org/general/oecdadoptsstrongerenvironmentalcommonapproachesforexportcredits.htm> >, accessed Last accessed December 1, 2012.
- OECD council (2012), 'Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches")', June 28, 2012', (TAD/ECG(2012)5).
- Prieto-Carrón, Marina (2008), 'Women Workers, Industrialization, Global Supply Chains and Corporate Codes of Conduct', *Journal of Business Ethics*, 83 (1), 5-17.
- Semple, Abby (2012), 'Reform of Procurement Directives - Council's draft offers progress on SPP', *Public Procurement Analysis*.
<<http://www.procurementanalysis.eu/resources/Commentary+on+Council+draft.pdf>>,
accessed Last Accessed December 1, 2012.
- Steurer, Reinhard (2010), 'The role of governments in corporate social responsibility: characterising public policies on CSR in Europe', *Policy Sciences*, 43 (1), 49-72.
- Steurer, Reinhard , et al. (2007), 'Sustainable Public Procurement in EU Member States: Overview of government initiatives and selected cases. Final Report to the EU High-Level Group on CSR', in Social Affairs and Equal Opportunities DG EUROPEAN COMMISSION. Employment and Lisbon Strategy Employment, International Affairs European Employment Strategy, CSR, Local Development (eds.), *Analysis of*

- national policies on CSR, In support of a structured exchange of information on national CSR policies and initiatives (Tender No VT/2005/063)* (Vienna).
- Verifying social standards in public procurement* (ICLEI Europe, 2012), The LANDMARK Project (dir.).
- Vives, Ramon, Sales, Albert, and Mannubia, Ignasi (2009), 'Introduccion de criterios sociales en los contratos de suministro de ropa de las administraciones publicas. Compra publica responsable de uniformes y productos textiles', in SETEM-Catalunya (ed.).
- Vogel, David (1995), *Trading Up: Consumer and Environmental. Regulation in a Global Economy* (Cambridge, MA: Harvard University Press).
- Woolcock, Steve (2012), 'Policy diffusion in public procurement', *IPE research seminar paper, May 2012* (London School of Economics).