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The politics of corporate responsibility: CSR and the governance of child labor and core labor rights in the 1990s

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**The politics of corporate responsibility:
CSR and the governance of child labor
and core labor rights in the 1990s**

PhD Dissertation

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Copenhagen Business School
October 2007

Contents

<i>Contents</i>	<i>i</i>
<i>Acronyms and abbreviations</i>	<i>iv</i>
<i>[preface]</i>	<i>vi</i>
1. Corporate responsibility and the governance of child labor and core labor rights	1
1.1 Introduction	1
1.2 The research questions	5
1.3 Definitions and delimitations	6
1.4 CSR and the three agreements	11
<i>Situating the three agreements</i>	<i>12</i>
<i>The MOU</i>	<i>14</i>
<i>The Atlanta Agreement</i>	<i>18</i>
<i>The AIP/FLA Agreement</i>	<i>20</i>
1.5 Outline	28
2. Philosophy of science and social science	29
2.1 Introduction	29
2.2 Three basic premises	29
2.3 Truth and knowledge	31
2.4 Materialism and Idealism	37
2.5 The agent-structure and levels of analysis problems	39
<i>The agent-structure problem</i>	<i>40</i>
<i>Levels of analysis</i>	<i>41</i>
2.6 Causation, explanation and understanding	42

3. Methodology and the research process	48
3.1 Introduction	48
3.2 The research design and process	49
3.3 A case study approach	54
3.4 Data collection and analysis	57
<i>A note on bias</i>	62
4. A theoretical framework	64
4.1 Introduction	64
4.2 Regime theory: a theoretical point of departure	66
<i>Broad characteristics and comments</i>	66
<i>A discussion of key issues</i>	72
4.3 Preconditions	78
<i>Characteristics of the problem</i>	78
<i>Characteristics of the framework of governance</i>	82
<i>Industry characteristics: power, control, vulnerability</i>	85
4.4 Processes and interaction	91
<i>Struggles to define the problem</i>	94
<i>Targeting: struggles over blame and responsibility</i>	102
<i>Economic coercion</i>	110
<i>Modeling the solution</i>	117
4.5 Summary	122
5. The politics of corporate responsibility and child labor in the Bangladeshi garment industry	125
5.1 Introduction	125
5.2 Industry characteristics	127
5.3 Characteristics of the framework of governance	132
5.4 Characteristics of the problem	135
5.5 A chronology of events	139
5.6 Struggles to define the problem	145
5.7 Targeting	147
5.8 Economic coercion	150
5.9 Modelling the solution	154
5.10 Concluding remarks	159

6. The big game: corporate responsibility and child labor in the production of soccer balls	162
6.1 Introduction	162
6.2 Industry characteristics	162
<i>Approaching the big business of soccer and soccer balls</i>	162
<i>Soccer balls in Sialkot</i>	166
<i>Brands at war - the ball marketers</i>	170
6.3 Characteristics of the framework of governance	174
6.4 Characteristics of the problem	178
6.5 A chronology of events	183
6.6 Struggles to define the problem	195
6.7 Targeting	204
6.8 Economic coercion	207
6.9 Modeling the solution	211
6.10 Concluding remarks	220
7. Sweatshops “at home” and abroad: the White House Apparel Industry Partnership	225
7.1 Introduction	225
7.2 Industry characteristics	226
<i>The retailers</i>	227
<i>The apparel marketers and manufacturers</i>	230
7.3 Characteristics of the framework of governance	233
7.4 Characteristics of the problem	238
7.5 A chronology of events	242
7.6 Struggles to define the problem	265
7.7 Targeting	269
7.8 Economic coercion	271
7.9 Modelling the solution	274
<i>Givens</i>	274
<i>Splits and compromises: conflicts unresolved</i>	278
7.10 Concluding remarks	288
8. Conclusions	292
Bibliography	306
Annex I. Interviews	349

Acronyms and abbreviations

AAFLI: Asian-American Free Labor Institute (AFL-CIO).
AAMA: the American Apparel Manufacturers Association.
ACFTU: All-Chine Federation of Trade Unions.
AFL-CIO: American Federation of Labor – Congress of Industrial Organizations.
AIP: Apparel Industry Partnership.
BGMEA: Bangladesh Garment Manufacturers and Exporters Association.
BIGU: Bangladesh Independent Garment-Workers' Union.
BSR: Business for Social Responsibility.
CEFT: Committee on Ethics and Fair Trade (WFSGI).
CLC: Child Labor Coalition.
CSR: Corporate Social Responsibility.
FIFA: Fédération Internationale de Football Association.
FLA: Fair Labor Association.
FLSA: Fair Labor Standards Act.
GCC: Global commodity chain.
GSP: Generalized System of Preferences.
HRCP: the Human Rights Commission of Pakistan.
ICCR: Interfaith Center on Corporate Responsibility
ICFTU: International Confederation of Free Trade Unions.
IGO: Intergovernmental organization.
ILGWU: International Ladies Garments Workers Union.
ILO: International Labour Organisation.
ILO-IPEC: the ILO's International Programme on the Elimination of Child Labour.
ILRF: International Labor Rights Fund.
ITGLWF: the International Textile, Garment and Leather Workers' Federation.
LCHR: Lawyers Committee for Human Rights
MFA: Multifibre Arrangement.
MOU: Memorandum of Understanding (Bangladesh).

NCL: National Consumers League.
NGO: Nongovernmental organization.
NLC: National Labor Committee.
NRF: National Retail Federation.
RWDSU: the Retail, Wholesale, and Department Store Union (AFL-CIO).
SCCI: the Sialkot Chamber of Commerce and Industry.
SGMA: the U.S. Sporting Goods Manufacturers Association.
SICA: the Soccer Industry Council of America (SGMA).
UEFA: Union des Associations Européennes de Football.
UN: United Nations.
UNICEF: United Nations Children's Fund.
UNITE: Union of the Needletrades, Industrial & Textile Employees.
WFSGI: World Federation of the Sporting Goods Industry.
WRAP: Worldwide Responsible Apparel Production (AAMA)
WRC: Workers Rights Consortium.
WTO: World Trade Organization.

[Preface]

This dissertation has been underway for more than five years. There are many to whom I am eternally indebted. First and foremost, Morten Ougaard has been a most insightful, inspiring and encouraging supervisor, his door always open and his company, intellectual and social, I have enjoyed all the way. More CBS colleagues than I will name here have also meant a lot to me: the Department of Intercultural Communication and Management is a place full of open doors and minds, both intellectually and on a personal plane. Special thanks to Hans Krause Hansen, Peter Wad, Ole Strömngren...

During the process I was one of the initiators of the network resulting, among other things, in the 2005 International Affairs special issue on Corporate Social Responsibility. For delightful and most inspiring workshops and other academic dealings, not to mention the social ones, I thank Halina Ward, Mick Blowfield, David Fig, George Frynas, Rhys Jenkins, Peter Newell and Anita Chan, Marina Prieto-Carron and Chandra Bushan. And, at the CBS, to Peter Lund-Thomsen and Søren Jeppesen, for being my 'partners in crime', and to Mette Morsing, Finn Junge Jensen, Sven Bislev, Dorte Salskov-Iversen for supporting our activities.

Last, but certainly not least, life has shaped and been shaped by this dissertation. Sine, you are the most amazing and wonderful person. I dedicate this to you and the three daughters that have been born since the beginning of this project:

- To Sine, Nynne, Nanna, and Karla.

*Michael E. Nielsen
October 1, 2007*

1. Corporate responsibility and the governance of child labor and core labor rights

1.1 Introduction

*'No amount of preparation could have lessened the shock and revulsion I felt on entering a sporting-goods factory in the town of Sialkot, seventy miles from Lahore, where scores of children, most of them aged five to ten, produce soccer balls by hand for forty rupees, or about \$1.20, a day. The children work eighty hours a week in near-total darkness and total silence. According to the foreman, the darkness is both an economy and a precautionary measure; child-rights activists have difficulty taking photographs and gathering evidence of wrongdoing if the lighting is poor. The silence is to ensure product quality: "If the children speak, they are not giving their complete attention to the product and are liable to make errors." The children are permitted one thirty-minute meal break each day; they are punished if they take longer. They are also punished if they fall asleep, if their workbenches are sloppy, if they waste material or miscut a pattern, if they complain of mistreatment to their parents or speak to strangers outside the factory. A partial list of "infractions" for which they may be punished is tacked to a wall near the entrance. It's a document of dubious utility: the children are illiterate. Punishments are doled out in a storage closet at the rear of the factory. There, amid bales of wadding and leather, children are hung upside down by their knees, starved, caned, or lashed.'*¹

One year after Jonathan Silvers painted such a grim picture of the working conditions in the soccer ball industry in Pakistan, an agreement was presented at the sporting goods industry's annual Super Show in Atlanta, Georgia. Backed by the World Federation of the Sporting Goods Industry

¹ Jonathan Silvers, 'Child Labor in Pakistan', *The Atlantic Monthly*, February 1996.

and the vast majority of the world's soccer ball-“producing” sporting goods companies, such as Adidas, Nike and Reebok, and with funding from the U.S. and British governments as well as the U.S. Soccer Industry Council of America, this ‘Partner’s Agreement to Eliminate Child Labour in the Football Industry in Pakistan’ was signed on February 14, 1997, by representatives of the Sialkot Chamber of Commerce and Industry, the ILO and UNICEF, marking – in the words of the ILO – ‘the first time that organizations representing multinational corporations and their local suppliers have joined with international organisations in a concerted effort to eliminate child labour from this specific industrial sector.’²

On the one hand, this so-called Atlanta Agreement provided for the establishment of a prevention, monitoring and verification system, involving both internal and external compliance and verification elements. On the other, the Agreement consisted of a Social Protection Program, entailing the provision of non-formal education, vocational training, micro-credit facilities, etc. to children and their families. By February 2003 49,765 monitoring visits had been conducted, the project had ‘succeeded in cleaning up 95 per cent’ of the hand-sewn soccer ball industry in the Sialkot district, and it had led to ‘educating 10,572 students through 255 non-formal education centres, mainstreaming 5,838 of them and providing health cover to 5,408 students.’³

We have, then, two fairly distinct ways of governing working conditions in this particular industrial sector. They did not involve a re-articulation of the dominant norms on childhood and child labor per se, nor were key elements of the conventional framework of governance - the nation-state and intergovernmental organizations, legislation and enforcement – rendered meaningless. But they constituted a marked change in the norms and practices of corporate responsibility, entailing a growing assumption of responsibility by the private sector. And they constituted a significant shift in governance, a redistribution of responsibility and political authority toward the private and the voluntary.

² International Labour Office, *ILO unites with industry groups to combat child labour* (Geneva: International Labour Office, press release, February 14, 1997 (ILO/97/2)).

³ International Labour Office and UNICEF, *From Stitching to School: Combating Child Labour in the Soccer Ball Industry in Pakistan* (Geneva/New York: International Labour Office/UNICEF, 2004), pp. 4 and 15.

The Partners' Agreement related to child labor in Sialkot is but one example illustrative of the change in corporate responsibility and the governance of child labor and labor rights during the 1990s, as profit-seeking corporations in growing numbers adopted codes of conduct or ethical guidelines, governing – in rhetoric, if not always in practice – a growing list of issues: from the rights of indigenous peoples in the Amazon region to the depletion of the ozone layer and problems of global warming; from the rights of child and (sometimes) adult workers to animal welfare and bioethics; from bonded labor in Lahore, Pakistan, to the sweatshops of suburban Los Angeles or down-town New York City.

Certainly, many of the issues were not new, nor was the idea of debating corporate responsibility an invention of the 1990s. Child labor had been debated and subject to legislation for centuries, as had the rights and working conditions of adult workers.⁴ Corporate responsibility and the role of business in society had also been subject to long-running debates. In the words of Blowfield and Frynas, 'From a historical perspective, [...] CSR is simply the latest manifestation of earlier debates on the role of business in society.'⁵ More than just an abbreviation, the use of CSR denotes that the shift which occurred during the 1990s was a historically particular re-articulation of corporate responsibility, CSR, and that this latest manifestation was quite distinct from the most recent of its predecessors as well as from the prevailing framework of governance. During the 1970s, just a couple of decades earlier, these debates manifested themselves very much in a focus on regulation and standard-setting by state and intergovernmental bodies.⁶ During the 1990s, in turn, the face of corporate responsibility - and thereby the governance of those societal concerns

⁴ John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge: Cambridge University Press, 2000); Héctor B. de la Cruz, Geraldo von Pobotsky and Lee Swepton, *The International Labor Organization: The International Standards System and Basic Human Rights* (Boulder, Colorado: Westview Press, 1996); Hugh Cunningham, *Children and Childhood in Western Society since 1500* (London: Longman, 1995); Alec Fyfe and Michele Jankanish, *Trade unions and child labour: A guide to action* (Geneva: International Labour Office, 1997).

⁵ Michael Blowfield and Jędrzej George Frynas, 'Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world', *International Affairs*, Vol. 81, No. 3, 2005, p. 500.

⁶ Rhys Jenkins, Ruth Pearson and Gill Seyfang, 'Introduction' in Jenkins, Pearson and Seyfang (eds.), *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan Publications Ltd., 2002).

involved - changed in a direction quite distinct from that of the 1970s, as illustrated by the Partners' Agreement above.

Viewed against the backdrop of the “conventional” framework of governance dominant throughout the latter half of the 20th century as well as the wave of regulatory codification attempts of the 1970s, one of the central characteristics of the shift which occurred in the 1990s was that it constituted and embodied a shift toward the private and voluntary: ‘For many proponents and critics, a key distinguishing feature of CSR is the voluntary nature of the initiatives companies undertake in its name, in contrast to the formal regulatory mechanisms historically used to govern business.’⁷ In broader terms, CSR may be seen as one of many such shifts in the role of the private sector and private authority in the multiple aspects of governance, a phenomenon which has attracted growing scholarly attention well beyond CSR and the governance of child labor and core labor rights: ‘In an era when the authority of the state appears to be challenged in so many ways, the existence of alternative sources of authority takes on great significance, especially when that authority is wielded internationally by profit-seeking entities. [...] we do not argue this phenomenon is entirely new; for instance, merchants of a century ago and more played a large role in governance. Our contributors do, however, point to the unique characteristics of current private governance activities. More importantly, they bring to the fore the increased contemporary significance of an upward trend in the management of global affairs by economic actors.’⁸

⁷ Blowfield and Frynas, ‘Setting new agendas’, p. 502.

⁸ A. Claire Cutler, Virginia Haufler and Tony Porter, ‘Private Authority and International Affairs’ in A. Claire Cutler, Virginia Haufler and Tony Porter (eds.), *Private Authority and International Affairs* (Albany: State University of New York Press, 1999), p. 3. See also James N. Rosenau and Ernst-Otto Czempiel (eds.), *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992); Richard Stubbs and Geoffrey R. D. Underhill (eds.), *Political Economy and the Changing Global Order* (Ontario: Oxford University Press, 2000); Richard A. Higgott, Geoffrey R. D. Underhill and Andreas Bieler, *Non-State Actors and Authority in the Global System* (London: Routledge, 2000); Geoffrey R. D. Underhill, *States, Markets and Governance: Private Interests, the Public Good and the Democratic Process* (Amsterdam: Vossiuspers UvA, 2001); Virginia Haufler, ‘Crossing the Boundary between Public and Private: International Regimes and Non-State Actors’ in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993); Virginia Haufler, *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy* (Washington, D. C.: Carnegie Endowment for International Peace, 2001).

The driving interest underlying this dissertation has been this: Why did we see this change in corporate responsibility and the governance of child labor and labor rights? Why did we see this *particular* form of change? After all, the problems and the solutions had been defined differently for decades. And why a change in *the first place*?

1.2 The research questions

In my pursuit of these rather broad questions and interests, I have focused in this dissertation on three in-depth empirical case studies. These are:

- i) The MOU: The Memorandum of Understanding concerning Child Labour in the Bangladeshi Garment Industry, signed by the Bangladesh Garment Manufacturers and Exporters Association, the International Labour Organization, and UNICEF, July 4, 1995;
- ii) The Atlanta Agreement: The Partners' Agreement to Eliminate Child Labour in the Football Industry in Pakistan, signed by the Sialkot Chamber of Commerce and Industry, the International Labour Office, and UNICEF, February 14, 1997;
- iii) The AIP/FLA Agreement: The Preliminary Agreement between (some of the) members of the White House Apparel Industry Partnership Task Force, November 2, 1998.

Referring to these three agreements, the research questions are formulated as follows:

1. Why did these agreements come into existence?
2. Why did they take on those particular forms?

In the following section, I elaborate further on the research questions and provide some pointers about the nature and direction of this dissertation. Subsequently, the three agreements will be characterized in further detail in section 1.4, where they will also be situated within the broader contemporary shift in corporate responsibility. The final section of this chapter provides an outline of the dissertation at hand.

1.3 Definitions and delimitations

The research questions and underlying research interests are inextricably tied to my conceptions of governance, corporate responsibility, the political and the economic – indeed, basic ontological premises concerning the social. I see governance, much as Cox and many other scholars see the State and other entities, as a social construction, and a multi-faceted and complex one at that.⁹ Governance relates, as I use it, to the ways in which societies define societal problems and the solutions to those problems, and governance is used deliberately to indicate that this involves more than governments and governmental mechanisms.¹⁰ These are undoubtedly important elements of the frameworks of governance related to child labor and core labor rights, which come into play in this dissertation. Central to this research project, however, governance also involves the norms and practices associated with corporations and a variety of different types of actors beside governmental ones.¹¹

Consequently, I use the concept ‘framework of governance’ as a deliberate alternative to regulatory framework and other similar concepts that carry too many connotations tied to government and governmental regulation. I use it instead to capture the premise that the governance of child labor and core labor rights includes the existing national and international regulation, patterns of enforcement, as well as the norms and practices of corporate conduct with regards to those issues. And I hope I have succeeded in using it in such a way as to also give room to the basic premise that both problems and solutions are always potentially conflictive and subject to politicization and change. The politicization of one element of the framework of governance is always, whether implicitly or explicitly, also a politicization of its other elements. In other words, a debate on corporate responsibility is also, perhaps implicitly, a debate about the societal concerns at stake *and* about the responsibility of other societal actors.

⁹ Robert W. Cox, *Production, Power, and World Order: Social Forces in the Making of History* (New York: Columbia University Press, 1987).

¹⁰ Jon Pierre (ed.), *Debating Governance* (Oxford: Oxford University Press, 2000).

¹¹ Braithwaite and Drahos, for example, operate with no less than 9 key actor types in their seminal book: organizations of states, states, international business associations, national business associations, corporations, international NGOs, national NGOs, mass publics, and individuals. Cf. Braithwaite and Drahos, *Global Business Regulation*, p. 476.

Corporate responsibility, it follows, is seen as a social construction. The norms and practices of corporate responsibility in relation to child labor and core labor rights have demonstrably varied over the years, as have those pertaining to the State and other societal actors. Since debates on corporate responsibility often touch upon quite fundamental societal concerns and (implicitly or explicitly) involve the responsibility of other societal actors as well – indeed, basically relate to the configuration of the public and the private spheres, of the political and the economic – a re-articulation of corporate responsibility is very much so a political phenomenon. Thus, CSR can neither be understood in terms of *corporate* responsibility alone nor in a-political or a-historical terms: ‘What may be labelled CSR issues today are often a product of many decades of conflict over resources that constitute ongoing historical struggles for corporate and state accountability and should be understood in this context.’¹² Corporate responsibility is therefore also seen as contested terrain, a field on which conflicting views on the proper constitution of the corporate and other parts of society occasionally go into battle.¹³ The generic term ‘corporate responsibility’ is used to refer to the contested terrain of corporate responsibility, the contestation and debates over corporate responsibility, rather than the particular norms and practices of corporate responsibility prevailing during a certain period of time.

As indicated above, this dissertation is concerned with the changes which occurred in the 1990s. In broad terms, these may be captured by the term Corporate Social Responsibility, or CSR: ‘Within a decade a whole new corporate language, championed by multinational corporations, has evolved around the notion of more ethical business practice. A new industry has grown up to help companies present, implement and monitor what they are doing in the name of CSR.’¹⁴ Corporate Social Responsibility, or CSR, is used in reference to the particular constitution of norms and practices of corporate responsibility in the 1990s, i.e. a historically specific manifestation.

¹² Niamh Garvey and Peter Newell, *Corporate accountability to the poor: Assessing the effectiveness of community-based strategies*, IDS Working Paper No. 227 (Sussex: IDS, 2004), p. 3.

¹³ Peter Utting, *Rethinking Business Regulation: From Self-Regulation to Social Control*, Technology, Business and Society Programme Paper Number 15 (Geneva: UNRISD, 2005).

¹⁴ Christian Aid, *Behind the mask: The real face of corporate social responsibility* (London: Christian Aid, 2004), p. 4; *note omitted*.

The fact that two quite similar questions were posed in the previous section is very much related to the above as well as the empirical and theoretical interests forming the point of departure for this research project. Corporate responsibility and governance more broadly are seen as social constructions and subject to social change. Asking why the three agreements came into existence is akin to asking why corporate responsibility and the governance of child labor and labor rights more broadly changed at all and in the first place. Interest and attention are invested in certain parts of the empirical and conceptual universe, which might be ignored or less emphasized under the second question, e.g., what were the critical junctures, the preconditions, and the crucial factors?

The second question, in turn, directs attention toward issues such as how and why conditions are politicized and problematized, how social problems are constructed and defined through more or less conflictive processes, and to the inclusions and exclusions of issues, concerns and actors. And it commands attention to the construction of solutions to those problems – the inclusions and exclusions of actors and issues, decisions on organizational forms, funding, mechanisms of control, enforcement and sanctions, etc. In many ways, this second question is similar to one of the basic questions within the international relations theory subfield, regime theory, where the characteristics of international policy regimes are sought explained.¹⁵ Of course, in the present dissertation, non-state actors and business in particular are much more central than has traditionally been the case within regime theory.

As far as the second question is concerned, let me furthermore clarify what is meant by ‘those particular forms’. I aim at the specific and central characteristics of each of the agreements, and this can obviously be conceived of and operationalized in different ways.¹⁶ More specifically, I will focus on the *scope* of the agreements, where scope firstly refers to the boundaries of the agreement with respect to the issues covered, both in terms of the range of issues included or not, and in terms of the depth or

¹⁵ For an overview, see Andreas Hasenclever, Peter Mayer and Volker Rittberger, *Theories of international regimes* (Cambridge: Cambridge University Press, 1997).

¹⁶ For a treatment of basic regime characteristics, see e.g. Lee E. Preston and Duane Windsor, *The Rules of the Game in the Global Economy: Policy Regimes for International Business* (Second Edition), (Boston: Kluwer Academic Publishers, 1997), p. 24.

substance involved. For example, is the agreement on child labor alone, or does it cover several issues? Does it merely prohibit the use of child labor, or does it address the underlying causes and/or the consequences? Second, scope also relates to the geographical boundaries, or lack thereof, of the agreements. Is the agreement confined to a particular physical and geographically delimited space, or is it in principle global? Third, scope refers to the sphere of business activities covered, where delimitations are most likely to be sectoral (the toy industry, the garment industry, etc.) and related to the activities at particular nodes in a commodity chain (e.g., in the manufacturing of soccer balls), but where they may also be product-related (as in soccer balls as opposed to sporting goods generally, for example).

In addition, ‘particular forms’ also refers to the *organizational form*, where this relates to the parties to an agreement (or, more broadly, a given solution) and the institutional set-up that this provides for. In general, which actors are involved – or not involved – is a central feature shaping the nature of an agreement. Why did these particular actors become involved (or excluded)? Are private sector actors involved? If so, more specifically which parts of the industry in question are formally involved (and which parts are involved informally or indirectly)? Are public sector actors involved? If so, are these intergovernmental agencies, national authorities, sub national entities, etc.? Moreover, how are these involved? And, finally, does the agreement contain provisions on monitoring, verification, enforcement and sanctions?

Furthermore, ‘particular forms’ refers to the *funding* of the agreements and how this “burden” is distributed and decided upon. Who pays, how much, and for what?

Finally, ‘particular forms’ refers to specific *rules* that the agreements establish with regards to those issues included. What are the rules, for example, on child labor? Does the agreement contain language on wages – what does the agreement stipulate?

Now, before moving on, a few of comments on the focus and emphasis in this dissertation, on some of the main inclusions and exclusions. To begin with, the research questions focus on the three agreements, which are all concerned with child labor. This dissertation is *not*, and I would like to underline this, solely about child labor. It is about child labor *and* core labor rights. It is about the inclusions and exclusions of issues and

concerns in the struggles to define problems and solutions, and corporate responsibility. How and why do these inclusions and exclusions come about, and how does this affect the processes and the outcomes?

The research questions and the focus on those three particular agreements do, of course, reflect some deliberate delimitations and choices. The operationalization and implementation of the agreements as well as their consequences are not a central concern. In other words, I will not focus on the consequences of the agreements, be it for the child and adult workers, for the companies, etc. These matters have been analyzed and debated extensively, and rightly so, whereas research focusing on explaining the changes is relatively scarce.¹⁷ I therefore consider this a reasonable and

¹⁷ The most extensive treatments of the backgrounds to the three agreements, which I have been able to find during this research process, are: Susan Bissell and Babar Sobhan, *Child labour and education programming in the garment industry of Bangladesh: Experiences and Issues* (Dhaka: UNICEF Bangladesh, 1996); Elliott Schrage, *Promoting International Worker Rights Through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State on behalf of The University of Iowa Center for Human Rights* (Iowa: University of Iowa Center for Human Rights, 2004); David Bobrowsky, *Creating A Global Public Policy Network in The Apparel Industry: The Apparel Industry Partnership*, (at www.gppi.net, accessed on January 12, 2004).

It may be noted that the authors of the first two of these were centrally involved in the respective processes. Moreover, it may be noted that the Bissell and Sobhan text was not easily accessed, whereas the last two texts were not in existence at the commencement of the present research project.

Examples of texts that do not have as their central concern – and consequently do not analyze or treat in depth – the background of the three agreements, their coming into existence and particular form, are: Christopher L. Avery, *Business and Human Rights in a time of change* (London: Amnesty International UK, 2000), pp. 53-55; Rachel Marcus and Caroline Harper, *Small hands: children in the working world*, Working Paper no. 16 (London: Save the Children, 1997 [October 1996]), p. 48; International Labour Organisation, International Programme on the Elimination of Child Labour (ILO-IPEC), *Action against Child Labour: Lessons and Strategic Priorities for the Future* (Geneva, 1997); Madiha Murshed, 'Unraveling Child Labor and Labor Legislation', *Journal of International Affairs*, Fall 2001, Vol. 55, No. 1; Susan L. Bachman, 'The Political Economy of Child Labor and Its Impacts on International Business', *Business Economics*, July 2000, Vol. 35, No. 3; Rijk van Haarlem, 'The BGMEA/ILO/UNICEF Child Labor Project In The Garment Industry, Bangladesh: Lessons Learned', presentation at symposium, Stanford University, California, February 7-8, 2001; at www.childlabor.org, accessed April 11, 2003; Samuel Grumiau, *Garments "Made in Bangladesh". The Social Reality Behind the Label* (Brussels: ICFTU, 2000); Jay R. Mandle, 'The Student Anti-Sweatshop Movement: Limits and Potential', *The Annals of The American Academy of Political and Social Science*, AAPSS, 570, July 2000; M. Zahoor Awan, 'Pakistan: From denial to awareness and

justifiable decision on where to invest my efforts: in all of that which preceded these arguably important aspects of reality.

1.4 CSR and the three agreements

The three agreements will be characterized in further detail shortly. In order to better characterize these, let us briefly look at the broader shift of

action' in Bjørne Grimsrud (ed.), *The Next Steps: Experiences and analysis of how to eradicate child labour* (Norway: Fafo/Centraltrykkeriet AS, 2002); Munir Quddus, 'Child Labor and Global Business: Lessons from the Apparel Industry in Bangladesh', *Journal of Asian Business*, Vol. 15, No. 4, 1999; M. M. Rahman, R. Khanam and N. U. Absar, 'Child Labor in Bangladesh: A Critical Appraisal of Harkin's Bill and the MOU-Type Schooling Program', *Journal of Economic Issues*, Vol. 33, No. 4, December 1999; Brent McClintock, 'Trade as if children mattered', *International Journal of Social Economics*, Vol. 28, No. 10/11/12, 2001; UNICEF, *The State of the World's Children 1997* (New York: Oxford University Press, 1997); Save the Children, *Big Business, Small Hands: Responsible Approaches to Child Labour* (London: Save the Children Fund, 2000), pp. 38-42; David Husselbee, 'NGOs as development partners to the corporates: child football stitchers in Pakistan', *Development in Practice*, Vol. 10, No. 3 & 4, August 2000; Saadia Toor, 'Child Labor in Pakistan: Coming of Age in the New World Order', *The Annals of The American Academy of Political and Social Science*, AAPSS, 575, May 2001; Samuel Poos, *The football industry: From Child Labour to Workers' Rights* (at www.cleanclothes.org, accessed March 1, 2002); Gary Gereffi, Ronie Garcia-Johnson and Erika Sasser, 'The NGO-Industrial Complex', *Foreign Policy*, July/August 2001; Kiran Mehra-Kerpelman, 'Playing fair and still winning', *World of Work*, No. 25, Juny/July 1998; International Labour Office, *A Future without Child Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report of the Director-General, International Labour Conference, 90th Session, 2002, Report I (B) (Geneva: International Labour Office, 2002); Robert J. Liubicic, 'Corporate codes of conduct and product labelling schemes: The limits and possibilities of promoting international labor rights through private initiatives', *Law and Policy in International Business*, Fall 1998; Rob van Tulder and Ans Kolk, 'Multinationality and Corporate Ethics: Codes of Conduct in the Sporting Goods Industry', *Journal of International Business Studies*, Vol. 32, No. 2, 2001; International Labour Organization, Sectoral Activities Programme, *Labour practices in the footwear, leather, textiles and clothing industries*, Report for discussion at the Tripartite Meeting on Labour Practices in the Footwear, Leather, Textiles and Clothing Industries, Geneva, 2000 (Geneva: International Labour Office, 2000); International Labour Office and UNICEF, *From Stitching to School*; International Labour Office and UNICEF, *Addressing Child Labour in the Bangladesh Garment Industry 1995-2001: A synthesis of UNICEF and ILO evaluation studies of the Bangladesh garment sector projects* (Geneva/New York: International Labour Office/UNICEF, 2004).

which they were not merely illustrative, but indeed played an important role in shaping.

Situating the three agreements

Among critics and advocates of CSR alike, there is widespread agreement that one of the most visible features of the shift in corporate responsibility was the spread of voluntary codes of conduct and ethical guidelines. These were not an invention of the 1990s, but during the early 1990s the promulgation of individual company codes slowly began picking up pace, with Levi Strauss and Reebok often mentioned as the pioneers.¹⁸ In the mid-1990s there was a literal spur of codes, and the development of multi-party codes and similar instruments by non-industry actors started becoming more visible and significant.¹⁹ In the mid-1990s, monitoring and verification became an increasingly important aspect of the debate as well as the concrete initiatives, and there was a related growth in the number of companies engaging in social and environmental reporting.²⁰

In the second half of the 1990s, notions of “stakeholder dialogue” and “public-private partnerships” had become increasingly prominent in the discourse, and there were growing signs of an emerging institutionalization of CSR: ‘However interpreted, the broad idea of ‘voluntary’ mechanisms to regulate business behaviour is winning support from policy-makers in national governments and intergovernmental organizations, underpinned by the assumption that firms are capable of policing themselves in the absence of binding international and national law to regulate corporate

¹⁸ Cf. Jem Bendell, *Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement*, UNRISD Technology, Business and Society Programme Paper Number 13 (Geneva: UNRISD, 2004); Oliver F. Williams (ed.), *Global Codes of Conduct: An Idea Whose Time has Come* (Notre Dame: University of Notre Dame Press, 2000); Michael K. Addo (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations* (The Hague: Kluwer Law International, 1999).

¹⁹ Cf. Bendell, *Barricades and Boardrooms*.

²⁰ See e.g. contributions in John V. Mitchell (ed.), *Companies in a World of Conflict: NGOs, Sanctions and Corporate Responsibility* (London: Royal Institute of International Affairs/Earthscan Publications Ltd., 1998).

behaviour.’²¹ In the very late 1990s these developments culminated – in the eyes of some – in the announcement by UN General Secretary Kofi Annan of the UN Global Compact.²² There was also, however, a growing skepticism toward – and criticism of – CSR as an increasingly dominant manifestation of corporate responsibility and as a modality of governing societal concerns.²³

In this rough picture of the developments, the Bangladesh MOU – the agreement being signed in mid-1995 and the controversy erupting in late 1992 – was clearly situated in the early stages of the shift, and it did not take the form of a code of conduct. The Atlanta Agreement, in turn, was announced in the wake of the spur of codes and the “Year of the Sweatshops”. It did not take the form of a code of conduct either – but it came into existence shortly after FIFA and international trade unions had agreed to the so-called FIFA Code of Labour Practice. The AIP/FLA Agreement, in contrast, was one of the most prominent multi-party code initiatives at the time. Having been formally established in mid-1996, the task force negotiated at a time when a considerable number of both individual and multiparty codes were in existence and in the process of being developed.

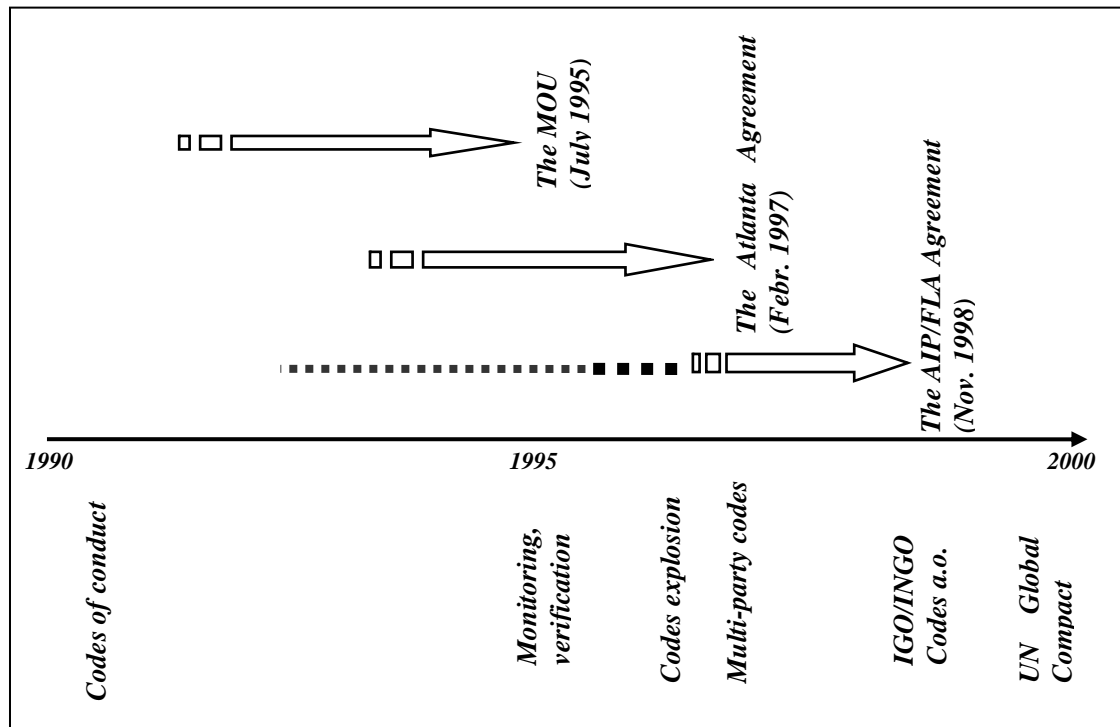
Hence, we may situate the three processes and agreements historically with respect to some of the major developments in CSR in the 1990s, as illustrated below. The three arrows pointing to the agreements are intended to illustrate the duration of the processes leading to these.

²¹ Blowfield and Frynas, ‘Setting new agendas’, p. 502. Cf. also Bendell, *Barricades and Boardrooms*, p. 16.

²² John G. Ruggie, ‘The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact’ in *Journal of Corporate Citizenship*, Issue 5, Spring 2002; John G. Ruggie, *Remarks on the Global Compact to the NGO Community*, Speech, March 13, 2000, Geneva (at www.unglobalcompact.org, accessed on June 2, 2002). Cf. also Peter Utting, *Rethinking Business Regulation*.

²³ See e.g. Bendell, *Barricades and Boardrooms*, pp. 17-18; Christian Aid, *Behind the mask*.

Figure 1.1 CSR and the three agreements: a rough timeline



As far as monitoring and verification, which became a prominent issue in the mid-1990s, was concerned, it is worth noticing that the Bangladesh MOU actually preceded the agreement of late 1995 by the GAP to allow for independent monitoring of its facilities in Central America. Moreover, the MoU was the first time that the ILO became involved in this type of activity, and it was the first instance of large-scale collaboration between the ILO and UNICEF of this kind. The Atlanta Agreement subsequently saw the replication in adjusted form of the main elements of the MOU. Monitoring and verification was also a key issue in the AIP/FLA Agreement and process, the negotiations occurring at a time when the debate had evolved and the strife surrounding internal vs. external and “independent” was much more pronounced.

The MOU

On the 4th of July, 1995 - after more than two and a half years of controversy and going to and from the negotiating table – a Memorandum of Understanding (the MOU) concerning child labor in the Bangladeshi garment industry was signed by the Bangladesh Garment Manufacturers

and Exporters Association (BGMEA), UNICEF Bangladesh, and the International Labour Office (ILO) Bangladesh.

Briefly put, the MOU entailed a phasing out of child labor in the garment industry, where all underage workers - defined as those who had not attained 14 years of age - were to be taken from their work and placed in schools on or before October 31, 1995. As envisaged by the parties, external funding subsequently flowed from the U.S. Department of Labor through the ILO's International Programme on the Elimination of Child Labour (IPEC), and the MOU consisted of four key components:

- *An initial fact-finding survey* to identify the child workers. In relation to this, the agreement stipulated 'that no underaged workers be terminated before the survey can be completed.' The survey, to be funded by UNICEF and the BGMEA, was to be conducted by survey teams to be established by the BGMEA, and the agreement allowed representatives of UNICEF, the ILO, and the U.S. Embassy in Bangladesh to accompany these teams;
- *A special education component* to be arranged by UNICEF in cooperation with local NGOs and in consultation with Bangladeshi authorities. UNICEF would contribute USD 175,000 in 1995 and additional funds later, whereas the BGMEA would contribute USD 50,000 per year;
- *An income maintenance component*, which - primarily through stipends of what was then approximately USD 7 per month - was to compensate (in part) for the lost income of the child workers that were to be terminated. The ILO would 'contribute a portion of the funds under the expanded IPEC action programme', whereas the BGMEA would 'contribute 50 percent of the cost of such stipends up to a maximum of USD 250,000 per year for three years';
- *A monitoring and verification component* led by the ILO, providing additional technical assistance and financial support of initially USD 250,000. While the agreement stated that verification 'may involve unannounced factory visits', it contained no language on violations and sanctioning mechanisms.

The MOU was novel in several respects. To begin with, the MOU was the first time that an entire industry entered into a partnership with two

intergovernmental organizations (IGOs) to eliminate child labor and provide alternatives for the displaced children.²⁴ Moreover, it was the first ‘first large-scale collaboration between the ILO and UNICEF in the elimination of child labour.’²⁵ Subsequently, UNICEF and the ILO announced an intention to cooperate more, and a number of similar partnerships involving the two have been formed - replicating, with modifications, the Bangladesh program in a number of other contexts, including the Atlanta Agreement described below.²⁶

The MOU was also novel in two ways as far as another key feature is concerned, the monitoring and verification component. In this respect the MOU actually preceded some of the “groundbreaking” agreements and thereby much of the subsequent debate over independent monitoring.²⁷ Moreover, the MOU was the first time that the ILO (through the ILO-IPEC) accepted to become involved in monitoring and verification in this way.

The absence of trade unions and labor rights organizations of any kind was also noteworthy, the noteworthiness relating less to any novelty than to the similarity of absence which was characteristic of many other “new” partnerships and agreements, including the Atlanta Agreement and to some extent also the AIP/FLA Preliminary Agreement.

Obviously, the “traditional” approach to child labor - characterized by an emphasis on international standard-setting and technical assistance through

²⁴ International Labour Organisation, International Programme on the Elimination of Child Labour (ILO-IPEC), *15 examples of Selected Successful Action Programmes* (at www.ilo.org, accessed on September 8, 2001).

²⁵ International Labour Office and UNICEF, *Addressing Child Labour in the Bangladesh Garment Industry 1995-2001*, pp. 16-17.

²⁶ See e.g. International Labour Organisation, International Programme on the Elimination of Child Labour (ILO-IPEC), *Pakistan - IPEC successfully applies model programme in football-making industry* (at www.ilo.org, accessed on September 8, 2001).

²⁷ For example, the agreement (of December 1995) between The GAP and the National Labor Committee over independent monitoring in El Salvador is often highlighted as being the first time that a US apparel company agreed to independent monitoring. See e.g., Kitty Krupat, ‘From War Zone to Free Trade Zone: A History of the National Labor Committee’ in Andrew Ross (ed.), *No Sweat: Fashion, Free Trade, and the Rights of Garment Workers* (New York: Verso, 1997).

the ILO and national legislation and enforcement by national governments - was not rendered obsolete by the MOU and similar initiatives. Quite the contrary, the MOU and similar initiatives by and large concerned the enforcement gap, i.e., the gap between the standards and reality. A marked difference between the traditional approach and these initiatives, however, lay in the way in which the responsibility for enforcement, both normatively and practically, was distributed - towards a much lower emphasis on the nation-state and a much greater responsibility on other societal actors, most notably corporations. In the process, however, the MOU actually went beyond international law in terms of not allowing the older children to perform light work.

The MOU in itself did not, in turn, redefine the boundaries of the responsibility of the international buyers, although the process did play an important role in relation to a number of specific companies as well as more broadly in relation to the emerging wave of codes of conduct. The MOU in formal terms focused instead on the local industry. More than anything, however, the MOU entailed a shift from condoning practices which were illegal under national and international laws towards emphasizing compliance with these. This, I would argue, was a central characteristic of many CSR initiatives - and yet CSR was and is very often defined and characterized as something moving or being “beyond the law.” As for the scope of the MOU, it was quite comprehensive in the sense of incorporating components aimed at addressing the underlying causes of child labor as well as the consequences of eliminating this. At the same time, however, the MOU was also very narrow and limited: it covered only the Bangladeshi garment industry and only the formal sector BGMEA members - thus excluding not only thousands of clothing workshops in Bangladesh but also the vast majority of child laborers in Bangladesh, many of whom were in much worse situations - and moreover it did not include any of the other basic labor rights issues.²⁸ In these respects, the MOU was similar in kind to a number of “focused” initiatives (and served to inform many of these), but different from e.g. codes of conduct, which tend to operate with different inclusions and exclusions.

²⁸ For a critique of the MOU, see e.g. Grumiau, *Garments “Made in Bangladesh”*.

The Atlanta Agreement

As mentioned above, this agreement was backed by the World Federation of the Sporting Goods Industry (WFSGI) and the vast majority of the world's soccer ball-“producing” sporting goods companies. The agreement was formally signed on February 14, 1997, by the Sialkot Chamber of Commerce and Industry (SCCI), the ILO and UNICEF.

With the stated aims of eliminating ‘the practice of stitching by children under 14 years within 18 months’ and of ensuring that this ‘does not create new and potentially more serious dangers to the affected children or their families’, the Agreement established a project consisting of the two programs mentioned earlier.

The Prevention and Monitoring Program involved both internal and external compliance and verification elements. The technical advice and support for this Program was to be provided by the ILO. Manufacturers were to be invited to join this voluntary program which, for the participating manufacturers, entailed that they agreed to:

- *a required formal registration* of all contractors, all stitching locations (to be identifiable and open to unannounced inspection visits), and all stitchers (including documentation verifying the age of stitchers);
- *establish an internal monitoring system*, to designate a senior manager as responsible, and to provide training of employees involved in this function;
- *independent third party verification* of their compliance with the Program. The Independent Monitoring Body was to provide periodic reports to the Coordinating Committee and to the WFSGI, and the reports ‘shall be made public.’

The Social Protection Program, in turn, committed the Partners to develop a series of initiatives:

- *a rehabilitation initiative* to place the children under 14 years removed from the industry into appropriate education programs;

- *an educational initiative* to discourage children from becoming child workers;
- *an in-kind assistance initiative* to provide in-kind assistance to children involved in education programs;
- *an awareness-raising initiative* aimed at various local constituencies;
- *an income generation initiative* to enable families of former child workers to replace the lost income, including through replacing these child workers with older family members.

The project was initially estimated to cost a little over USD 1,000,000 over the first two years. The main share was to be provided by the ILO's USD 500,000 in IPEC programmatic funds, contributed by the U.S. Government. UNICEF, in turn, pledged USD 200,000 in funding, whereas the Soccer Industry Council of America agreed to contribute USD 100,000 to support the Social Protection Program. Finally, all costs associated with the development and implementation of the Prevention and Monitoring Program was to be borne by the participating manufacturers, an amount estimated to total USD 360,000 over the following two years.²⁹

The fact that the Atlanta Agreement showed a strong resemblance to the Bangladesh MOU was not coincidental. The MOU did become a model, and the Atlanta Agreement drew considerably on the lessons and solutions from Bangladesh: '[The MOU] has served as an important model and its major elements have been applied and replicated elsewhere in other export sectors. A case in point is the soccer ball stitching industry in Pakistan that followed a similar agreement in 1997.'³⁰ Many of the above characteristics thus apply to the Atlanta Agreement as well, with a few minor differences:

- Again, UNICEF and the ILO partnered with a local industry association; neither trade unions nor labor rights organizations were parties to the agreement;
- The Atlanta Agreement also included an independent monitoring component, again with the ILO in charge; unlike the MOU,

²⁹ International Labour Office, *ILO unites*.

³⁰ International Labour Office and UNICEF, *Addressing Child Labour*, p. 18.

however, it also placed a pronounced emphasis on internal monitoring;

- Again, a sizeable share of the funding for the initiative came from the U.S. government through the ILO-IPEC;
- The Atlanta Agreement, too, embodied a shift from illegality to legality and a going beyond international law in terms of not allowing older children to perform light work;
- It too placed the local manufacturing industry in focus, with the Sialkot Chamber of Commerce and Industry as a formal partner to the agreement, and with the local manufacturers as participants and partially funding the project. As in the MOU, the international buyers were not directly partners to the agreement. However, SICA did contribute funds for the project, *and* in this case the WFSGI and the international buyers were intricately involved in the process leading to the Atlanta Agreement, and they publicly supported and publicized it;
- Again the scope of the initiative i) covered a geographically limited, local manufacturing industry, and ii) it was a narrow agreement in the sense that it was focused on child labor and did not include other basic labor rights.

The AIP/FLA Agreement

The so-called White House Apparel Industry Partnership (AIP) was an anti-sweatshop task force consisting of a small number of private actors. Announced by U.S. President Bill Clinton in early August of 1996, the task force was given two mandates by the President:

‘First, they will take additional steps to ensure that the products they make and sell are manufactured under decent and humane working conditions. Second, they will develop options to inform consumers that the products they buy are not produced under those exploitative conditions.’³¹

³¹ President Clinton at the Rose Garden ceremony on August 2, 1996; cited from Thomas A. Hemphill, ‘The White House Apparel Industry Partnership Agreement: Will

On April 14, 1997, the AIP members presented the Apparel Industry Partnership's Agreement – referred to as the AIP Agreement – on a Workplace Code of Conduct as well as Principles of Monitoring. This agreement was only a first step, and the task force was to continue working on a final agreement.

The so-called Preliminary Agreement of November 2, 1998, henceforth the AIP/FLA Agreement (as distinct from the April 1997 AIP Agreement), was reached by a subgroup of task force members: representatives of Nike, Phillips Van Heusen, Reebok, Liz Claiborne, Business for Social Responsibility, the International Labor Rights Fund, the Lawyers Committee for Human Rights, the National Consumers League, and the Robert F. Kennedy Memorial Center for Human Rights. Three other task force members - the Union of Needletrades, Industrial and Textile Employees (UNITE) and the Retail, Wholesale, and Department Store Union (RWDSU) of the AFL-CIO as well as the Interfaith Center on Corporate Responsibility (ICCR) – rejected the Agreement, joining the massive choir of criticism that soon followed.

The AIP/FLA Agreement basically comprised a Workplace Code of Conduct, a set of Principles of Monitoring, and an agreement to establish the Fair Labor Association (the FLA).

The Workplace Code of Conduct (the Code) went significantly further than the voluntary industry code adopted earlier in 1998 by the U.S. industry association, the American Apparel Manufacturers Association (AAMA), the so-called Worldwide Responsible Apparel Production (WRAP) principles. The latter were formulated in very general terms compared to the AIP/FLA Code, mentioning neither collective bargaining nor overtime compensation, and requiring wages and working hours to be in accordance with the local legal minimum or maximum, respectively. The AIP/FLA Code, in turn, included ‘all internationally recognized labor rights [...]’³² The Code contained provisions prohibiting the use of forced labor and of child labor (no employment of persons younger than 15 – or

Self-Regulation Be Successful?’ in *Business and Society Review*, Vol. 140, No. 2 (Summer), 1999, pp. 123-124.

³² International Labor Rights Fund, *Assessment of the Fair Labor Association Agreement of November 2, 1998* (Washington, D.C.: ILRF, 1998).

14 where local and international law allow – or younger than the age of completing compulsory education), harassment and abuse, and discrimination, and it also contained health and safety requirements.

More specifically, let us briefly review the Code’s requirements concerning freedom of association and collective bargaining, wages, hours of work, and overtime compensation:

- *Freedom of association and collective bargaining*: Requiring employers to recognize and respect the right of employees to freedom of association and to collective bargaining, the Code contained special country provisions to ‘hold companies and their subsidiaries, contractors and subcontractors accountable for recognizing worker organization for the purpose of collective bargaining, and for not collaborating in official or unofficial suppression of such worker organizations.’³³ While one of the nonindustry parties to the agreement, the International Labor Rights Fund (the ILRF), listed this as one of the strengths of the AIP/FLA Code, and while this was going further than the AAMA’s WRAP principles, the ILRF also listed as one of the Code’s weaknesses the fact that it ‘does not force companies to leave a country where laws don’t respect freedom of association, although actual production in that country must meet the standards of the FLA for the company to be certified.’³⁴ Indeed, the special country provisions were soft and vague, compared to a mid-1998 proposal by some of the labor and NGO task force members: ‘If, despite the best efforts of employers to adhere to these and other appropriate special guidelines approved by the Association, no Participating Company is able to demonstrate progress toward implementation of those provisions of the Code addressed by the country guidelines, the Association shall determine whether production under such circumstances is consistent with the Workplace Code and Principles of Monitoring.’³⁵

³³ International Labor Rights Fund, *Assessment*.

³⁴ International Labor Rights Fund, *Assessment*.

³⁵ Cited from Alan Howard, ‘Why Unions Can’t Support the Apparel Industry Sweatshop Code’ in *Working USA*, July/August 1999, p. 41.

- *Wages*: The Code required companies to pay the legal minimum wage or the prevailing industry wage, whichever was higher. The payment of a sustainable living wage was not stipulated in the Code. Instead, the living wage issue was to be addressed later on in a review of a study to be conducted by the U.S. Department of Labor of ‘prevailing wages, minimum wages and poverty lines in the garment and footwear-producing countries.’³⁶ Again, while the AIP/FLA agreement went further than the WRAP principles, the inclusion by postponement of the living wage issue in somewhat vague terms was a compromise too weak for some of the task force members. The Workers Rights Consortium (WRC), established in the wake of the AIP/FLA agreement, in turn defined and included a requirement to pay a living wage.³⁷

- *Hours of work*: The Code limited work to 60 hours per week (including a maximum of 12 hours overtime) or to the legal maximum, whichever was the lower. Again, this went beyond the WRAP principles’ stipulations of legal limits, of particular relevance in countries where the law established no limit at all, such as the U.S. The WRC went still further, though, setting the weekly maximum at 48 hours, with overtime being voluntary.

- *Overtime Compensation*: The Code required that overtime compensation be at least the normal rate of pay. While the WRAP principles did not include mention of this point, the WRC stipulated an overtime compensation rate of at least 1.5 times the normal hourly rate.

The Principles of Monitoring (the Principles) provided, in quite elaborate terms, for a two-tier system of internal and external compliance monitoring and reporting, with the Fair Labor Association (FLA) undertaking a range of related functions. Internal monitoring, the plans for which required the FLA’s approval, was to cover all applicable facilities over a period of two years. Factories, where less than 10 per cent of the production was for the

³⁶ International Labor Rights Fund, *Assessment*.

³⁷ For a comparison of the WRAP principles, the AIP/FLA agreement, and the WRC, see Rhys Jenkins, ‘The political economy of codes of conduct’ in Jenkins, Pearson and Seyfang (eds.), *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan Publications Ltd., 2002).

participating brand or company, were not applicable. Findings were to be reported to the FLA along with accounts of how the problems had been remedied. The internal monitors were moreover required to consult with local human rights, labor and community groups in the process.

As for the external monitoring, the agreement required that the FLA be provided with a complete list of the applicable facilities, and – while the participating companies were allowed to nominate factories for external monitoring – the FLA was furthermore to determine which facilities were to be externally monitored. Not surprisingly, however, internal monitoring was to do most of the job: the agreement required 30 per cent of applicable facilities to be subject to external monitoring over an initial period of two or three years. Thereafter the sample of facilities would be 10 per cent annually. Subject to a reassessment by the FLA of the necessary level of external monitoring based on the first years of experience, the latter percentile could then be adjusted downward to no less than 5 and upward to not more than 15 per cent. In the words of one of the parties to the agreement, the ILRF, this implied that potentially '85% of applicable facilities are without external monitoring in any one year [...].'³⁸ Or, as a representative of UNITE (that left the task force) put it, this meant that 'a company could be declared in compliance with the code even though nobody outside the company had inspected 95 percent of its facilities.'³⁹

The agreement furthermore required that this external monitoring be conducted by organizations accredited by the FLA, and that the FLA be provided a copy of the contract between the monitoring organization and the company. Moreover, the companies were allowed to select and pay the external monitors directly, something for which the agreement was subsequently criticized. Again, UNITE's Alan Howard captured the concerns of many critics: 'And who are these external monitors? The same accounting firms companies have been hiring all along to monitor the internal company systems routinely declared to be working just fine. The difference now is that the companies will report the findings of these monitors to an Association in which they have veto power over the most critical decisions.'⁴⁰

³⁸ International Labor Rights Fund, *Assessment*.

³⁹ Howard, 'Why Unions Can't Support', p. 42.

⁴⁰ Howard, 'Why Unions Can't Support', p. 42.

The Fair Labor Association, in terms of basic structure, was to be established as a non-profit entity, with a governance structure balancing the number of industry and non-governmental organization representatives on the Board of Directors, with a mutually acceptable Chair. A system of super-majority voting was agreed upon, implying that the votes of two-thirds of both industry and non-industry Board members were required to make basic changes. On the one hand, this made drastic changes very unlikely, thus not only assuring participating companies against a wholesale transformation of the requirements, but also assuring against a subsequent roll-back of the requirements already stipulated in the agreement. On the other hand, the super-majority rule also gave ‘any three companies or three groups the ability to block action on key questions [...]’⁴¹

Unlike the two agreements above, the AIP/FLA Agreement was not a time-limited “elimination” of a given problem. Rather, the Code, the system of monitoring, and the establishment of the FLA, as opposed to the setting up of a temporary project coordination committee, were parts of an agreement intended to be an on-going and running solution to existing and future problems. This, of course, was a quite significant difference between the AIP/FLA Agreement and the two described above. A difference not only setting the potential implications of these respective agreements apart, it was also a difference which might be said to apply more broadly to the world of CSR initiatives: the circumscribed and (intendedly) final solutions to specific problems and the broader and usually more prescriptive principles for practice and conduct that we know from codes and guidelines.

As far as the actors included were concerned, unlike the two agreements above, no intergovernmental or governmental entity was a party to it. There was, however, an explicit mandate from the U.S. President to the task force. Moreover, the Clinton Administration supported the task force during the process, and once more the U.S. Department of Labor was involved in the background. Trade unions were part of the task force but, again, conspicuously absent in the end as parties to the Agreement and in the Board of Directors of the FLA: with organized labor refusing to sign on

⁴¹ Interfaith Center on Corporate Responsibility, *Interfaith Center on Corporate Responsibility's Analysis: White House Apparel Industry Partnership Agreement*, Nov. 3, 1998 (New York: ICCR, press release, November, 1998).

to the Agreement, the ILRF was the only of the NGO parties to the Agreement that I would characterize as a labor rights NGO.

Unlike the two earlier agreements, moreover, major international brands were formally parties to the Agreement and clearly centrally involved; smaller companies were also represented in the task force, but none of them were part of the subgroup negotiating and agreeing to the Preliminary Agreement. Thus, in this Agreement it was the boundaries of the responsibility of the international buyers that were explicitly shifting, and in this sense, of course, the ‘going beyond the law’ phrase is obviously a relevant and central characteristic of this Agreement, as it is of CSR more broadly.

However, once more I will maintain that the shift from illegality to legality in labor practices, in the potential ramifications of Agreement, was an equally significant characteristic. Finally, the intention of the parties, of course, was that a growing number of apparel companies would become participating companies, through the FLA, and that organized labor would eventually join in again. In that sense the initial group of partners to the Agreement – while not irrelevant to an analysis seeking to explain it – was, of course, open rather than fixed.

Like the two other agreements, the requirements set in the Code in some respects went beyond international law, for instance on child labor. Whether this applied to all of the standards in the Code, however, is debatable, as illustrated in the following quote on the living wage issue, which was a central matter in the process:

‘Some workers’ rights are very controversial. There is debate, for example, as to whether business should be required to pay a “living wage” to its employees or (as many standards say) only the legal minimum in the country or prevailing industry wage, whichever is the higher. These may be lower than a living wage. Opponents argue that it is impossible to define the living wage, especially across borders. Nevertheless, a human rights perspective leads inevitably towards it. The Universal Declaration (Article 25) recognises that: “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care.” Article 23 speaks of “just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”, while Article 7(a)(ii) of the International Covenant on Economic, Social and Cultural Rights refers to a wage which

provides “a decent living for themselves and their families”, basing this on the minimum conditions of life provided for in the convention itself.’⁴²

As for the scope of the Agreement, the earlier description of the Code provides an excellent illustration of the characteristics of the Code: it included more issues and it went substantively further than many other codes did at the time. Yet, in the eyes of many it could and should have gone further.

Compared to the MOU and the Atlanta Agreement (and many other “focused” initiatives), moreover, the AIP/FLA Agreement in its Code included a much broader range of labor rights issues on the one hand. On the other, the requirements in the Code were comparatively shallower in the sense of not including provisions and requirements aimed at resolving underlying or deeper problems and potential consequences of the provisions and requirements set forth. For instance, with regards to child labor, the Code “merely” established a prohibition, but it contained no language on those additional aspects so central to the two agreements above – aspects reflecting the concerns and lessons which appear so important in other similar agreements and much of the discourse surrounding these and, more broadly, child labor. Similarly, the Code prohibited discrimination, but it included nothing on underlying structural issues in relation to e.g. women workers.

Moreover, unlike the MOU and the Atlanta Agreement, the AIP/FLA Agreement was not confined to a specific geographical location. Quite the contrary, although being negotiated by a task force in the U.S., it was global in the scope of its potential implications for working conditions in facilities across the globe. Moreover, as mentioned, the Agreement was not limited to the initial industry partners to it, but was open to many more companies wishing to sign up with the FLA.

As for the monitoring and verification element, the combination of internal and external, third party monitoring and verification was much more elaborate, but basically similar to two agreements above. As noted, however, the AIP/FLA was essentially open-ended in terms of time and

⁴² International Council on Human Rights Policy, *Beyond Voluntarism: Human rights and the developing international legal obligations of companies* (Versoix, Switzerland: ICHRP, 2002), pp. 30-31.

geography and, therefore, markedly different not merely in terms of the sheer number of the facilities to be monitored.⁴³

1.5 Outline

In chapter 2, Philosophy of science and social science, central issues within philosophy of science and basic questions in social science are addressed, as I endeavor to account for my deliberations and decisions, their circumstances and consequences for the research undertaken.

In chapter 3, Methodology and the research process, I endeavor to provide an account similar to that of chapter 2, only in this chapter I focus on issues of a methodological nature. The chapter contains a discussion of the case study approach, both in general and in the concrete research project at hand. This is followed by a description of the data collection and analysis and a section on the research process.

Chapter 4, A theoretical framework, opens with a condensed review of the regime theory literature. In the following sections I specify the theoretical elements within each of the broader categories: the specific preconditions and the processes and interaction. In the final section I summarize the explanatory framework.

Chapters 5, 6, and 7 contain the in-depth analyses of the three agreements. Each chapter opens with a short introduction, followed by an analysis of the specific preconditions in each case at the beginning of the process – the characteristics of the industry, the characteristics of the existing framework of governance (including prevailing norms and practices of corporate responsibility), and the characteristics of the problem. Before analyzing the processes, I then provide a detailed and chronologically ordered, tentatively descriptive overview of each process. The subsequent part of the empirical analyses focus on different aspects of the processes leading up to the agreements: the struggles to define the problem, targeting, economic coercion, and the modelling of the solution.

Finally, in chapter 8 the conclusions are presented. Annex I, after the Bibliography, contains a list of interviews conducted.

⁴³ The AIP/FLA Agreement was also very elaborate and detailed on the monitoring part, compared to the MOU and the Atlanta Agreement. In the latter two cases, the detailed terms of reference were laid out later.

2. Philosophy of science and social science

2.1 Introduction

In the example used by Djurfeldt, the Swedish 19th Century philosopher Boström would ask his students whether the fire place in front of them was inside or outside of them. If the student claimed the fire place was outside of him, Boström would not approve as he believed the material world did not exist, that reality was identical to God and his ideas.⁴⁴ Posing questions and providing responses to them, whether in a conversation about fire places or in a doctoral dissertation about corporate responsibility, are discursive events which are based on a range of more or less explicit premises. What is reality? Can we know it? Can we explain it? How?

In the present chapter I present some of the more meta-theoretical foundations of this study, i.e. the ways in which I have chosen to deal with some of the big questions. My point of departure in the next section is made up of three basic premises from the critical realist philosophy of science. In section 2.3 I turn to questions concerning truth and knowledge. In sections 2.4 and 2.5 I will discuss two of the dualisms within the social sciences, the materialism-idealism dispute and the agent-structure problem (including the related levels-of-analysis matter), respectively. Section 2.6 concerns 'Causation, explanation and understanding' and ends with a generic explanatory framework.

2.2 Three basic premises

During the first stage of this research process, considerable emphasis was deliberately placed upon philosophy of science. In particular critical realism and three basic premises (shortly below) forwarded by this

⁴⁴ Göran Djurfeldt, *Boström och kaminen* (Lund: Arkiv förlag, 1996).

tradition have been important in working through some of the philosophical and basic social science issues.⁴⁵

Briefly put, critical realism developed in the context of the major debates on philosophy of science during the 1960s and 70s as the hyper-naturalistic positivism that had dominated in the mid-20th century came under increasing attack. Particularly associated with the works of Roy Bhaskar and Rom Harré, critical realism emerged as a third way with its promises to be able to transcend the rivaling polar positions of positivism and hermeneutics/critical theory and combine and reconcile ontological realism, epistemological relativism and judgmental rationality.⁴⁶ Bhaskar argues that both essentially share a positivist account of natural science that he argues to be false. In addition, hermeneutics is argued to operate with an implicitly empiricist ontology.⁴⁷ Thus, critical realism proposes, in contrast to the empirical-analytical perspective, that actors' accounts form the indispensable starting point in any social scientific inquiry. In contrast to hermeneutics, in turn, critical realism argues for an explicitly realist and 'deep' ontology and for a judgmental rationality, i.e. that actors' accounts are both limited and corrigible.⁴⁸ Furthermore, in contrast to hermeneutics, critical realism insists on the necessity and possibility of causal explanations and a notion of causation, which, in contrast to the empirical-analytical perspective, is based on the ontological depth above and on a subsequent rejection of actual regularities as the basis for causality.

⁴⁵ The term 'critical realism' arose from the combination and further development of two major parts of the work of Bhaskar – his 'transcendental realist' philosophy of (both natural and social) science and his 'critical naturalist' philosophy of social science, the latter sharing the basic ontological and epistemological premises of the former but contributing further to a specifically social ontology, epistemology and methodology, cf. Roy Bhaskar, 'General introduction' in Archer et.al. (eds.), *Critical Realism: Essential Readings* (London: Routledge, 1998), p. ix. In addition, the term critical realism may include the theory of explanatory critique and the dialectics of Bhaskar. I use critical realism in reference to the three basic premises at the end of the present section.

⁴⁶ Bhaskar, 'General introduction', p. xi; Peter Wad, 'Mellen enhedsvidenskab og flerhedsvidenskab,' *GRUS*, vol. 21, no. 60, p. 10; Andrew Sayer, *Realism and Social Science* (London: Sage Publications Ltd., 2000), p. 4.

⁴⁷ Bhaskar, 'General introduction', pp. xii and xiv; Wad, 'Mellen enhedsvidenskab og flerhedsvidenskab', p. 14.

⁴⁸ Bhaskar, 'General introduction', p. xii.

Hence, critical realism portends to be a third way transcending or, at least, providing a strategy for moving beyond some of the fundamental disputes and dichotomies within the social sciences, i.e. the opposition of nomothetic and ideographic, the separation and opposition of explanation and understanding, and the objectivism-subjectivism divide.

Critical realism rests on three basic ontological premises:

- World Independence: the ontological, intransitive dimension of being exists outside, before and independently of and is not reducible to the epistemological, transitive dimension of knowing;
- Stratification of reality: reality is stratified/layered in three domains: the real, the actual, and the empirical;
- Transfactuality of mechanisms: generative mechanisms are transfactual, i.e. they exist as real phenomena irrespective of their being actualized or unactualized (the actual), perceived or not perceived (the empirical).

In the following sections, as I move closer towards the actual conceptualization and methodological considerations, these three relatively abstract premises and their potential and actual implications for the present dissertation will be illustrated and discussed in further detail.

2.3 Truth and knowledge

As mentioned above, the intransitive dimension is held to exist outside, before and independently of the transitive dimension.⁴⁹ The former includes the latter but is not reducible to it, and conflating the two, i.e.

⁴⁹ Bhaskar, 'General introduction', p. xi. As Ougaard notes, this is a philosophical point of departure which is impossible to prove right, but which may nevertheless be justified; Morten Ougaard, 'Det kommer an på hvor man begynder: Roy Bhaskars kritiske realisme som erkendelsesteoretisk strategi' in *GRUS*, vol. 21, no. 60, 2000, p. 21. Bhaskar's justification is that in order for science to be possible, intransitive objects must exist, and, given that science is possible, there must be an intransitive domain; Roy Bhaskar, 'Philosophy' in Archer et.al. (eds.), *Critical Realism: Essential Readings* (London: Routledge, 1998), p. 23.

reducing the question of what is to the questions of what we know and how we can know it, is to commit ‘the epistemic fallacy.’⁵⁰

The distinction between these two dimensions leads to two key questions. The first question has to do with the ontological distinction and its validity in the social domain, i.e. to what extent do social forms exist outside, before and independently of the human perceptions, activities and practices on which they rely for their reproduction? Social science is different from natural science, not because society is less real than nature, but because society is characterized by three particular kinds of emergence: a) in contrast to the structures of nature, social structures depend on the very activities and practices that they produce and inform; b) social structures depend on human actors’ perceptions of their own practices and their conditions; c) social structures are less permanent, i.e. more temporally and spatially limited, than are those of nature.⁵¹ To hold that a social reality exists outside and independently of our perception of it, however, does not amount to a claim that society exists independently of human cognition and practice. The point is simply that social phenomena are not just in our heads and that they may exist regardless of whether we study them or not, regardless of what we may think of them, etc. This is different from the position that perceptions, including social science theories, cannot influence the social – clearly, they can.

The second matter is how do we handle the “epistemological problem” arising from the recognition that there are real objects, that our perception of these is not identical to them, and that our perception of them is concept-dependent? In a simple form, Djurfeldt illustrates the epistemological problem in this way (where S is the subject, “O” is the subject’s perception of O, and O is the object):

Figure 2.1 The epistemological problem⁵²

$$S \rightarrow \text{“O”} / O$$

⁵⁰ Bhaskar, ‘General introduction’, p. xii.

⁵¹ Peter Wad, ‘Kritisk realisme’ in *GRUS*, vol. 21, no. 60, p. 58.

⁵² From Djurfeldt, *Boström och kaminen*, p. 14.

Critical realism highlights the epistemological problem and, because of its realist ontology, promises⁵³ an approach to epistemological relativism that neither empiricism nor hermeneutics provide for: while empiricists/positivists often fail to see a problem (i.e. disregard the significance of the “O” – O relation and conflate the two, thus rejecting the explanatory significance of ‘understanding’ and constructivist insights generally), and hermeneutics and post-structuralist approaches frequently entail a judgmental relativism in which questions of Truth are replaced by an emphasis on Verstehen as opposed to explanation and/or are turned into matters of knowledge, power and ‘truth effects’⁵⁴ - frequently on an implicit Humean or positivist ontological basis⁵⁵ - critical realism opens up for an explanatory approach in which actors’ accounts and understanding form an important element.

In other words, hermeneutics and understanding, whether recognized or not, is part of scientific practice, and critical realism is, as I see it, open to many arguments of post-structuralism. I.e., as a consequence of recognizing the epistemological problem, the critical realist view of causation also includes – in principle, at least - the causal and constitutive effects of interpretation, meaning, reason and discourse (concepts are used rather indiscriminately and randomly). Discourse is not only representational and denotative, but also performative and constitutive of social phenomena:

‘Those who dismiss discourse as ‘just talk’ are usually rightly reminded that it can have real effects: but then if it can have effects, it must also be capable of being causal [...] Those who reject talk of causes as essentialist and instead assert the play of difference and ‘repetitivity’ within discourse, but then treat the latter as responsible for the patterns and processes of social life, also implicitly readmit causation by another route.’⁵⁶

⁵³ It should be noted, though, that the extent to which this promise has actually been realized in terms of theoretical and methodological ventures into investigating the interplay between “O” and O on a critical realist basis is limited – and Bhaskar himself is accused of disregarding the importance of significant social constructivist elements in his own work. See Finn Collin, ‘Kritisk realisme og sosialkonstruktivisme: En kritik af Roy Bhaskars videnskabsfilosofi’ in *GRUS*, vol. 21, no. 60, p. 70.

⁵⁴ Sayer, *Realism and Social Science*, pp. 47-48.

⁵⁵ Bhaskar, ‘General introduction’, p. xiv.

⁵⁶ Sayer, *Realism and Social Science*, p. 96.

Thus, the conception of causation is broadened, and understanding and explanation cease to be regarded as opposites and mutually exclusives.⁵⁷

Now, working from this foundation has had a number of implications for the ways in which conceptualization and methodology have been approached in this research project. Most importantly, I have strived to fathom the “epistemological problem” in conceptualizing the preconditions and the processes leading up to those changes which I seek to explain. For example, there have been widely diverging representations of the reality of soccer ball production in Sialkot, as demonstrated in the findings reported by the Human Rights Commission of Pakistan (HRCP) in their 1995 report, *Child labour in Pakistan: Sialkot, Kasur*. Presenting the replies of the football producers, the HRCP wrote the following:

‘In answer to a direct question as to whether children did stitch footballs, it was admitted that child labour was involved in this process, but the ages of children were not below fifteen and they worked at home to help their parents. [...] Now this work was performed in an informal and casual environment where the children worked in the evening while watching television.’

And, a few pages later, the HRCP’s own empirical observations:

‘While those children seen working in the workshops (small shops, mainly in the city area, with 5 to 6 workers stitching footballs) were usually over twelve years of age, children as young as 6/7 were seen stitching footballs or related sports items in homes and small village workshops.’⁵⁸

The “epistemological problem” implies that the ontological dimension is open to a range of conflicting and competing representations, and that the dynamics associated with this multiplexity, with the openness of the ontological toward discursive struggles between actors and their different knowledges, truths and representations thereof, have been taken to be an important element in social change and, consequently, in seeking to explain this. The HRCP report, then, ceases to be a mere source of

⁵⁷ Djurfeldt, *Boström och kaminen*; Sayer, *Realism and Social Science*, p. 18.

⁵⁸ Human Rights Commission of Pakistan, *Child labour in Pakistan: Sialkot, Kasur. HRCP Rights of the Child series, No. 9* (Lahore: Human Rights Commission of Pakistan, 1995), pp. 7 and 11.

information. Instead, it also comes to be seen as a discursive event, one of many, the interaction between which becomes an important element in the conceptual work.⁵⁹ In logical extension, in my approach (conceptually and methodologically) to the preconditions for these processes, the openness of the ontological has similarly been emphasized.

However, epistemological relativism inevitably raises questions of truth and truthfulness, and in contrast to some variants of post-structuralism critical realism explicitly argues that judgmental rationality is both possible and necessary:

*'[...] we can never justifiably claim to have discovered the absolute truth about matters of fact. Our knowledge must be admitted to be fallible. However, we must beware of two common non-sequiturs here, both of which have appeared in social science from time to time: first, from the fact that knowledge and the material world are different kinds of thing it does not follow that there can be no relationship between them; and second, the admission that all knowledge is fallible does not mean all knowledge is equally fallible.'*⁶⁰

That is, for epistemological relativism to make any sense, the ontology must be realist.⁶¹ As an intermediate between either of the two absolutes – Truth and judgmental relativism – (some) critical realists opt for the concept of 'practical adequacy.' Practical adequacy has been operationalized in various ways. Whereas Sayer emphasizes the generation of expectations about the world and about results of actions, the intersubjective intelligibility and acceptability, and the (cognitive and practical) contextual nature of practical adequacy, elsewhere the matter has been treated in terms of three relationships to be interrogated: the relationship between meaning/interpretation and i) material realities, ii) intentions and desires, and iii) situational, normative appropriateness, respectively.⁶²

⁵⁹ It has also been a source of information, and the issues concerning the multiple roles of sources will be discussed further in the following chapter.

⁶⁰ Sayer, *Method in Social Science*, p. 65; emphasis in original.

⁶¹ As Bhaskar puts it: 'To be a fallibilist about knowledge, it is necessary to be a realist about things.' Cf. Bhaskar, 'Philosophy,' p. 32.

⁶² Sayer, *Realism and Social Science*, pp. 43 and 66; Norman Fairclough, Bob Jessop and Andrew Sayer, *Critical Realism and Semiosis*. Paper presented to the International

Thus, I have strived to capture the openness of the ontological and the dynamics associated with this and the epistemological problem, without throwing overboard the notion that not all knowledge is equally fallible. It is both possible and reasonable, although not necessarily easy, to seek to capture the empirical dynamics arising from the “epistemological problem” while maintaining some judgmental rationality. In the example above, the HRCP disputes the statements of the producers. Taking this dispute and the two statements seriously when conceptualizing and analyzing the preconditions and the process, however, does not necessarily entail taking everything at face value. Some statements are simply factually incorrect: a range of additional sources corroborating the findings of the HRCP may, for example, be used when attempting to analyze the preconditions in this particular case, and the number of children benefiting from the Atlanta Agreement (see Introduction) might also be taken as an indication. And, in extension, one may inquire into the potential reasons for such differences of opinion and expression, e.g. culture and tradition, economic interests, etc.

Finally, as a consequence of this, the present dissertation is also a truth claim and a piece of scientific knowledge, the fallibility of which I alone cannot be the judge. Conceptual and methodological considerations and decisions are quite important in this regard, and I shall therefore return to this matter in the following chapters. Thus, at present suffice it to say, that I am well underway laying bare the basic premises of this research project, and that in conducting it I have taken practical adequacy to entail a commitment to account for the radical historical contingency and the constitutive effects of knowledge claims and knowing subjects, to a critical and reflexive praxis for recognizing my own ‘semiotic technologies’ for making sense, and a no-nonsense commitment to strive for faithful accounts of a ‘real’ world.⁶³

Association for Critical Realism Annual Conference, Roskilde, Denmark, 17-19th August 2001, p. 2.

⁶³ Fairclough, Jessop and Sayer, *Critical Realism and Semiosis*. p. 2, drawing on Habermas; cf. also Mats Alvesson and Kaj Sköldbberg, *Reflexive Methodology: New Vistas for Qualitative Research* (London: Sage Publications Ltd., 2000).

2.4 Materialism and Idealism

More than the debates on structure and agency (below), perhaps, the materialism-idealism discussions have tended to take an adversarial or dichotomous form, with both material and ideational aspects being forwarded as ultimately determining the other and social praxis as such. This is compounded and partially explained by the fact that, although at the core this is really an ontological matter and a question of what reality is like, the binary form of the debate has been markedly shaped by epistemological divisions within the social sciences in general and within specific theoretical fields. Thus, the materialism vs. idealism debate is embroiled within and reflects larger meta-theoretical struggles between positivisms and constructivisms in their various forms.⁶⁴ In large part, this explains why, according to Alexander Wendt, a ‘truly synthetic position is hard to sustain.’⁶⁵

In its crude and binary form, the strife may be represented as follows:

- ‘Materialists believe the most fundamental fact about society is the nature and organization of material forces.’⁶⁶
- ‘Idealists believe the most fundamental fact about society is the nature and structure of social consciousness.’⁶⁷

Now, it may be observed that most agree that – coined as an a priori theoretical matter of ultimate primacy or final instance – this dispute is seemingly unsolvable. As Laclau and Mouffe have put it, the question of relative weights ‘cannot be determined at the level of a general theorization of the social.’⁶⁸ This has the effect of shifting the problem (of relative

⁶⁴ See e.g. Peter J. Katzenstein, Robert O. Keohane and Stephen D. Krasner, ‘International Organization and the Study of World Politics’, *International Organization*, vol. 52, pp. 645-685.

⁶⁵ Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), pp. 24-25.

⁶⁶ Wendt, *Social Theory*, p. 23.

⁶⁷ Wendt, *Social Theory*, p. 24.

⁶⁸ Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985), p. 77. Cf. also Wendt, *Social*

weight) from a level of general theorizing to the more substantial theorizing and the a posteriori empirical level.

In an attempt to move on and clarify my position and point of departure a little further, however, it may also be observed that there is some common ground between the two extreme positions above: that reality necessarily comprises both material and ideational elements. As mentioned earlier, critical realism also implies that both material and ideational aspects may be causally relevant,⁶⁹ and, considering the research questions and my interest in writing a nuanced history of the three agreements on the basis of a multi-faceted conceptual framework and explanatory approach, there are good reasons to seek to embrace both material and ideational aspects in what follows: '[...] any specific event or set of events limited in time and space can and should be explained as the result of a combination of factors, some of which are economic and some not. Sometimes economic causes are decisive, sometimes ideational ones are, and often explanations have to identify the unique constellation of economic, political and ideational factors that only taken together make up the necessary and sufficient conditions for the event to happen.'⁷⁰ Moreover, there are, in my view, good reasons for allowing not just an intermediate but also a constitutive role to ideational aspects of social praxis: if critical realism is right in claiming intransitivity and stratification, then perceptions and ideas – whether individual or collective and shared, subjective or intersubjective – are intrinsic to our acting upon the material and cannot in principle be relegated to an isolated secondary position.

At the same time, there is a material basis to life and this sets certain boundaries on social praxis, forms an important part of structured interests, and has certain effects on the non-material, regardless of the meanings attached to this material basis. This is not inconsistent with maintaining a

Theory, p. 112; Morten Ougaard, *Political Globalization: State, Power and Social Forces* (Palgrave Macmilland: Basingstoke, 2004), p. 25; Roy Bhaskar, 'Societies' in Archer et.al. (eds.), *Critical Realism: Essential Readings* (London: Routledge, 1998), p. 222.

⁶⁹ This is, however, one of the weaker or less developed areas within critical realism, and critical realist writers may be found to be leaning toward either of the two – while e.g. Bhaskar and Porpora may be characterized as predominantly materialist, others such as Harré, Sayer, Outhwaite, and Wendt to varying degrees lean toward some form of moderate constructivism/idealism.

⁷⁰ Ougaard, *Political Globalization*, p. 25.

constitutive and causal role of ideas as an inherent and fundamental aspect of reality and social praxis (and, hence, of theorizing).⁷¹ For example, even if a given economic space may have been constituted largely by political ideas in a given material context, once constituted the relations and logics of that economic space cease to be merely ideational – they are materialized too. Thus, while the ideational is granted a constitutive role, the relationship between material and ideational aspects works both ways in the reproduction or transformation of this economic space, i.e. as complex processes of interaction and mutual constitution that implies neither a purely material, mechanistic determination nor an unrestricted (and equally unwarranted) slide into a vision of the world as a free play of signs.

So, I wish to allow theoretically for the constitutive role of ideas while maintaining an emphasis on the material aspects of social praxis and on the causal significance of both of these. Acknowledging that this is a difficult position to sustain does not, in my view, render the position any less problematic than either of the two vulgar extremes and the materialist intermediate variable solution. My approach, then, may be characterized as moderately constructivist, and material and ideational aspects of reality are seen as partially and mutually constitutive.

2.5 The agent-structure and levels of analysis problems

Following Wendt, it may be useful to begin by distinguishing between two different but interrelated issues.⁷² In the agent-structure problem the basic question involved in the individualism vs. holism debate has to do with how one relates agents and structures and which unit of analysis to focus on. The second - *levels of analysis* – problem concerns which level of

⁷¹ Bob Jessop, *The Capitalist State: Marxist Theories and Methods* (New York: New York University Press, 1982), p. 200; Norman Fairclough, *Discourse and Social Change* (Cambridge: Polity Press, 1992).

⁷² For an exchange of different views on these two problems and their interrelations, see e.g., Alexander Wendt, 'Bridging the Theory/Meta-theory Gap in International Relations Theory,' *Review of International Studies*, vol. 17, pp. 383-392; Alexander Wendt, 'Levels of analysis vs. agents and structures: part III,' *Review of International Studies*, vol. 18, pp. 181-186; Martin Hollis and Steve Smith, 'Beware of gurus: structure and action in international relations,' *Review of International Studies*, vol. 17, pp. 393-410; Martin Hollis and Steve Smith, 'Structure and action: further comment,' *Review of International Studies*, vol. 18, pp. 187-188.

social aggregation to focus on, i.e. where to locate one's emphasis in terms of independent variables. I proceed by clarifying first what I see as the more fundamental or principled issue of the two, the question structure and agency.

The agent-structure problem

Individualism and holism – as two stereotype approaches – form the two opposites of the old debate, the dualism. One quite influential contribution to the agent-structure debate and a proclaimed alternative to the traditional dualism is Anthony Giddens' structuration theory.⁷³ As Kaspersen notes, although many sympathize with Giddens' ambition to transcend the structure-agency dualism, his theory has been severely criticized on a number of fundamental points.⁷⁴ Going to the core of Giddens' theory are a number of objections challenging the inseparability of structure and agency and Giddens' resolution of the activity- and concept-dependence of society: Giddens posits structure and agency to be inseparable. An analysis therefore includes institutional aspects (the structural properties of social systems) and strategic conduct (how agents draw upon structural properties), where these are seen as ontologically inseparable, and can for practical reasons only be methodologically bracketed.⁷⁵ By contrast, Bhaskar and other critical realists hold the opposite to be true: that society and people, structure and agents/agency 'refer to radically different kinds of thing.'⁷⁶

This separation marks a fundamental ontological parting of the ways between this approach and Giddens' structuration theory. In other words,

⁷³ Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Cambridge: Polity Press, 1984).

⁷⁴ These concern the agent bias and the under-emphasis on the constraining aspects of structure, the definition of structures as rules and resources, and the lack of a concept of structural differentiation. See Lars Bo Kaspersen, *Anthony Giddens: An Introduction to a Social Theorist* (Oxford: Blackwell Publishers Ltd., 2000), pp. 161-162. Cf. also Giddens, *The Constitution of Society*, p. 18; Douglas V. Porpora, 'Four Concepts of Social Structures' in Archer et.al. (eds.), *Critical Realism: Essential Readings* (London: Routledge, 1998), pp. 344-346.

⁷⁵ Giddens, *The Constitution of Society*, p. 285; Kaspersen, *Anthony Giddens*, p. 48.

⁷⁶ Bhaskar, 'Societies', p. 214.

the dualism in sociology and social science in general can be seen to reflect that reality (ontology) *is* stratified and that structures and agents are *ontologically* – and not just methodologically – distinct objects. Thus, in contrast to structuration theory, the dualism and its implications ought to be embraced.⁷⁷ Given ontological autonomy, Bhaskar and Archer see the relation between structure and agency as an inherently tensed phenomenon:

‘It is still true to say that society would not exist without human activity [...] But it is no longer true to say that agents create it. Rather one must say: they reproduce or transform it. That is, if society is always already made, then any concrete human praxis [...] can only modify it [...] Society stands to individuals, then, as something they never make, but that exists only in virtue of their activity.’⁷⁸

In other words, action and structure are characterized by relations of priority and posteriority – by before, during, and after – in cycles of structural conditioning, social interaction, and structural elaboration reproducing or transforming the reality resulting from previous cycles.⁷⁹

Levels of analysis

This brings me to the question of which level(s) of analysis to focus on in seeking to explain the three agreements. Clearly, researchers have different inclinations in this regard, and one’s inclinations and interests obviously influence the ways in which one poses questions and defines research topics and purposes. My interest, which I have tried to capture in the formulation of the research questions, lies in the relations and processes of interaction between corporations, states and non-state actors. Moreover, the research questions, flavored by my levels-interest, determine how I would characterize approaches that focus on other levels. Thus, proceeding to emphasize structures, relations and processes within the individual corporation (or several corporations) might be characterized as a micro-

⁷⁷ Margaret Archer, ‘Realism and morphogenesis’ in Archer et.al. (eds.), *Critical Realism: Essential Readings* (London: Routledge, 1998), p. 370.

⁷⁸ Bhaskar, ‘Societies’, p. 214.

⁷⁹ Margaret Archer, ‘Introduction: Realism in the social sciences’ in Archer et.al. (eds.), *Critical Realism: Essential Readings* (London: Routledge, 1998), p. 202.

level, inside-out explanation of the agreements, that – given the questions and the underlying interests they reflect – would imply some problematic features of atomistic, individualist approaches. While such micro-level aspects are undoubtedly highly relevant, they can form only part of an answer to the questions as I have posed them - they cannot alone provide a proper explanation to research questions directed at a higher level of analysis.

At the other extreme, one might seek a macro-level explanation and focus on the broader structural tendencies of the global (political, economic, etc.) system. Indeed, this too is an important focus and undoubtedly contains aspects relevant to the research questions at hand. One major difficulty – given the questions – associated with such a macro-level approach would be to move beyond the broad lines to include more specific relations and agential aspects in the explanation of particular outcomes and events. To the extent that one does not successfully deal with this difficulty, the resulting analysis can form only part of an answer to the questions as I have posed them. And, to the extent that one does actually succeed in handling the difficulty, one may actually have ended up with something other than a macro-level approach!

Thus, I would argue that the most appropriate focus of the approach in the present research project, given the questions, is to be found at what may be characterized as the meso-level. In principle, however, this does not entail the entire exclusion of all micro and macro aspects. Rather, seeking to provide an explanation of the agreements centered on the meso-level preconditions and the processes of interaction between corporations, state and non-state actors, the question is whether and how to incorporate relevant aspects of what I referred to as micro and macro above.

2.6 Causation, explanation and understanding

As mentioned, reality is seen as stratified or layered in three domains: the real, the actual, and the empirical.⁸⁰ ‘The real’ is whatever exists, the domain of objects, their structures and powers, physical or social. ‘The actual’ is the domain of events, i.e. what happens if and when these powers are activated. Finally, ‘the empirical’ is the domain of experience, more or

⁸⁰ Bhaskar, ‘General introduction’, p. xi.

less successfully referring to the actual and the real.⁸¹ The empirical is part of both the actual and the real, but exhaustive of neither. Likewise, the actual is part of the real, but not exhaustive of it.

This ontological depth leads to a conception of causation that is markedly different from the standard Humean account.⁸² First of all, the distinction between the real, the actual and the empirical implies a rejection of a purely observational criterion for making ontological claims about the existence of causal laws: there is more to reality than what is immediately observable and what happens to be observed. Secondly, there is a categorical ontological distinction between a sequence of events and the causal law(s) involved: '[...] laws cannot be the regularities that constitute their empirical grounds.'⁸³ Thus, even though in controlled experiments sequences of events may be manipulated and studied, the produced regularities are ontologically distinct from the causal laws that may be deduced from such experiments. Thirdly, the notion of (actual and empirically experienced) regularity as the indicator of causality is discarded by the argument that reality is characterized by emergence and by varying degrees of systemic openness/closure rather than by closed systems of experiments.⁸⁴ Thus, although constant conjunctions and consistent regularities may be produced and found within the closed systems of experiments, reality rarely meets the conditions of such closure. Where regularities do occur in social systems, they 'are approximate and limited in duration and are usually the product of deliberate efforts to produce them [...]'⁸⁵

⁸¹ Sayer, *Realism and Social Science*, p. 11-12.

⁸² Briefly put, Hume held that relations between causes and effects form the basis for all our reasoning about matters of fact, causation being understood as universal, empirical regularities between sequences of events, and causal laws as (defined and confirmed) statements about the constant conjunction of events, often in the form of 'if a, then b.' Cf. Robert S. Hill, 'David Hume' in Leo Strauss and Joseph Cropsey (eds.), *History of Political Philosophy* (Third Edition), (Chicago: University of Chicago Press, 1987), p. 537; Bhaskar, 'Philosophy', p. 25; Sayer, *Method in Social Science*, p. 115.

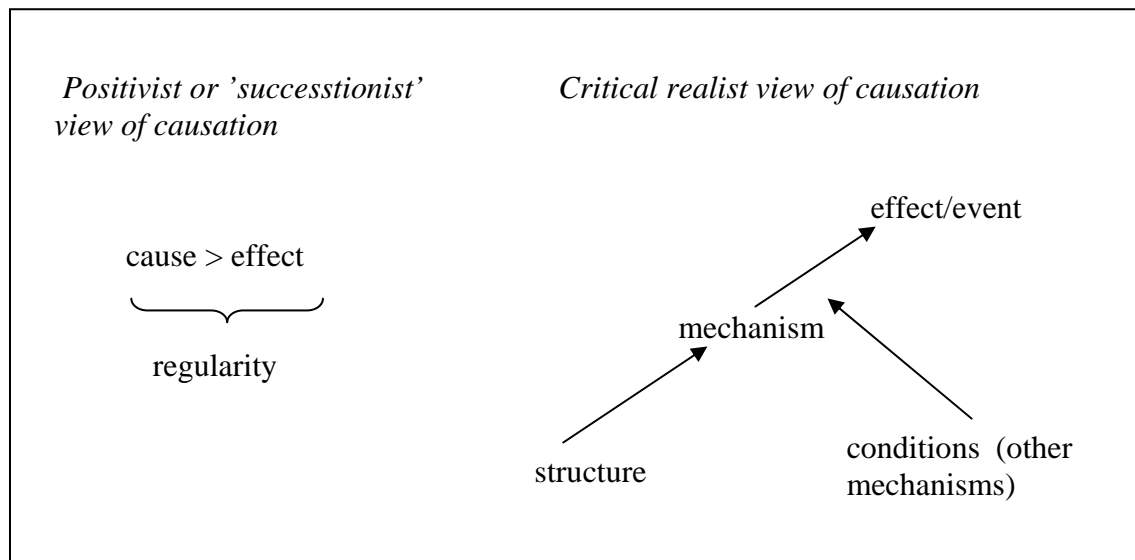
⁸³ Bhaskar, 'Philosophy', p. 26.

⁸⁴ Wad, 'Kritisk realisme', p. 66.

⁸⁵ Sayer, *Realism and Social Science*, p. 15.

Instead of the traditional Humean “successionist” view of causation, then, in critical realist terms explaining a phenomenon entails seeking to identify the “real” causal mechanisms and structures of objects, the conditions necessary for the existence of these mechanisms, and the conditions and other mechanisms involved in producing the “actual” phenomenon to be explained. Andrew Sayer has illustrated the two views of causation as follows.

Figure 2.2 Two views of causation⁸⁶

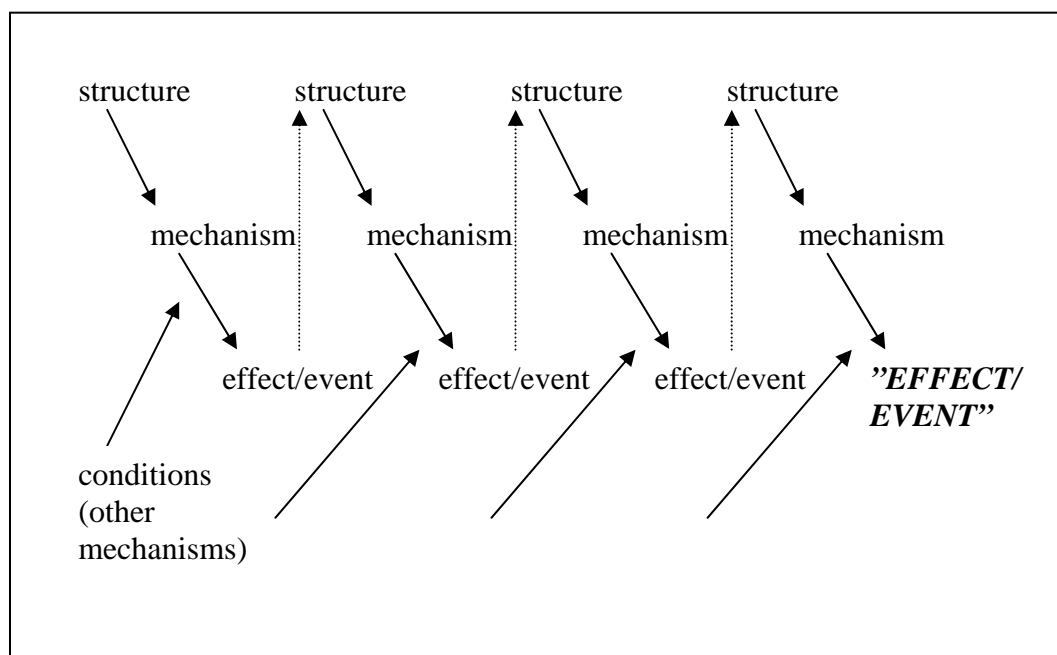


Thus, in terms of the explanatory approach and conceptual work (and, consequently, methodology and analysis), it might be said that the second and the third premise (stratification and transfactuality) entail an emphasis on the real and the transfactual. This does not, however, resolve all the tricky questions of philosophy and basic social theorizing, cf. the previous sections.

Furthermore, the illustrations (as well as many of the discussions and examples) are extremely simplified. Literally hundreds of such “causations” illustrated above were required for each of the three agreements to come into existence. In other words, there were innumerable “small” effects/events before each of the “events” to be explained, as I have sought to illustrate below.

⁸⁶ Figure based on Figure 1.1 and 1.2 in Sayer, *Realism and Social Science*, p. 14 and 15, respectively. Cf. also Sayer, *Method in Social Science*, p. 102.

Figure 2.3 Plural causations



Perhaps as a consequence of writing on causation with recurring references to the “other” view, effects and events tend to be treated, by Sayer and others, as that which is to be explained, whereas structures and mechanisms are highlighted as that which is needed in order to do so:

‘There is more to the world, then, than patterns of events. It has ontological depth: events arise from the workings of mechanisms which derive from the structures of objects, and they take place within geo-historical contexts. This contrasts with approaches which treat the world as if it were no more than patterns of events, to be registered by recording punctiform data regarding ‘variables’ and looking for regularities among them.’⁸⁷

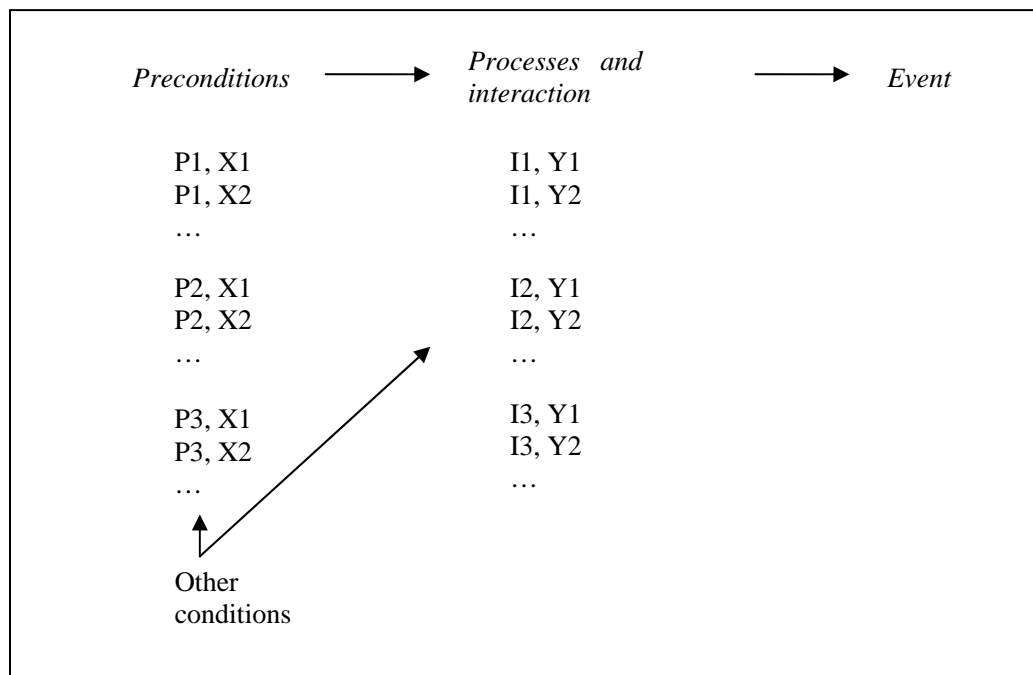
Yet, while “actual” sequences of events and regularities cannot amount to an explanation, explanation and abstraction ought to include *process* and not be reserved for “structure” alone. Processes of interaction are not only part of the “actual” story, but also structured or patterned, and – given the complexity of reality and the multiplicity of causations (my illustration above) – abstraction ought to involve an attempt at conceptualizing this patterning of ontologically different forms of interaction, at identifying and

⁸⁷ Sayer, *Realism and Social Science*, p. 15.

describing the generic logics and tendencies associated with these (and concrete conceptual elements ought subsequently to be defined).

In a sense, processes and interaction are already present in the above illustration of plural causations. Seeking to incorporate the above concerns more clearly, I use a generic explanatory framework consisting of the categories illustrated below and serving as the basis for the conceptual labor in the following chapter.

Figure 2.4 Explanatory road map



- where P and X designate different types of (specific structural) preconditions and the different powers, liabilities and dispositions associated with each of these, and where I and Y designate the different forms of (patterned) processes and interaction and the generic logics and tendencies associated with these.

Finally, as noted above, the stratification and transfactuality premises entail a considerable emphasis on the “real” in terms of conceptualization and, consequently, methodology and analysis. The point here is not, of course, that methodologically and analytically less emphasis is placed on the “actual” and the “empirical”, both of which are part of the “real”. Quite the contrary! Depending on the research object and purpose, one may put more or less emphasis on these. In the present research project, for example, it will be important to build up quite detailed chronologies of

events (chronological accounts of the processes, encompassing the actual and empirical): if one has only a faint idea of what actually occurred (and in which order) in terms of concrete events and the ways in which these were perceived during the process, one is in a relatively weaker position to analyze and explain that which is to be explained.

3. Methodology and the research process

3.1 Introduction

There is a striking discrepancy between the number of actual, in-depth investigations to explain changes in corporate responsibility during the 1990s – including the three agreements on which this dissertation focuses – *and* the number of explanations offered. The latter is far higher, the reason seemingly being that explanations and accounts are often provided in passing, on journeys departing from questions seeking something other than an explanation, thus ultimately seeking different answers and therefore traversing different terrains on the way.⁸⁸ One of the ambitions of this dissertation is to contribute, theoretically and empirically, to explaining the existence and form of the three agreements and writing three concrete histories of how corporate responsibility changed during the 1990s.

Obviously, the above has considerable bearing on matters of research design and methodology, with which this chapter is concerned. In the following section I present some considerations and reflections on the research design and process, the preconditions and predispositions involved, and some reflections on how things actually turned out. This includes the basic arguments and considerations concerning the case study approach employed in this dissertation, the more concrete aspects of which are treated in section 3.3. In section 3.4 I turn to issues concerning data collection and analysis.

⁸⁸ Morten Ougaard with Michael E. Nielsen, 'Beyond Moralizing: Agendas and Inquiries in Corporate Social Responsibility' in Sumati Reddy (ed.), *Corporate Social Responsibility: Contemporary Insights* (Hyderabad: ICFAI University Press, 2004).

3.2 The research design and process

The basic design of this research project may be characterized as rather intensive, as opposed to extensive.⁸⁹ The two are characterized and contrasted in the figure below.

Figure 3.1 Intensive and extensive research⁹⁰

	INTENSIVE	EXTENSIVE
Research question	How does a process work in a particular case or small number of cases? What produces a certain change? What did the agents actually do?	What are the regularities common patterns, distinguishing features of a population? How widely are certain characteristics or processes distributed or represented?
Relations	Substantial relations of connection	Formal relations of similarity
Types of groups studied	Causal groups	Taxonomic groups
Type of account produced	Causal explanation of the production of certain objects or events, though not necessarily representative ones	Descriptive 'representative' generalizations, lacking in explanatory penetration
Typical methods	Study of individual agents in their causal contexts, interactive interviews, ethnography, qualitative analysis	Large-scale survey of population or representative sample, formal questionnaires, standardized interviews, statistical analysis
Limitations	Actual concrete patterns and contingent relations are unlikely to be 'representative', 'average' or generalizable. Necessary relations discovered will exist wherever their relata are present, e.g. causal powers of objects are generalizable to other contexts as they are necessary features of these objects	Although representative of a whole population, they are unlikely to be generalizable to other populations at different times and places. Problem of ecological fallacy in making inferences about individuals. Limited explanatory power
Appropriate tests	Corroboration	Replication

In designing the present research project, my design preferences stemmed from a combination of factors. To begin with, while critical realism is not a

⁸⁹ As Andrew Sayer has pointed out, this is not merely a matter of surface design features, however: 'Superficially, this distinction seems nothing more than a question of scale or 'depth versus breadth'. But the two types of design ask different sorts of question, use different techniques and methods and define their objects and boundaries differently [...]' Sayer, *Method in Social Science*, p. 221.

⁹⁰ From Sayer, *Method in Social Science*, p. 222.

method,⁹¹ there is a close relation between the basic premises presented in the previous chapter and the basic types of questions one is inclined to pose as well as the basic type of research design this may point to as the more feasible. As Danermark et.al. have put it:

*'[...] reality has an ontological depth, which implies that an empirical correlation can neither establish which mechanisms are at work nor provide any deeper information about the interplay of forces behind the registered empirical conditions. Rather, such interplay can be revealed through intensive, focused studies of deliberately selected cases. In other words, empirical regularities are puzzle pieces in the search for mechanisms, not the control and judge. Empirical regularities may also generate fruitful questions, but in the search for causal explanations, the quantitative analyses play a less important role.'*⁹²

The ontological realism and depth combined with the particular view of causation, in other words, not only makes one more inclined to venture into the world of explaining social phenomena: the basic premises presented in the previous chapter have strongly influenced this project on those points included in the figure above, as will be clear in this chapter.

The seeming lack of studies seeking to explain the changes in corporate responsibility, cf. above, as well as the relatively embryonic conceptual work on this matter, i.e. what might be termed the explanation oriented literature on CSR, both suggest that research – and, in my view, intensive research in particular – is both needed and relevant. Further, on a broader note and with reference to international relations theory, the growing and relatively recently renewed interest in the role of private actors and private authority in international affairs, transnational politics and political globalization also played in, both inspiring and stirring my research interests and influencing my point of departure and chosen path. Thus, while the above might also be seen as calling for more studies of both an abstract as well as of a relatively extensive nature, I see this as clearly warranting more intensive research seeking to explain and account for the changes in corporate responsibility.

⁹¹ Berth Danermark et.al., *Att förklara samhället* (Lund: Studentlitteratur, 1997), p. 220. Cf. also Henry Wai-chung Yeung, 'Critical realism and realist research in human geography: a method or a philosophy in search of a method?' in *Progress in Human Geography*, vol. 21, 1997, no. 1.

⁹² Danermark et.al., *Att förklara samhället*, p. 223 (my translation from Swedish).

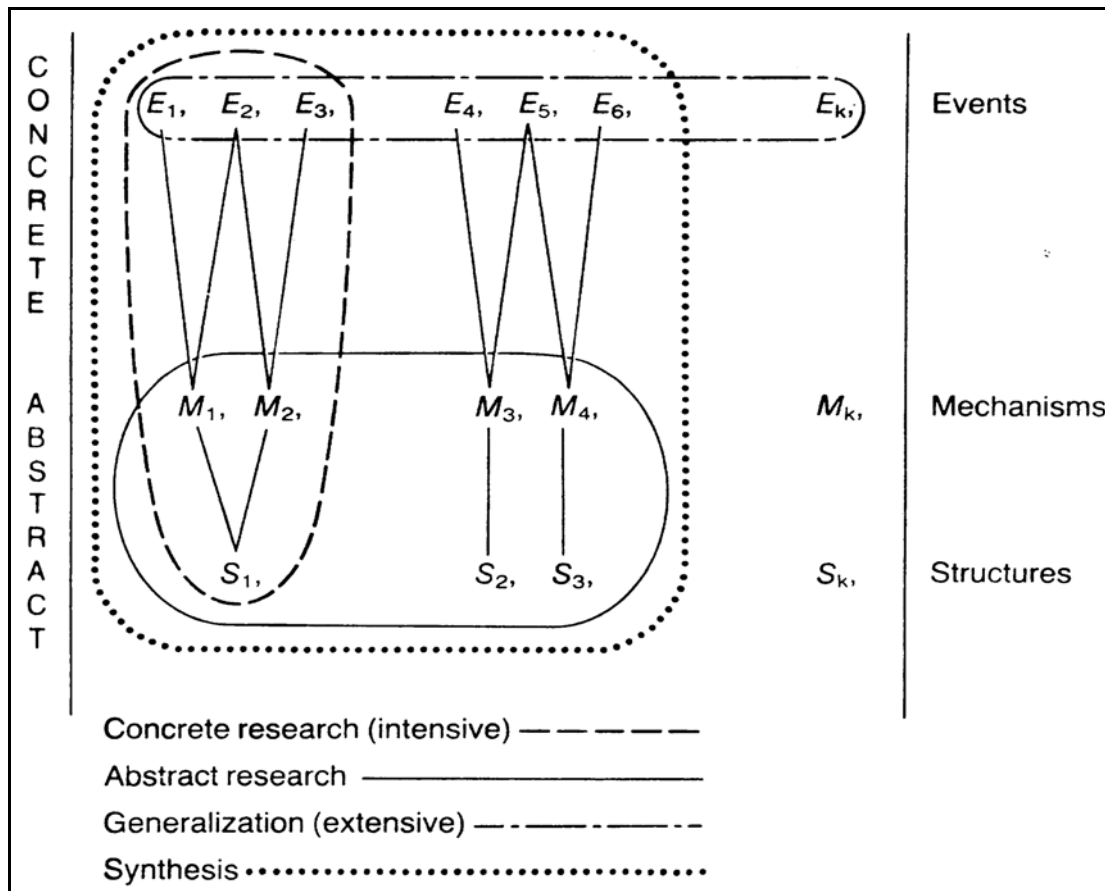
Having said this, I did fall into the same trap as so many others before me: I got caught up in the details and complexities of my empirical cases, and the sensation of being in the process of making an important contribution through these empirical and concrete histories only added fuel to the fire. This made the analyses and writing of the case study chapters more demanding, on the one hand, and in the end resulted in some delimitations, on the other, that were first and foremost based on practicalities. Specifically, these delimitations primarily concerned the broader context of these cases. I had envisioned a fuller analysis, which has not been produced, of the following: major shifts in social relations of production and the spread of global commodity chains; major shifts in the “domestic” politics of dominant nation-states, focusing on the United States; major shifts in state-market relations; and major shifts in the global security climate. While an analysis of these in the dissertation would, in my view, have further enhanced the results of this research project, however, this result would have come at the price of a lesser contribution on the concrete in-depth case aspects.

In the following sections the more concrete deliberations on and manifestations of this intensive design will be discussed further. Before moving on, however, let us consider the research design and process in terms of the relations between the theoretical and the empirical. I have approached this as an iterative process, where the purpose was not so much the testing of already existing theory, but rather the development of a conceptual framework through an on-going iteration between the empirical and the theoretical, which began before this research process and which continued well into the process. Thus, we might say that the intention was to conduct theoretically informed and informative concrete research.

The figure below provides a graphic illustration of the differences between different types of research and shows that in intensive research, such as in the present dissertation, elements of abstract research as well as generalization are involved. The figure also illustrates how intensive research – unlike generalization and abstract research – encompasses both the concrete and the abstract. In this lies the possibility of iteration between inductive-deductive descriptions of the empirical phenomenon and retroduction, the latter entailing (critical) abstractions on that which produces the phenomenon or constitutes a condition for it.⁹³

⁹³ Yeung, ‘Critical realism and realist research’, p. 59.

Figure 3.2 Types of research⁹⁴



While my abstractions have been grounded in concrete, empirical data, this iteration has also involved a critique of and work from existing theories, the thought processes often involving counterfactual thinking and, recalling the basic premises in the previous chapter, a focus on the stratification of reality and the transfactual nature of causal mechanisms. The purpose, therefore, has been neither to make the empirical fit the theoretical nor to paint a nicely worded “theoretical picture” resembling the empirical. Rather, given the practical limitations and the existing theoretical work on the subject matter as well as my aim of contributing to the theoretical development on this, I have seen this as the most feasible way of building and refining a conceptual framework through (while also) conducting valuable and relevant empirical work.

As Yeung has put it in his more general argument, ‘*The role of the realist researcher is to achieve a harmonious synchronization between deductive*

⁹⁴ From Sayer, *Method in Social Science*, p. 215.

*abstraction and inductive grounding of generative mechanisms. Under this argument, a realist researcher should not simply ‘borrow’ an existing theory and fit it into empirical data; nor should the theory emerge solely from concrete data. The most practically feasible method of theorization is an iterative process of abstracting theories based on an immanent critique and the grounding of abstractions in concrete data [...]*⁹⁵

The research process may be described broadly in terms of different “moments”.⁹⁶ First, the initial phase was primarily focused on philosophy of science and the basic premises treated in the previous chapter. Second, in the following phase the emphasis was primarily on the abstract, i.e. on reading and reviewing existing theories and the process of abstraction and retroduction. In part this emphasis was determined by my previous experiences and work as a student, entailing a fairly extensive and substantial insight into the empirical field.⁹⁷ On the one hand, this made it possible to begin working on the theoretical part quite early on, as opposed to conducting pilot empirical studies, for example. On the other hand, while placed early on in the process, the initial abstractions were not based on the three cases or the empirical in a very narrow sense, but – later on in this phase, as I worked through international relations theory and theories of international regimes – drew from the numerous inductive and deductive moments in the preceding work on my masters thesis in particular.

Third, having formulated a conceptual framework, during the following phase the emphasis was to a large extent on the empirical, i.e. data collection, analysis and writing on the three case studies. More than a year into this, the continuous reflections and thinking on the abstract led to a short interlude of revising the conceptual framework, before the analysis and writing continued.

This interlude entailed the exclusion of a few explanatory factors, which I had realized were less relevant, given the research questions and chosen

⁹⁵ Yeung, ‘Critical realism and realist research’, p. 63.

⁹⁶ See e.g. Danermark et.al., *Att förklara samhället*, pp. 250-253 for a discussion of a concrete research process in terms of moments.

⁹⁷ As a student of international business and development studies at the CBS, I had been working on corporate responsibility since the mid 1990s, including a confidential bachelor project during the first half of 1997 which concerned the Atlanta Agreement, and a master’s thesis on the oil industry and corporate human rights responsibility, including field work in Ecuador.

empirical focus (for example, physical coercion). For the most part, though, it entailed what I would characterize as a change of formulation, emphasis and precision of some of the (remaining) elements, rather than a wholesale transformation of the earlier framework. This revision was based both on a better insight into the concrete and empirical (including, but not exclusively, the three cases) as well as additional theoretical readings (for example, readings on framing and social problems theory in relation to ‘struggles to define the problem’). Finally, this interlude constituted the cutting-off point after which the conceptual framework has not been changed any further.

3.3 A case study approach

Having presented in the previous section a number of reasons for adopting an intensive, concrete case study approach in this dissertation, this section addresses my considerations and decisions involved in the concretization and operationalization of this basic design. It might be recalled, as a point of departure in the following, that the broader research interest underlying this was not an interest in explaining the three agreements *per se*, but rather an interest in explaining the changes in corporate responsibility and the governance of child labor and core labor rights during the 1990s, which was then concretized in my focus on the three agreements.

To begin with, the combination of this interest and the more abstract aspects concerning an intensive, concrete research design does not directly translate into a decision concerning the proper level(s) of analysis on which to focus. Given the broader research interest, I could have decided to work from a much broader research question and pursue a macro-approach focusing on the broader structural tendencies and processes at work and defining my cases correspondingly. As argued in section 2.5, however, while these broader tendencies and processes were certainly relevant in (re-) shaping the broad frameworks for action, an analysis primarily focused on these would entail an exploration and explanation of the broader contours of the changes in corporate responsibility – i.e., it would not emphasize the more specific and particular features. And it was from some of the particulars of changes, such as the three agreements, that the particulars of CSR more broadly arose. Moreover, by analyzing the production of change in corporate responsibility and the governance of child labor and core labor rights in the more concrete, it seemed to me I would be in a better position to emphasize the contextual, historical and

political nature of the change. This was an important concern, and one that is highly relevant, I would argue, considering the often quite ahistorical and apolitical nature of the CSR discourse.⁹⁸

As would be clear by now, I have defined my cases in terms of agreements – the outcomes, the preconditions and processes leading to these. Referring back to Sayer's distinctions (figure 3.1), this definition might be said to entail an understanding and approach based on substantial relations of connection. The benefit of this is that time, place, space, actors and relations are introduced in a very different way than, for example, with a definition based on industry, without losing sight of broader industry-related dynamics.⁹⁹

Moreover, and in very basic terms, the overall strategy was to conduct a relatively low number of case studies which were to be analyzed in depth, the aim being to provide an account, holding considerable explanatory power, of those three agreements. In itself, this may be of both empirical and theoretical value.¹⁰⁰ Moreover, the analysis of these unique and important agreements may be of considerable relevance to our understanding of both the broader shift in corporate responsibility and more specifically of other agreements related to corporate responsibility and the governance of child labor and core labor rights in the 1990s.

But, more specifically, why did I decide to focus on those three agreements in particular?

First of all, unlike the emphasis upon generalizability and statistical representativity, which is generally typical of extensive research designs, in an intensive research design the cases are strategically hand-picked

⁹⁸ Blowfield and Frynas, 'Setting new agendas,' p. 510.

⁹⁹ For example, focusing on the Atlanta Agreement rather than the sporting goods industry more broadly, Sialkot is a more important place than it might otherwise have been, the period between 1994 and 1997 is central, and specific organizations and individuals were more important and involved compared to others, etc. It is then obvious how this more substantial fleshing out of the important and central causal groups and relations of connection provides some quite tangible and direct input to data collection methods, priorities and sampling criteria.

¹⁰⁰ As Sayer has put it, 'we must avoid the absurd dogma that no study of individuals, in the broad sense, is of interest except as a representative of some larger entity.' Sayer, *Method in Social Science*, p. 226.

based on a combination of one's overall strategy and research interests – translated into more concrete criteria – and an assessment of the expected informational value of the case(s).¹⁰¹

My basic requirement was that, focusing on corporate responsibility and the governance of child labor and core labor rights, the cases be unique and important, in terms of involving the production of significant changes in corporate responsibility and the governance of child labor and core labor rights, i.e. cases involving the formation of particular new elements in the norms and practices of corporate responsibility and the ways in which child labor and core labor rights were governed, and cases that set new precedents and made significant marks on the subsequent developments. In addition, an aspect of their uniqueness and importance relates to the nature of the political processes and outcomes.¹⁰²

Secondarily, the selection of case studies was based on several criteria. For one, the overall strategy was to select cases that involved processes and agreements situated at different points in time during the 1990s. In the broader historical view, the three agreements are all contemporaries (from the 1990s), and the study does, in this broader historical sense, employ a “most similar” cases approach. At the same time, the intentions behind stretching over the 1990s were i) to allow for the possibility of being able to point to some significant changes in the preconditions for concrete processes of producing changes in corporate responsibility during the 1990s, and ii) to contribute, in a modest way, to writing a sort of history of the rise of CSR in the 1990s by writing my histories from the very concrete and particular. The three cases, as it were, reflect this concern (see section 1.4).

Moreover, I focus on cases related to child labor and core labor rights. Clearly, child labor and labor rights issues were central in the contests over and changes in corporate responsibility during the 1990s, but so were

¹⁰¹ See e.g. Danermark et.al., *Att förklara samhället*, p. 243; cf. also Bent Flyvbjerg, *Rationalitet og magt, Bind 1: Det konkrete videnskab* (Denmark: Akademisk Forlag, 1991).

¹⁰² As mentioned, I was in part inspired by the growing interests within international relations theory in the role of private actors in international affairs, in the transnational, multi-layered and trans-sectoral nature of politics and governance, which seemed particularly relevant as an in-way to studying the nature of political and economic globalization and the nature and (re-)articulation of the state-market relationship, the public-private dichotomy, etc. See n. 8.

environmental issues and the broader human rights issues, e.g. beyond-the-workplace issues such as community rights and the rights of indigenous peoples.¹⁰³ The decision to focus on a sub-group of concerns, an issue area, was based on the premise that e.g. environmental issues involve concerns and problems, material relations, ideational structures and histories, institutional frameworks, etc. that are different from, if not entirely unrelated to, those related to child labor and labor rights and the social aspects of corporate responsibility.¹⁰⁴

Finally, in spite of the above and all that has been said and written about these three processes and agreements, I was moreover – and this was an additional selection criteria – unable at the time to find any systematic and in-depth analyses of an academic sort (involving conceptual work and empirical data collection and analysis) seeking to shed light on the processes and explain the outcomes.¹⁰⁵

3.4 Data collection and analysis

In collecting data to enable me to explain the three agreements at hand, two types of methods have been employed: I have conducted a number of interviews, and I have compiled and reviewed a vast amount of different

¹⁰³ Cf. e.g. John V. Mitchell (ed.), *Companies in a World of Conflict*; Williams (ed.), *Global Codes of Conduct*; Addo (ed.), *Human Rights Standards*; Sigrun I. Skogly, 'Complexities in Human rights Protection: Actors and Rights Involved in the Ogoni Conflict in Nigeria' in *Netherlands Quarterly of Human Rights*, Vol. 15, No. 1, 1997; Alison Brysk, 'Turning Weakness Into Strength: The Internationalization of Indian Rights' in *Latin American Perspectives*, Vol. 23, No. 2, 1996; Douglas Cassell, 'Corporate Initiatives: A Second Human Rights Revolution?' in *Fordham International Law Journal*, Vol. 19, No. 5, 1996; Judith Kimberling, *Crudo Amazónico* (Quito: Ediciones Abya Yala, 1993).

¹⁰⁴ Clearly, the writing of three concrete histories is relevant in the empirical sense, but there are a number of deeper differences: global warming and the use of child labor in a certain factory are two different kinds of phenomena, presumably involving dramatically different kinds of necessary relations and potentials for politicization and regulatory outcomes. Conversely, there are also a number of similarities, from the broader structural tendencies related to the globalization patterns of production and consumption to the basic logics and patterns of interaction, as in the struggles to define the problem.

¹⁰⁵ At the time refers to the period of late 2001 to early 2002 when the project description was prepared and the research project subsequently began to be refined.

types of documents.¹⁰⁶ The interviews have contributed significantly to my insight into the cases, although it must also be stated that the detailed and retrospective nature of the project has influenced the purpose of, approach to, and use of the interviews conducted. The documents collected and reviewed have played a correspondingly greater role.

Specifically, during the research project I have conducted a total of 21 interviews, each of a duration of between 45 minutes and 2½ hours (see list in Annex I). In addition, I had actively been working on setting up another 10, most of which were “cancelled” (due to saturation and/or access to published material, cf. below).¹⁰⁷ Moreover, I made another 23 inquiries or contacts that did not result in interviews.¹⁰⁸ Altogether, I have spoken to the vast majority of those individuals that I would want to contact for an interview, were I beginning my field work today, and by late 2003 I felt that I had reached a certain saturation point, where additional interviews

¹⁰⁶ Obviously, given the rather historical and retrospective nature of the research question, observation-based methods were less relevant.

¹⁰⁷ One key individual could not be located (Dan McCurry, who headed the International Labor Rights Fund’s Foul Ball campaign), whereas another had passed away (David Husselbee, formerly Save the Children, Pakistan). I also telephoned Bangladesh and Pakistan a number of times to set up interviews with representatives (“back then”) of the Sialkot Chamber of Commerce and Industry as well as the Bangladesh Garment Manufacturers and Exporters Association. The telephone connections were of quite poor quality, and it was difficult to identify and track down the specific individuals that I wanted to speak to. Finally, I would have liked to talk to several current and former ILO-IPEC officials, and I spent months communicating with a Geneva official who promised to try to set up meetings in Geneva between myself and a small group of persons centrally involved in the first two of my cases back then. An upcoming review of, and conference on, the past ten years’ efforts and collaboration between UNICEF and the ILO-IPEC, however, apparently resulted in some uncertainties concerning dates and planning in Geneva.

¹⁰⁸ In some cases, the representatives of the organization simply refused to say anything, let alone participate in an interview. In cases where I received no reply or calls back, the organization was contacted at least one more time. In two cases, the individual confirmed a certain presence or involvement in specific activities, but also stated that no leading or active role was played in these, and instead referred back to individuals which I had already interviewed. The remaining 21 non-interviews are rather unproblematic in my view. In some cases, I had already accessed sufficient written material by/on the individual and/or organization. In several other cases, the non-interviews were unproblematic because the organization had been less centrally involved “back then” and/or because I had already conducted one or more interviews with actors in a similar structural position.

seemed marginally less useful than other types of data collection and processing – or I had quite simply come across or been referred to published material.¹⁰⁹

The aim of conducting interviews in this research project has been to engage in a conversation with a considerable number of key individuals that were “there”. I.e. that were involved in the turn of events “back then” and not just happen to be representing organization X or Y on CSR “now” – not to mention unknown respondents to a questionnaire a number of randomly selected companies within a given industry.¹¹⁰ I sought to engage these key individuals in a conversation in which they would share their experiences and recollections, and where I would also be able to table a number of inquiries which the available secondary sources were not very helpful in illuminating. Moreover, the interviews were very important in terms of shedding light on the chain of events and, in some cases, the identity of other individuals involved “back then”.

The interviews were predominantly non-structured and with mainly open-ended questions, in which I sought to strike a balance between letting the conversation flow and steering the direction and topics based upon an interview guide, which involved the following themes: i) background of the individual and the organization; ii) the situation of the organization at the time; iii) the involvement of the organization/individual (how, why, perceptions of the situation/the issues/the other actors); iv) key events and the agreement (how, why, perceptions of the situation/the issues/the other actors – including the non-events, the non-issues, etc.); v) miscellaneous. In those cases where the interviewed had been involved in more than one of the case studies below, themes ii)-iv) were talked through for each of the cases.

¹⁰⁹ Elliott Schrage, who had – as we shall see – been centrally involved in the soccer ball case, in our email correspondence referred to his recently published report which included a comprehensive treatment of that case. Cf. Schrage, *Promoting International Worker Rights Through Private Voluntary Initiatives*.

¹¹⁰ As a sampling strategy, this is far removed from the random selection of respondents: ‘Intensive research focuses mainly (though not exclusively) on groups whose members may be either similar or different but which actually relate to each other structurally or causally. Specific, identifiable individuals are of interest in terms of their properties and their mode of connection to others. Instead of relying upon the ambiguous evidence of aggregate formal relations among taxonomic classes, causality is analysed by examining actual connections.’ Sayer, *Method in Social Science*, p. 221.

For a number of reasons, including the emphasis on the specific preconditions and processes and a relatively high degree of detail as well as the lack of available, in-depth material on the backgrounds to the agreements, the early interviews were rather explorative and open in nature. Because much of the existing literature on the cases did not generally go into details with the backgrounds to the agreements – the preconditions, the actors involved, the processes, the chains of events and the order in which these occurred – however, some of these early interviews were just as rewarding as the later ones, where I had rather substantial chronological and other types of overviews. I soon realized, however, that 5 to 10 years is a long time when it comes to thinking back and recalling different aspects of the past.

Because a considerable number of the organizations (and individuals) involved in the processes back then are situated in the U.S., I decided to conduct the main of my field work in the U.S. This was also, by implication, a decision *not* to go to Bangladesh or Pakistan, which were obvious alternatives. Given the limited time and financial resources, this was a choice that had to be made, and I made it based upon an assessment of where I would be able to access as many centrally involved individuals and their organization archives as possible – undoubtedly, D.C. was the place to be.

As mentioned I have, in addition to conducting interviews, also collected and reviewed a vast amount of different types of documents. The purpose of this has been two-fold. First of all, the interviews can only do so much in terms of bringing insight into the different perspectives, perceptions, and nuances being sought, and different types of documents are therefore important and useful supplements in building a richer picture and understanding of these matters, plus in some cases even working as correctives to the sometimes less than perfect recollections brought up during the interviews. Second, while an interview situation may be suitable for providing points of departure for document searches, for example, it is not ideal for working through the preconditions and processes in greater detail and thematic or chronological order. In particular I found that the numerous and often complex situations and events “back then”, and especially their chronological order, were quite difficult, not to say practically impossible, to deal with in detail in the interview situations. Thus, different types of documents were sought for. First of all, numerous reports, press releases, hearing transcripts, legislative records, etc., were collected from a number of different organizations. Such documents were

useful in terms of understanding the positions and perspectives of different actors at different points in time. Moreover, in many cases the documents served as important remnants, constituting points of departure for additional document searches.¹¹¹ Second, I collected a sizeable body of documents such as telefaxes, emails, meeting summaries and personal notes, the access to which was an important additional purpose of conducting interviews. These documents were especially important and useful for building up a detailed chronology of events (again, constituting important points of departure for additional document searches and interview questions) *and* for gaining invaluable insight into the perceptions and behind-the-scenes going-ons, on which the existing literature shed a relatively sparse light. This was particularly so in relation to the Bangladesh case. Third, I conducted a large number of online database searches to compile a substantial body of news agency reports and news paper and magazine clippings. Many of the documents have been important as narrating sources, including – as many of them do – statements by key actors involved in the respective processes, *and* as a whole this body of documents has been invaluable in building the detailed chronological overviews of the processes. Fourth, existing literature from journals and books was sought for through a variety of database searches. Finally, while the above provided me with most of the needed statistics and other quantitative data, I also consulted various reports and online services for statistical information.

As indicated above, the retrospective and explanatory focus in this project has certainly had an impact on the matters discussed here. As narrating sources the interviews have been helpful in terms of bringing insights as far as the main contours of the picture as well as key situations and aspects were concerned. The different types of documents, in turn, have been an invaluable supplement to the interviews, enabling me to build a thicker, more nuanced, more detailed and historically precise picture. The limited

¹¹¹ As illustrated by Alvesson and Sköldberg, the same source can be regarded as both a remnant and a narrating source: '[...] it can easily be seen that the same source can be both a remnant and a narrating source, depending on the researcher's choice of aspect. The pyramids of Egypt, to take another example, are for most of us mute testimony to the building activities of the pharaohs, and hence remnants; for a pyramidologist, their construction expresses secret messages which have not yet been (entirely) decoded, and so in this perspective they are narrating sources. Or, to take an example closer to hand, (authentic) minutes constitute a remnant *of* a meeting, but a narrating source *about* the same meeting. As a remnant they testify to the fact *that* a meeting has taken place; as a narrating source they tell us *how* it has taken place.' Alvesson and Sköldberg, *Reflexive Methodology*, p. 71; italics in original.

time available for each interview simply did not allow for a lengthy discussion of each and every question that I would have liked to raise, nor were those interviewed generally able to recall in great detail and with some precision the situation and going-ons on a particular date several years ago. The documents, moreover, often served to corroborate the statements presented during the interviews.

Many of the documents have, of course, also been important as remnants, i.e. as traces of events occurred. Without these, I could not have constructed the detailed chronologies of events that I have found necessary to map out and analyze the processes. Not so much from an empiricist point of departure or from an infatuation with “events” in the critical realist terminology, but rather from the notion that in order to explain the existence *and* nature of the three agreements, an analysis of the processes of producing the three agreements is necessary, and this must necessarily be based upon an overview of and a relatively detailed knowledge of the actual events and the perceptions of the empirical held by key actors at various points in time. Thus, my collection of documents has been driven by a search for narrating sources, but also by a search for remnants for this purpose.

A note on bias

I have taken it to be an unavoidable fact that all of my sources were more or less biased. Thus, I have been cautious with single sources on key matters, evaluating as critically as possible the source as well as seeking to corroborate or counter the statement by finding other sources on the same matter. With respect to more recent sources in particular, I have generally been more cautious, both because they are more remote in time and space from the matter at hand (distance), and because they are more likely to have passed through more hands (dependence).¹¹² Moreover, I believe to have been aware of the possibility of post-rationalizations and the potentially distorting effects that might flow from the fact that constructions of the past include constructions of the individuals’ and/or the organizations’ past *and* present identities.

Although some of this also applies to the older sources, i.e. that date back to the processes at hand, a different kind of bias awareness has been central

¹¹² On distance and dependence, see Alvesson and Sköldbberg, *Reflexive Methodology*, pp. 73-74.

when it comes to these sources. Seeing as the bias, the “tainted” and more or less conflicting sources (“authors” and statements), has to some extent been incorporated into the conceptual framework, the search for additional sources on the same matter has been more than a methodological, source critical exercise: bias, in this perspective, is not merely a methodological difficulty, *but* indeed a conceptual and methodological positive rooted in the basic premises discussed in the previous chapter. As Alvesson and Sköldbberg have put it:

‘A certain established bias – for instance, an ideological one – can, on the other hand, contain very valuable information from the perspective of ideology research: what message is being conveyed? What is crucial to the criticism of bias is always to ask who is speaking, and with what purpose.’¹¹³

For instance, in the Bangladesh case, a variety of actors presented numerous, widely diverging estimates of the number of child workers that would be affected by the Child Labor Deterrence Act, which was introduced in the U.S. Congress in that period. Instead of viewing the biased sources and pieces of information as a problem, a difficulty faced when seeking to uncover the true figure from those ‘damned lies and statistics,’¹¹⁴ I consider bias and contradictions as very telling and useful in trying to appreciate the views, perceptions and intentions of different actors, in trying to grasp the nature and dynamics of the political situation and process.

¹¹³ Alvesson and Sköldbberg, *Reflexive Methodology*, p. 72; emphasis omitted.

¹¹⁴ Joel Best, *Damned Lies and Statistics: Untangling Numbers from the Media, Politicians, and Activists* (Berkeley: University of California Press, 2001).

4. A theoretical framework

4.1 Introduction

‘Unfortunately, most regime theory to date has assumed that states are the main – even only – participants in regimes.[...] Even the more liberal variants of regime analysis place more emphasis on the sovereign state than on important nonstate actors. To date, the literature on regimes has remained stubbornly state-centric.’¹¹⁵

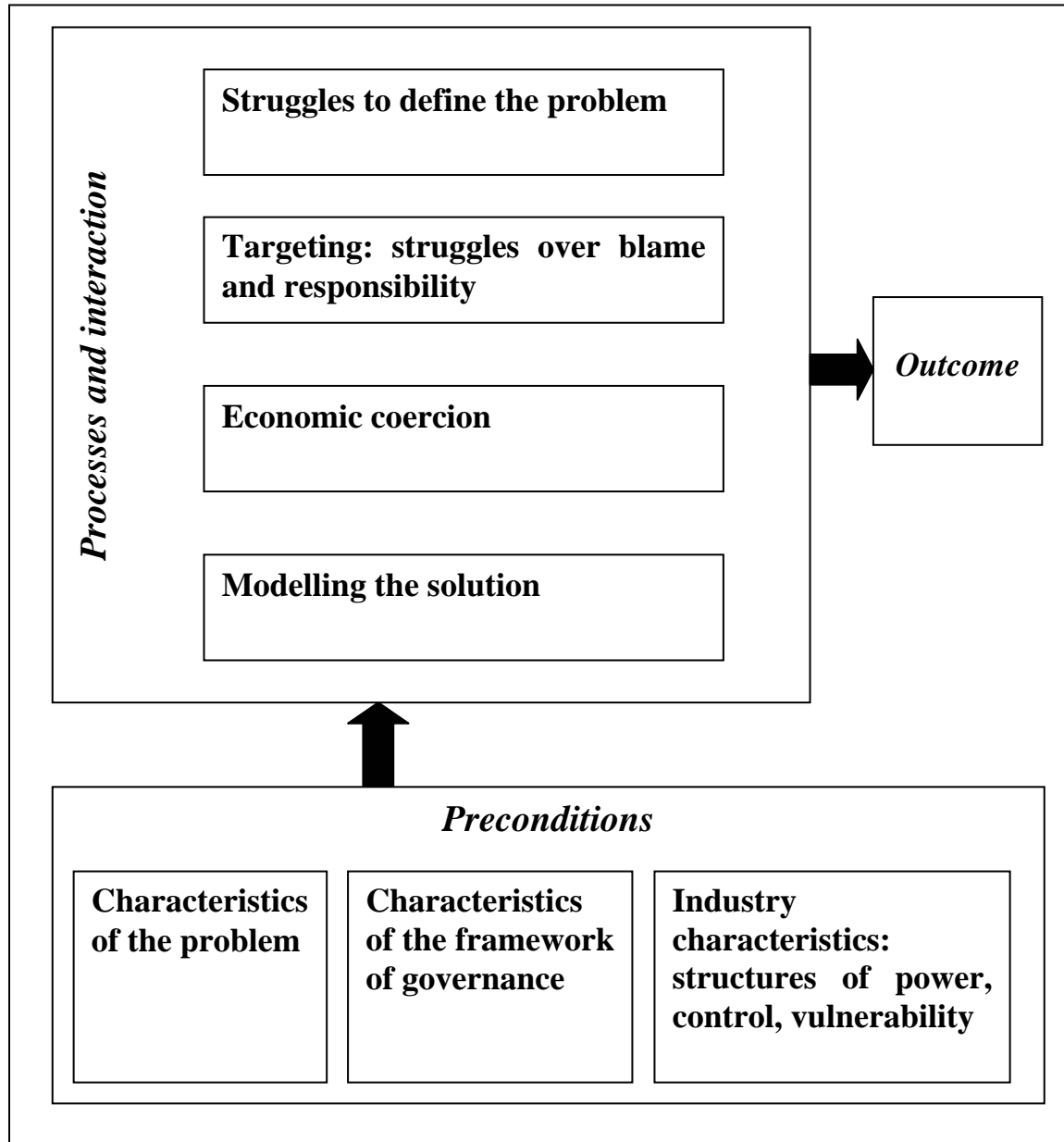
The study of international regimes is conventionally regarded as part of the broader field of international relations, its “baptism” as a sub-field dating back to the mid-1970s when John Ruggie first introduced the concept to political science.¹¹⁶ Rather than a theory, “international regimes” were introduced as cross-cutting variables centered on the formation, characteristics, development, and effects of international regimes. Thus, in spite of the state-centrism referred to in the quote above, the general research interests of regime theory indicate that *this body of theory could constitute a highly relevant and useful point of departure* for pursuing the research questions and interests at hand. Furthermore, regime theory is a field with fairly strong theoretical developments, developments which have – for better and for worse – in part been fuelled by inter-perspectival and paradigmatic strife and debates. Finally, there have been some exceptions to the state-centrism mentioned above.

¹¹⁵ Cutler, Haufler and Porter, ‘Private Authority and International Affairs’, pp. 13-14.

¹¹⁶ John G. Ruggie, ‘International Responses to Technology: Concepts and Trends’, *International Organization*, vol. 29, p. 570. See also Katzenstein, Keohane and Krasner, ‘International Organization and the Study of World Politics’, p. 660.

In this chapter I present the arguments and deliberations behind the explanatory framework illustrated below.

Figure 4.1 Explanatory framework



In doing so, I begin by providing a brief overview of the theoretical field constituting my point of departure, regime theory, commenting upon the main points of interests – questions or concepts – to which I shall return in later sections of this chapter. In the last part of the following section, I return to some of these in a more elaborate discussion of certain basic conceptual issues. In sections 4.3 and 4.4 I then turn to conceptualizing the preconditions and the processes. Finally, section 4.5 contains a summary.

4.2 Regime theory: a theoretical point of departure

Broad characteristics and comments

Following Hasenclever, Mayer and Rittberger, regime theory may be categorized in terms of four broad explanatory perspectives:¹¹⁷

- the neoliberal or interest-based perspective;
- the neorealist or power-based perspective;
- weak cognitivism;
- strong cognitivism.

The two dominant perspectives for many years, the neorealist¹¹⁸ and the neoliberal perspective,¹¹⁹ have in common a number of basic assumptions.

¹¹⁷ Actually, the authors distinguish between the neoliberal, the neorealist and the cognitivist perspectives, but then proceed to distinguish between weak and strong cognitivist approaches. Cf. Hasenclever, Mayer and Rittberger, *Theories of international regimes*, p. 136.

¹¹⁸ See Joseph M. Grieco, 'Understanding the Problem of International Cooperation: The Limits of Neoliberal Institutionalism and the Future of Realist Theory' in David A. Baldwin (ed.), *Neorealism and Neoliberalism: The Contemporary Debate* (New York: Columbia University Press, 1993); Joseph M. Grieco, *Cooperation Among Nations: Europe, America, and Non-Tariff Barriers to Trade* (Ithaca: Cornell University Press, 1990); Joseph M. Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism', *International Organization*, vol. 42, 1988, pp. 485-507; Joseph M. Grieco, 'Realist Theory and the Problem of International Cooperation: Analysis with an Amended Prisoner's Dilemma Model', *The Journal of Politics*, vol. 50, 1988, pp. 600-624; Stephen D. Krasner, 'Sovereignty, Regimes, and Human Rights' in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993); Stephen D. Krasner, 'Westphalia and All That' in Judith Goldstein and Robert O. Keohane (eds.), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca: Cornell University Press, 1993); Stephen D. Krasner, 'Global Communications and National Power', *World Politics*, vol. 43, 1991, pp. 336-366; Stephen D. Krasner, 'Structural causes and regime consequences: regimes as intervening variables', pp. 1-21, and 'Regimes and the limits of realism: regimes as autonomous variables', pp. 355-368, both in Stephen D. Krasner (ed.), *International Regimes* (Ithaca: Cornell University Press, 1983).

¹¹⁹ See e.g. Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984); Arthur A. Stein, 'Coordination and collaboration: regimes in an anarchic world', pp. 115-140, in Stephen D. Krasner (ed.), *International Regimes* (Ithaca: Cornell University Press,

The state is seen as a rational utility maximizer and as the primary actor within the international system, which – in the absence of a central authority – is characterized as inherently anarchical. In spite of these shared assumptions, thinking within the two perspectives has also developed on the basis of other, diverging assumptions related to state concerns and actions, about the obstacles to international cooperation and the role of powerful states in this. These are presented below.

Figure 4.2 Anarchy and...

Neorealism	Neoliberalism
States are primarily concerned with their survival, security and policy autonomy.	States are concerned with these matters, but they should not be privileged vis-à-vis other important interests.
States engage in power-balancing out of a concern with relative gains.	States develop growing interdependencies and cooperation out of a concern with their own gains.
State actions are determined by the distribution of power and by distributional conflicts.	State actions are primarily determined by the existence of shared interests and mutual gains.
There are significant obstacles to cooperation: anarchy entails a fear of cheating; the concern with survival and autonomy entails reluctance towards developing interdependencies; the primacy of relative gains becomes central as gains are rarely evenly distributed.	The obstacles are exaggerated: cooperation entails growing transparency and ability to coordinate sanctions in cases of cheating; relative gains rarely constitute a threat to survival, and areas of mutual interests are expanding; the concern with absolute gains entails a diffuse reciprocity.
Cooperation is determined by the power structure, and powerful states are key to both the creation and the nature of the cooperation.	Cooperation is primarily a function of the patterns of mutual interests; power relations do influence the nature of cooperation and the distribution of benefits.

The above points to a number of questions or key issues relating to basic assumptions of consequence to the following conceptual discussions.

1983); Duncan Snidal, 'The Limits of Hegemonic Stability Theory', *International Organization*, vol. 39, 1985, pp. 579-614; Kenneth A. Oye (ed.), *Cooperation under Anarchy* (Princeton: Princeton University Press, 1986); Michael Zürn, 'Bringing the Second Image (Back) In: About the Domestic Sources of Regime Formation', pp. 282-311, in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993); and Volker Rittberger, 'Research on International Regimes in Germany: The Adaptive Internalization of an American Social Science Concept', pp. 3-22, in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993).

There is the matter of material and ideational forces, upon which I have already touched. Moreover, in seeking to explain changes in corporate responsibility and the governance of child labor and core labor rights, how do I relate to the entrenched absolute vs. relative gains debate, i.e. the divisive question of assumptions stressing either mutual interests or power and distributional conflicts? I return to these assumptions shortly.

The third of the above perspectives, labeled ‘weak cognitivism’ by Hasenclever, Mayer and Rittberger, is a category resting on the common tendency of the included works to incorporate so-called cognitive variables – ideas, knowledge, etc. – primarily as supplement or intermediate variables rather than positing an ontological and/or epistemological alternative to the first two perspectives. Thus, an increasing number of scholars within the field explicitly accept the key premises of more constructivist approaches, e.g. that (state) actors and the international system are socially constructed. Nevertheless, many opt for a predominantly rationalist, ‘intermediate variable’ solution, where actors are perceived of as rational utility-maximizers whose strategies/means may change as a result of ‘cognitive’ change (conceptualized in various ways), but whose interests and identities remain unaffected by this, i.e., interests and identities are given and stable. Hasenclever, Mayer and Rittberger explain:

*’This seeming paradox clears up when we take into account the rationalist strategy of separating the constitution of states as central actors in international politics from issue-area specific institutional choices. While it appears to be accepted that states are ultimately constituted by the fundamental norms and rules of an international society, the same states are expected to proceed as utility-maximizers once they have to decide on the creation and maintenance of international regimes.’*¹²⁰

I return to this later in this section.

¹²⁰ Hasenclever, Mayer and Rittberger, *Theories of international regimes*, p. 161. In addition to those discussed here, other prominent works focus on types of ideas and causal pathways (see in particular Judith Goldstein and Robert O. Keohane (eds.), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca: Cornell University Press, 1993), on epistemic communities (see especially Peter M. Haas (ed.), ‘Knowledge, Power, and International Policy Coordination’, special issue of *International Organization*, vol. 46, 1992, no. 1), and on perception and felt normative obligation of individual actors (e.g. Ole R. Holsti and James N. Rosenau, ‘The Foreign Policy Beliefs of American Leaders: Some Further Thoughts on Theory and Method’ in *International Studies Quarterly*, vol. 30, 1986, pp. 473-484).

One strand of work, categorized within this perspective, focuses on “learning”, a concept which Virginia Haufler has also posited as one of the three factors driving the contemporary rise in corporate self-regulation.¹²¹ According to Haufler, three broad factors – i) political risk (of activism and regulation), ii) reputation as an asset, and iii) information, knowledge, and learning – are driving the contemporary rise in corporate self-regulation. While clearly incorporating relations of power, distributional conflicts and relative gains concerns, Haufler’s work is closer to the neoliberal or interest-based perspective. Furthermore, information, knowledge, and learning, are incorporated by Haufler as an ‘intermediate’ variable within a largely rationalist, materialist framework. Learning will serve as a point of departure in my discussion of Modelling the solution in section 4.4. It is not an entirely unproblematic concept, however, as I argue below.

Another strand of work, which is less easily categorized but included here, is that on “institutional bargaining”, personified by Oran Young in particular.¹²² In his work on institutional bargaining over the years, Young has persistently sought to theorize *process*. In doing so, Young has forwarded some significant criticisms of the ways in which process in broad terms is treated within regime theory, suggesting that processes generally involve different stages, the political dynamics of which ‘are by

¹²¹ Virginia Haufler, *A Public Role for the Private Sector*. See also Joseph S. Nye, Jr., ‘Nuclear Learning and US-Soviet Security Regimes’, *International Organization*, vol. 41, 1987, pp. 371-402; Ernst B. Haas, ‘Why Collaborate? Issue-Linkage and International Regimes’, *World Politics*, vol. 32, 1980, pp. 357-402; Jack S. Levy, ‘Learning and Foreign Policy: Sweeping a Conceptual Minefield’, *International Organization*, vol. 48, 1994, pp. 279-312.

¹²² Oran R. Young, *Creating Regimes: Arctic Accords and International Governance* (Ithaca: Cornell University Press, 1998); Oran R. Young, ‘The Politics of International Regime Formation: Managing Natural Resources and the Environment’, *International Organization*, vol. 43, 1989, pp. 349-376; Oran R. Young and Gail Osherenko (eds.), *Polar Politics: Creating International Environmental Regimes* (Ithaca: Cornell University Press, 1993); Oran R. Young and Gail Osherenko, ‘Testing Theories of Regime Formation: Findings from a Large Collaborative Research Project’, pp. 223-251, in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993). In their *Theories of international regimes*, Hasenclever, Mayer and Rittberger place Young under the interest-based perspective while acknowledging the marked constructivist elements in Young’s work. This seems somewhat unwarranted to me, especially considering their categorization of e.g. Goldstein and Keohane’s edited volume (*Ideas and Foreign Policy*), which is just as interest-based, under weak cognitivism.

no means the same.’¹²³ Moreover, in the work on institutional bargaining, several more specific concepts and arguments have been presented, which I shall draw upon in the later parts of section 4.4, having returned to some of Young’s broader arguments in the opening of that section.

Finally, the fourth of Hasenclever, Mayer and Rittberger’s perspectives - strong cognitivism – comprises a number of quite diverse contributions, which pose more or less radical epistemological and/or ontological alternatives to the other perspectives. Prominent in this vein is the international society approach¹²⁴ along with a Habermasian “communicative action” approach,¹²⁵ “modernist constructivism”¹²⁶ and Gramsci-inspired contributions¹²⁷ as well as postmodernist and feminist approaches.¹²⁸

¹²³ Young, *Creating Regimes: Arctic Accords*, p. vii.

¹²⁴ Hedley Bull, ‘Society and Anarchy in International Relations’, pp. 75-93, in James Der Derian (ed.), *International Theory: Critical Investigations* (London: MacMillan Press Ltd., 1995); Andrew Hurrell, ‘International Society and the Study of Regimes: A Reflective Approach’, pp. 49-72, in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Oxford University Press, 1993).

¹²⁵ Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989); Friedrich V. Kratochwil and John G. Ruggie, ‘International Organization: A State of the Art on an Art of the State’, *International Organization*, vol. 40, 1986, pp. 753-775.

¹²⁶ Notably Alexander Wendt, *Social Theory*; Alexander Wendt, ‘Collective Identity Formation and the International State’, *American Political Science Review*, vol. 88, 1994, pp. 384-396; Alexander Wendt, ‘Anarchy is What States Make of It: The Social Construction of Power Politics’, *International Organization*, vol. 46, 1992, pp. 391-425; Alexander Wendt, ‘Levels of analysis’; Alexander Wendt, ‘Bridging the Theory / Meta-theory Gap’; Martha Finnemore, ‘Norms, Culture, and World Politics: Insights from Sociology’s Institutionalism’, *International Organization*, vol. 50, 1996, pp. 325-347; Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization*, vol. 52, 1998, pp. 887-917. See also John G. Ruggie, ‘What Makes the World Hang Together? Neoliberalism and the Social Constructivist Challenge’, *International Organization*, vol. 52, 1998, pp. 855-885.

¹²⁷ E.g. Robert W. Cox, *Production, Power, and World Order*, and a range of Cox’ articles compiled in Robert W. Cox (with Timothy J. Sinclair), *Approaches to World Order* (Cambridge: Cambridge University Press, 1996); Craig N. Murphy, *International Organization and Industrial Change: Global Governance since 1850* (Cambridge: Polity Press, 1994); Stephen Gill, *Power and Resistance in the New World*

As Geoffrey Underhill has noted, the work of Robert W. Cox offers ‘a flexible analytical tool of considerable promise for our understanding of international political economy across levels of analysis.’¹²⁹ This promise resides, in part, in the fact that Cox’ framework not only stresses the interplay between material, ideational and institutional forces, but moreover specifies an ontology of three interrelated spheres: social relations of production, forms of state, and world order.¹³⁰ In other words, Cox’ alternative to the mainstream perspectives constitutes one of the most significant exceptions to the previously mentioned state-centrism, the

Order (Hampshire: Palgrave Macmillan, 2003); Stephen Gill, ‘Two concepts of international political economy’, *Review of International Studies*, vol. 16, 1990, pp. 369-381.

¹²⁸ E.g. Richard K. Ashley, ‘The Poverty of Neorealism’, *International Organization*, vol. 38, 1984, pp. 225-286; Richard K. Ashley and R. B. J. Walker, ‘Introduction: Speaking the Language of Exile: Dissident Thought in International Studies’, *International Studies Quarterly*, vol. 34, 1990, pp. 259-268 (and other contributions in that issue); Mark Neufeld, ‘Interpretation and the ‘Science’ of International Relations’, *Review of International Studies*, vol. 19, 1993, pp. 39-61; Roxanne L. Doty, ‘Foreign Policy as Social Construction: A Post-Positivist Analysis of U.S. Counterinsurgency Policy in the Philippines’, *International Studies Quarterly*, vol. 37, 1993, pp. 297-320; J. Ann Tickner, ‘On the Fringes of the World Economy: A Feminist Perspective’, pp. 191-206, in Craig N. Murphy and Roger Tooze (eds.), *The New International Political Economy* (Boulder: Lynne Rienner Publishers, 1991).

¹²⁹ Geoffrey R. D. Underhill, ‘Introduction: Conceptualizing the Changing Global Order’, p. 16, in Richard Stubbs and Geoffrey R. D. Underhill (eds.), *Political Economy and the Changing Global Order* (Ontario: Oxford University Press, 2000). Obviously, disagreements are multiple concerning the precise meaning of Gramsci’s concepts and their interrelation (in part due to the circumstances under which most of them were developed). Cf. Quintin Hoare and Geoffrey Nowell-Smith (eds.), *Antonio Gramsci: Selections from the Prison Notebooks* (London: Lawrence & Wishart Ltd., 1971). See also the thematically organized volume by David Forgacs (ed.), *The Antonio Gramsci Reader: Selected Writings 1916-1935* (New York: New York University Press, 2000).

¹³⁰ In short, Cox argues for an ontology consisting of three broad, interrelated categories of forces: i) material capabilities and relations, productive and destructive potentials, in their dynamic form existing as technological and organizational capabilities, in their accumulated forms as stocks of equipment and wealth; ii) ideational forces understood as widely shared collective images or intersubjective meanings and the rationalities of certain social groups; and iii) institutional forms that tend to reflect the power structure at their point of origin, to legitimate, stabilize and perpetuate a given order, including through the institutionalization of conflict/serving as a battleground (along the way, however, institutions take on a life of their own). See e.g. Cox, *Production, Power, and World Order*, pp. 11-33.

incorporation of social relations of production within the framework being particularly relevant to the dissertation at hand. Moreover, the promise in part stems from the marked analytical emphasis on exploring the limits, inherent contradictions and sources of conflict and potential transformation inherent in different historical orders. This emphasis, I would argue, is particularly helpful when seeking to understand and explain social change. Thus, while the strengths of Cox' and other Gramsci-inspired contributions generally lie in the conceptualization and analysis of broader structural tendencies and historical transformations, I have also found notions of state, power and hegemony to be quite useful and relevant to the discussion of mutual interests vs. distributional conflicts below, and they have influenced the basis for the more concrete conceptualization of more specific processes and struggles in the following sections.

A discussion of key issues

The above points to a number of central and basic questions within the field, some of which it may be helpful to confront before proceeding. As mentioned, there is the matter of material and ideational forces, and there is the absolute vs. relative gains debate, i.e. the divisive question of assumptions stressing either mutual interests or power and distributional conflicts.

In beginning to approach these questions, let us consider Zacher and Sutton's illustrative example of an application of the neoliberal perspective – with its emphasis on increasing interdependence, mutual interests, and market failures – to the study of the international regimes governing four industries.¹³¹ Here, the authors emphasize the importance of growing interdependencies, implying both expanding mutual interests in cooperation, especially in the economic realm, as well as increasing gains from such cooperation.¹³² The core of the subsequent argument may be outlined as follows. To begin with, Zacher and Sutton define states' concerns as two-fold – to increase their populations' economic welfare and to maintain their policy autonomy in critical issue areas – implying that a great number of important regimes either function to facilitate the flow of commerce or to protect state sovereignty and decision-making powers.

¹³¹ Mark Zacher and Brent A. Sutton (eds.), *Governing global networks: International regimes for transportation and communications* (Cambridge University Press, 1996).

¹³² Zacher and Sutton, *Governing global networks*, p. 3 and 21.

Following from this, and from the characterization of international politics as comprising both shared and conflicting interests, the authors go on to argue that in some cases conflicting interests do override any common interest and possibility of cooperation. However, the ‘existence of important mutual interests in cooperation in particular issue areas generally assures the creation and durability of international regimes’, and divergent interests, distributional conflicts, and power relations ‘usually’ do not block cooperation.¹³³ The conditions in which such mutual interests are likely to be shared by states are defined in terms of market failures according to neoclassical economic theory, i.e. as situations where governmental intervention to regulate a market that cannot operate effectively will enhance total welfare gains.¹³⁴

Ideational forces have often been explicitly acknowledged, but just as often excluded or assumed away by scholars within the neoliberal perspective, and this appears to be the case in Zacher and Sutton’s work as well.¹³⁵ There are examples of alternative approaches to market failures, though. Meyer et.al., for example, combine a largely materialist approach to environmental market failures with more constructivist insights on the changing knowledges, discourses and rationalities about the environment, and adding also the significance of changing institutional frameworks and the UN in particular.¹³⁶ Still, this tends toward an ‘intermediate variable’ solution, cf. above.

As mentioned above, the Gramsci-inspired contributions offer another alternative, as illustrated in Cox’ argument explicitly referring to the work of Gramsci:

‘The juxtaposition and reciprocal relationships of the political, ethical, and ideological spheres of activity with the economic sphere avoid

¹³³ Zacher and Sutton, *Governing global networks*, p. 16 and 35.

¹³⁴ The conditions that, according to the theory, must be satisfied for an allocation of scarce resources through market mechanisms to result in a socially optimal outcome are: perfect information; zero transaction costs; atomistic markets; perfect factor mobility; and actor rationality in the pursuit of utility maximization (Zacher and Sutton, *Governing global networks*, p. 24).

¹³⁵ See e.g. Keohane, *After Hegemony*, pp. 6, 66-67, 121, 126-127, 132.

¹³⁶ John W. Meyer et. al., ‘The Structuring of a World Environmental Regime, 1870-1990’, *International Organization*, vol. 51, 1997, No. 4.

*reductionism. It avoids reducing everything either to economics (economism) or to ideas (idealism). In Gramsci's historical materialism (which he was careful to distinguish from what he called "historical economism" or a narrowly economic interpretation of history), ideas and material conditions are always bound together, mutually influencing one another, and not reducible one to the other. Ideas have to be understood in relation to material circumstances. Material circumstances include both the social relations and the physical means of production. Superstructures of ideology and political organization shape the development of both aspects of production and are shaped by them.'*¹³⁷

Following from the discussion of basic premises in Chapter 2, however, in constructing the conceptual framework here, ideational forces are neither assumed away, nor have I sought to employ a priori assumptions relegating ideational structures and forces to secondary positions. Rather, I have sought to incorporate both and the interplay between them.

Another question is that of mutual interests vs. power and distributional conflicts. Neither the general tendency within the neoliberal perspective, followed by the Zacher and Sutton, to downplay the significance of distributional conflicts and power relations, nor the general assumption that actors' utilities and interests do *not* incorporate the gains and positions of other actors, seem entirely reasonable. For example, with a transformation in the relational configuration pertaining to certain (working) conditions and social relations of production and consumption – and the market and/or governance failures that may be said to exist – the ways in which different actors relate to those conditions and that market or governance failure, and thereby the interests they might have in (de-) politicizing it change, implying a potential (and likely) change in both the configuration of mutual interests *and* distributional conflicts involved in concrete cases. Under such circumstances, and quite contrary to e.g. Zacher and Sutton, it is reasonable to assume that actors involved in the struggles to shape or re-shape corporate responsibilities in relation to child

¹³⁷ Robert W. Cox, 'Gramsci, hegemony, and international relations: an essay in method (1983)' in Cox (with Sinclair), *Approaches to World Order*, pp. 131-132. Or, as Gramsci put it: 'It may be ruled out that immediate economic crises of themselves produce fundamental historical events; they can simply create the terrain more favourable to the dissemination of certain modes of thought, and certain ways of posing and resolving questions involving the entire subsequent development of national life... The specific question of economic hardship or well-being as a cause of new historical realities is a partial aspect of the question of the relations of force at their various levels.' Cited from Forgas, *The Antonio Gramsci Reader*, p. 208.

labor and core labor rights are very much so concerned with other actors' positions and gains, and that relations of power and distributional conflicts thus are central to explaining the changes at hand. Certainly, as I will argue below, this does not entail that the existence of mutual interests in resolving problems in one way rather than another are irrelevant. It does mean, however, that it might be of interest to consider in greater detail the arguments why power and distributional conflicts should be privileged.

Grieco and Krasner – both of which tend to conceptualize power and conflicts in terms of material capabilities – are two of the more prominent voices here. While Grieco has sought to develop his argument through an 'amended' version of Prisoner's Dilemma (PD) (taking into account both absolute and relative gains) and in his model is mostly concerned with power as an end, Krasner has taken a somewhat different route, tending toward a view of power as a means. Krasner's argument is two-fold. First of all, using PD to analyze what is defined as market failures entails the assumption of (rational) *egoism*, by virtue of which moving to Pareto-efficiency – making at least one actor better off and none worse off – is primarily a question of information and monitoring *and* the intelligence of actors to find a solution to cheating. If, however, relative gains are relevant, then even 'making at least one actor better off and none worse off' obviously involves an entirely different, and possibly more important, problem: distributional conflict in which relations of power play a central role.¹³⁸ Secondly, in many cases, dilemmas of common aversion (beyond simple coordination problems) are claimed to be more characteristic of international politics than the situation depicted by PD. Thus, if the collective action problem involves several efficient equilibrium outcomes – as opposed to PD – but the actors prefer different ones, 'The problem is not how to get to the Pareto frontier [as in PD] but which point along the frontier will be chosen.'¹³⁹ Again, a distributional conflict in which relations of power play a central role. Krasner subsequently specifies three ways in which power may be relevant in the resolution of distributional conflicts: power may be used to determine who can play in the first place, to dictate the rules of the game (e.g. who moves first), and to change the payoff matrix (e.g. through tactical issue-linkage or threats).¹⁴⁰

¹³⁸ Krasner, 'Global Communications and National Power', p. 336.

¹³⁹ Krasner, 'Global Communications and National Power', p. 340.

¹⁴⁰ Krasner, 'Global Communications and National Power', p. 340.

Following Krasner, then, the problem in achieving the “proper” change in corporate responsibility and governance vis-à-vis certain problems does not merely involve a problem of coordination between different parties which are assumed to ultimately prefer that “proper” change (the equilibrium outcome in PD). Rather, the different parties prefer more or less diverging outcomes and are from the outset not prepared to enter into a demanding compromise: rather than a mutual interest in reaching a certain outcome, what the parties have in common is a shared aversion toward compromise from the outset. That corporations and activists may occasionally prefer different outcomes cannot come as a major surprise, but the argument applies to intra-industry differences as well.¹⁴¹

In seeking to conceptualize the preconditions and processes involved in bringing about changes in corporate responsibility and governance, relegating power relations and the uses of power during a process of politicization and (re-) solution to a secondary, less significant level does not seem acceptable. Conversely, it seems equally unreasonable as an a priori assumption to claim that the existence of mutual interests between different parties should not also be considered potentially significant. Yet, the two perspectives are not easily reconciled, cf. Grieco’s attempt at amending PD or Zacher and Sutton’s incorporation of power as a secondary element, presumably because of the hefty reliance on rigid game-theoretic models, the systemic approach and the one-dimensional conception of structures and interests as material. Once again, it may be useful to draw upon the historicist and more flexible work of Cox and, in particular, Gramsci’s notion of power and hegemony.

In short, Gramsci – referring to Machiavelli’s *The Prince* – ‘took over from Machiavelli the image of power as a centaur: half man, half beast, a necessary combination of consent and coercion.’¹⁴² Gramsci correspondingly distinguished between two modalities of domination and power within the state-civil society complex,¹⁴³ namely coercion or force

¹⁴¹ See e.g. Jenkins, ‘The political economy of codes of conduct.’

¹⁴² Cox, ‘Gramsci, hegemony, and international relations’, p. 127; cf. Gramsci’s own formulation in Hoare and Nowell-Smith, *Prison Notebooks*, pp. 169-170.

¹⁴³ The notions of power and hegemony are closely related to Gramsci’s understanding of the state: ‘Gramsci’s enlargement of the concept of the state includes the limited conventional idea of the state as the machinery of coercion or the monopoly of the legitimate use of physical force within a given country, i.e., legal structure and machinery for law making, policy formulating, and enforcement through

and hegemony as a consensual form of domination based on ‘*the successful mobilization and reproduction of the ‘active consent’ of dominated groups by the ruling class through their exercise of intellectual, moral, and political leadership. This should not be understood in terms of mere indoctrination or false consciousness – whether seen as the reflex of an economic base or as an arbitrary set of mystifying ideas. For the maintenance of hegemony involves taking systematic account of popular interests and demands, shifting position and making compromises on secondary issues to maintain support and alliances in an inherently unstable and fragile system of political relations [...]*’¹⁴⁴

This suggests the possibility of conceptualizing and analyzing the preconditions and processes related to corporate responsibility and the governance of child labor and core labor rights in ways which move beyond the polar positions above: That preconditions and processes may be seen as more complex, as involving both shared ideas and material interests as well as distributional and ideational conflicts; that processes may be seen as constant struggles to reproduce or transform social problems and their solutions, identities and relations; that struggles may be seen as tugs of war involving fundamental conflicts, but simultaneously as “negotiations” entailing elements of accommodating and taking into account, of selectively domesticating (some of) the ideas and interests of other parties in making concessions and compromises, cf. the quote above.¹⁴⁵

administration, police, and military. It also includes the machinery of organizing consent through education, opinion shaping, and ideology formation and propagation.’ Cox, *Production, Power, and World Order*, p. 409, n. 10. In addition to this general, content empty concept of the state, a more particularized and differentiated concept of what the state *is* in a concrete historical instance is contained in the notion of a historic bloc, i.e. the fit between material, ideational and institutional forces in a particular configuration of social forces upon which state power ultimately rests and which gives content to a historical state. Cox, *Production, Power, and World Order*, p. 105 and 409, n. 10.

¹⁴⁴ Jessop, *The Capitalist State*, p. 148.

¹⁴⁵ See also Bob Jessop, *State Theory: Putting the Capitalist State in its Place* (Cambridge: Polity Press, 1990), p. 217; William Roseberry, ‘Hegemony and the Language of Contention’ in Gilbert M. Joseph and Daniel Nugent (eds.), *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico* (Durham: Duke University Press, 1994), pp. 360-361.

4.3 Preconditions

Characteristics of the problem

A central precondition in any analysis seeking to explain a change in corporate responsibility and the way in which a certain problem is governed, as in the three agreements, is the problem itself. The facts of responsibility and a framework of governance existing and being changed presuppose, in other words, the existence of some kind of social problem and a more or less widely felt need to act on this. Certainly, a dramatic or considerable shift (actual or impending) in the characteristics of the problem must be considered a potentially quite significant precondition for such changes. For this reason alone, analyzing the characteristics of the problem is necessary.

Yet, this is not as straightforward as it might seem. First of all, problems do not automatically translate into their own solutions. Second, and more fundamentally, what is a social problem? As Goode has shown in his article on the sociology of social problems, there are different answers to that question. In the eyes of some, a social problem is defined by 'the existence of an objectively-determinable, concretely-real damaging or threatening condition.' Others prefer to distinguish between conditions and problems, holding that social problems exist only when certain conditions come to be socially defined as problems. In the extreme, the latter position implies that 'a given condition need not even exist in the objective sense to be defined as a social problem.'¹⁴⁶

Referring back to the earlier discussion of the epistemological problem and world independence in chapter 2, the distinction between conditions and social problems is warranted. Conditions may or may not exist, and they may or may not be perceived of as problematic. In other words, conditions and problems should not be conflated, and a (social) problem, as I use the concept here, is a condition or set of conditions socially defined as problematic: 'No condition is a social problem until someone considers it a social problem.'¹⁴⁷ Furthermore, the processes of socially defining the

¹⁴⁶ Erich Goode, 'The American Drug Panic of the 1980s: Social Construction or Objective Threat?' in *Violence, Aggression and Terrorism*, Vol. 3, No. 4, 1989, p. 328.

¹⁴⁷ Joel Best, 'Typification and Social Problems Construction' in Joel Best (ed.), *Images of Issues: Typifying Contemporary Social Problems* (Second Edition) (New York: Aldine de Gruyter, 1995), p. 5.

problem and its solution occur (in part) on the basis of, and may relate in a variety of ways to, the potentially quite complex and multifaceted conditions which are open to varying interpretations and representations by different actors with more or less diverging, conflicting interest. It follows that “characteristics of the problem” does not refer to a problem defined but in these terms rather refers to these conditions, and that the preconditions so conceptualized comprise both the multifaceted conditions *and* the constraints and potentials that these provide for politicization, problematization and resolution.

Thus, the characteristics of the problem are assumed to be potentially significant in two ways. First of all, dramatic or considerable changes, actual or impending, may be of central significance in setting in motion a series of events. In analyzing the characteristics of the problem, we need to ask: Did such dramatic changes occur or were they (perceived to be) impending? Second, in line with the argumentation in chapter 2, even in the absence of such dramatic changes, the characteristics of the problem contain part of the constraints and potentials for politicization, problematization and resolution, and as such may contribute significantly to shaping the process and outcome by being actively drawn upon in different ways in the interplay between different subjectivities in the process: What were the politicization, problematization and resolution constraints and potentials in the characteristics of the problem?

Bearing this in mind, and with a view to the subsequent analysis of process, I have sought to focus more specifically on facets that must be considered potentially significant from an objectivist point of view and which tend to be central in the interplay between different perspectives in debates on corporate responsibility:

- the existence and extent of the problem
- the gravity of the problem
- the breadth and depth of the problem
- the il/legality of the problem

To begin with, we need to consider *the existence and extent of the problem*, in factual terms (numbers, statistics). For example, was child labor being used? And what was the extent and proportions of this? We must proceed as if it does matter if certain conditions exist. Should it turn out that this was not the case, we will at least have reached an important

conclusion about the interplay of different perceptions of reality vis-à-vis that reality. Moreover, denials of the factual existence of certain conditions are not unusual reactions to attempts at problematizing those very same conditions. Beyond the mere existence, very often debates on social problems involve understatements and exaggerations of the extent or proportions of conditions – or, as I would put it, minimizations and maximizations in the process of claims-making (further below). While objectively measurable, analyzed as preconditions, the existence and extent in factual terms may, of course, have been fraught with considerable uncertainty or even lack of apprehension and awareness on part of the actors involved.

In addition, the nature of the problem in terms of *the gravity of the problem* is assumed to be significant. Unlike the above, gravity is not conceived of as a numerical matter, as I use it: the number of sweatshop workers is a matter of extent, whereas gravity concerns the ‘qualitative’ aspects of the conditions. The a priori assumption is that it may be significant whether the conditions are akin to Bales’ descriptions of new forms of slavery or a one-off minor violation of the U.S. Fair Labor Standards Act.¹⁴⁸ Like the above, debates on problems often involve minimizations and maximizations of gravity, and the gravity of conditions may constitute the basis for disputes between conflicting socio-cultural perspectives.¹⁴⁹ Indeed, relativizing problem minimizations or denials are not unusual, be it out of genuine beliefs and/or because such minimization or denial cannot be sustained on factual grounds. As demonstrated by Margaret Keck and Kathryn Sikkink’s example of the issue of female genital mutilation, the gravity of the condition also includes the constraints and potentials related to (re-)naming the problem.¹⁵⁰

The characteristics of the problem in terms of *breadth and depth* is another facet assumed to be significant. By breadth I mean the range of related conditions or issues (focusing here on child labor and core labor rights, not all of which are necessarily part of concrete debates). For example, what

¹⁴⁸ Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley: University of California Press, 1999).

¹⁴⁹ See Goode, ‘The American Drug Panic’, p. 339 on severity and the ‘materials’ that are drawn upon in constructing social problems.

¹⁵⁰ Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998), p. 20.

might be said about freedom of association, the right to collective bargaining, nondiscrimination, etc.? Conditions may be in keeping with international law on some counts and in blatant violation on others, for example. It may be that those violations apply to women workers only, whereas male workers have it differently. By depth I mean the main underlying structural pressures and constraints as well as the consequences, for the workers and the employers. For instance, does child labor exist within the context of household poverty, of unemployed adult family members, of socio-cultural and political traditions condemning and/or condoning the work of children, etc.?¹⁵¹ Do employers have political-economic interests in employing child workers, directly or indirectly? Breadth and depth, as I will argue more extensively in the following subsection, are assumed to be central in shaping the processes, and the two are moreover dynamically related: breadth often comes at the expense of depth and vice versa.¹⁵²

Finally, the element of *il/legality*, both under local and international law, is assumed to be potentially significant as well. In the narrow sense, certain conditions come with a host of strictly legal constraints and potentials, such as possibilities of seeking redress, etc.¹⁵³ In a broader sense, following Wilson, law may also be seen as a system of meanings that is constitutive of social realities, and law may serve as a form of power, e.g. providing legitimacy in concrete political processes.¹⁵⁴ Thus, the ability to categorize certain conditions or practices as legal or illegal may be quite important in struggles to define the problem, just as such categorizations may influence the substance and pace of modelling of the solution(s).

¹⁵¹ See Myron Weiner, *The Child and the State in India: Child Labour and Education Policy in a Comparative Perspective* (Princeton: Princeton University Press, 1991). For a discussion of inclusions and exclusions from a gender perspective, see also Stephanie Barrientos, 'Flexible' female employment and ethical trade in the global economy' in P. Newell, S. M. Rai and A. Scott (eds.), *Development and the challenge of globalization* (London: ITDG Publishing, 2002)

¹⁵² Cf. e.g. Peter Utting, *Business Responsibility for Sustainable Development*, UNRISD Occasional Paper 2000 No. 2 (Geneva: UNRISD, January 2000), p. 23.

¹⁵³ See e.g. Halina Ward, *Legal Issues in Corporate Citizenship* (London: International Institute for Environment and Development, 2003); Garvey and Newell, *Corporate accountability to the poor*.

¹⁵⁴ Richard A. Wilson, 'Human Rights, Culture and Context: An Introduction', pp. 14-18, in Richard A. Wilson (ed.), *Human Rights, Culture and Context: Anthropological Perspectives* (London: Pluto Press, 1997).

To summarize, the characteristics of the problem – the existence and extent, the gravity, the breadth and depth, and the il/legality – are potentially significant in two ways: through a dramatic shift (actual or impending) and/or through the constraints and potentials forming the basis for potential politicization, problematization and resolution. In the following subsection I will suggest that process be analyzed in terms of four related aspects: struggles to define the problem, targeting, economic coercion, and modelling the solution. The potential significance of the characteristics of the problem relates to all four.

First and foremost, the characteristics of the problem are assumed to be significant in triggering and shaping the struggles to define the problems, and the facets and dynamics alluded to above will be treated further in the following subsection. Second, seeing as problems and solutions are often closely related, the characteristics of the problem in this way hold an indirect significance to the modelling of the solution. Beyond this, however, modelling occurs not only on the basis of the constraints and potentials of the struggles to define the problem: regardless of how these struggles play out, modelling also occurs on the basis of the constraints and potentials inherent in the characteristics of the problem (further below). Third, the characteristics of the problem are potentially significant in relation to targeting as well. Consider the extent and gravity of the problem: theoretically I would not expect to find the top ten oil companies in the world targeted in a global campaign on the basis of an isolated and relatively minor oil spill. Nor would I assume a single sweatshop with a handful of employees to form a sufficient basis for a broad-based campaign targeting a number of clothing companies and retailers. Fourth, economic coercion (threatened or actualized) is often closely related to the characteristics of the problem, for instance through trade regulation.¹⁵⁵

Characteristics of the framework of governance

As defined earlier (chapter 1), the framework of governance includes national and international legislation and patterns of enforcement, and it also includes the norms and practices of corporate conduct (focusing here on child labor and core labor rights). The characteristics of the already existing framework of governance must be assumed to be central to any

¹⁵⁵ Cf. e.g., Daniel S. Ehrenberg, ‘The Labor Link: Applying the International Trading System To Enforce Violations of Forced and Child Labor’ in *Yale Journal of International Law*, Vol. 20, No. 2, 1995.

processes leading to a change therein. The outcome, the change, presupposes that these processes have involved the articulation of a need to act differently – an articulation that can only occur on the basis of that which is changed, a need and a difference that must be assumed to have as a central reference point that which is found in need of difference: the characteristics of the framework of governance.

As with the characteristics of the problem, the framework of governance may be significant in more than one way. We may find that there have been significant shifts in the framework, or that such a shift was impending: regulatory oscillations may be significant in triggering a chain of events and in constituting (part of) the institutional basis and reference point during the processes. This may be in the form of labor market deregulation, whether through legislation or de facto changes in patterns of enforcement. Or we may find a shift in the opposite, (re-) regulating direction, where some of the problematized conditions are side-effects stemming from the introduction of new legislation, actual or impending, aimed at protecting the workers, the children, the endangered species, etc. And it may be that a significant shift has occurred in labor-related trade regulation, actual or impending.

Moreover, in constituting (part of) the institutional basis and reference point during the processes, the framework of governance embodies a number of constraints and potentials that may significantly shape the processes that occur (or do not occur because of the framework). For example, it influences what may be categorized as legal and illegal (though it does not determine such categorizations entirely, of course). The potential significance of the framework is much broader, however, as it may provide constraints and potentials relevant to the legitimation of problems and solutions alike – a reference point for allegations, accusations, justifications, etc. And it may provide constraints and potentials of fundamental significance to targeting and economic coercion during the processes, for instance if the possibility of filing a multibillion dollar class-action law suit against a foreign TNC exists as an alternative to campaigning against unreceptive local state authorities.

Furthermore, *gaps* may be particularly significant. We may assume that processes leading to a change in the framework of governance involve as a central facet the “deficiencies” of this framework, recognizing that the terminology employed (the market failures, the governance failures, the gaps between rhetoric and reality, the improvements, etc.) may vary as

much as the preferred outcome, cf. Krasner above. Whatever terminology one prefers, the change may draw heavily on and retain a number of facets of the existing framework, but – by definition – the need and difference above imply deficiencies or gaps. As Keck and Sikkink have argued in their discussion of accountability politics:

‘Networks devote considerable energy to convincing governments and other actors to publicly change their positions on issues. This is often dismissed as inconsequential change, since talk is cheap and governments sometimes change discursive positions hoping to divert network and public attention. Network activists, however, try to make such statements into opportunities for accountability politics. Once a government has publicly committed itself to a principle – for example, in favor of human rights or democracy – networks can use those positions, and their command of information, to expose the distance between discourse and practice. This is embarrassing to many governments, which may try to save face by closing that distance.’¹⁵⁶

The gap between rhetoric and reality – the law, the norms and public statements of commitment vis-à-vis the patterns of enforcement and corporate labor practices – may come in different forms. In many (child labor/labor) cases, legislation may have been in place for decades or even longer, but the framework may be characterized by an ineffective or inconsequential pattern of enforcement on part of the public authorities charged with this task.¹⁵⁷ In such cases, the gap may not be a new one and it may be formally associated with the responsible authorities. Yet, might we not expect to see a process pattern similar to Keck and Sikkink’s boomerang pattern in the sense that actors other than the local state authorities failing to enforce the existing regulation are targeted (with all that this entails in terms of struggles to define the problem, availability and application of mechanisms of economic coercion...)? And, moreover, might we not expect that those targets – when it comes to labor rights issues involving, to a considerable extent, global supply chains and business partners in other countries – be the corporations that (appear to) dominate the supply chains?

¹⁵⁶ Keck and Sikkink, *Activists beyond Borders*, p. 24.

¹⁵⁷ See e.g. Myron Weiner’s characterization of ‘The Rhetoric’ and ‘The Reality’ of Indian politics on child labor and compulsory, universal, primary education; Weiner, *The Child and the State in India*, pp. 7-15.

Of course, the gap may also exist in the form of an *absence* of formal rules and public legislation. Such an absence, and its normative underpinnings, may be assumed to be as significant as any actual rules and regulations, in particular when it comes to the “non-regulation” of specific aspects or issues where such nonregulation may be held out as unreasonable by virtue of the characteristics of the problem as well as the characteristics of the framework of governance applicable to closely related aspects or issues. Consider the following statement by U.S. Senator Tom Harkin, for example:

‘Our laws prohibit the importation of ivory, endangered species such as the spotted turtle, and products made from prison labor. Yet, our laws fall silent when it comes to goods made through the exploitation of children. We look out for animals and prisoners, but fail to protect youngsters from exploitive and abusive labor.’¹⁵⁸

Industry characteristics: power, control, vulnerability

Finally, we must assume that certain industry characteristics may significantly contribute to shaping any process and outcome related to corporate responsibility and the governance of child labor and core labor rights. To begin with, the basic nature of the industry or business must be assumed to be related to the characteristics of problem and in particular to the types of issues potentially subject to a problematization. To this basic nature of the industry we might add the preferred mode of operation (e.g., do major TNCs often engage in joint-venture partnerships with foreign governments?), the degree of asset specificity, and the prime location factor (e.g., low-cost labor or market access?).¹⁵⁹

Extractive industries and companies, for example, generally have quite high asset specificity and long investment horizon but a relatively lower interest in low-cost labor. Their socioenvironmental (human rights) impacts, on the other hand, are often quite grave in material terms as well as being highly symbolic. Moreover, since the wave of decolonization and oil industry nationalizations in the late 1960s and 1970s, international oil companies have been partnering up with the national oil companies of

¹⁵⁸ Tom Harkin, ‘Put an End to the Exploitation of Child Labor’ in *USA Today Magazine*, January 1996.

¹⁵⁹ See e.g. Haufler, *A Public Role for the Private Sector*, p. 25.

various host countries. This can become problematic if the government partner is severely repressive, cf. the controversy over the trial and execution of Ken Saro-Wiva and the role of Royal Dutch/Shell in Nigeria, or when the government partner is more or less absent in the area in terms of social institutions and/or regulation of socio-environmental impacts, as in the case of Texaco in Ecuador.¹⁶⁰

When focusing on child labor and core labor rights, in turn, we are more likely to encounter industries involving labor-intensive and, often, fairly low-skill labor, the cost of labor tending to be an important location factor. Compared to extractive industries, moreover, there will be a relatively lower asset specificity and a comparatively shorter investment horizon. As Haufler notes, however, this combination – the relocation of production to exploit low-cost labor – is precisely what makes such companies likely targets for criticism, and – in some cases – susceptible to pressure.

Yet, if these are assumed to be characteristics more generally applicable to this or that industry per se, how can we explain the involvement (or lack thereof) of some companies or groups of companies, whether in serving as targets or in their engagement in the struggles to define the problem and solution? If we are to analyze and explain more concrete processes and outcomes, we need to analyze more concretely the competitive dynamics and *the positions of power, control and vulnerability* embedded within industry structure. These positions (relations) of power, control and vulnerability hold constraints and potentials of potential significance to different parts of the processes to be analyzed. Following the Global Commodity Chains approach (GCC), an industry may be conceived, and analyzed, in terms of i) the *territoriality* of the chain, i.e. the spatial dispersions or concentration of production and distribution networks; ii) the *input-output structure*, i.e. a description of the sequence of value-adding economic activities in terms of nodes, activities, roles and relationships; iii) the *governance structure*, i.e. the authority and power relations determining how financial, material and human resources are allocated and flow within the chain; iv) the *institutional framework*, i.e.

¹⁶⁰ See e.g. Mitchell (ed.), *Companies in a World of Conflict*; Jędrzej George Frynas, 'Political instability and business: Focus on Shell in Nigeria' in *Third World Quarterly*, Vol. 19, 1998, pp. 457-477; Skogly, 'Complexities in Human rights Protection'; Andrew Rowell and Stephen Kretzmann, *All For Shell* (San Francisco; Project Underground, 1997).

the framework of national and international regulation relevant to the chain, including state development strategies and trade policies.¹⁶¹

Theoretically we may furthermore place considerable emphasis here on the third of these dimensions, the governance structure, which is also central in the GCC approach as such. The first two dimensions above are primarily descriptive in nature, and although they are relevant in the analysis as a basis for understanding and analyzing the third dimension, the potential significance in theoretical and explanatory terms may reasonably be captured in the analysis of the governance structure and the positions of power, control and vulnerability that this entails. For example, a marked concentration in territorial terms of some activities in a given chain may imply that companies are not only more likely to operate with similar labor practices and working conditions, under a similar governance framework, but that they may therefore also to some degree tend to have a shared problem and a shared vulnerability to e.g. trade sanctions. The same argument applies to the institutional framework. While characterizing the framework of governance separately has already incorporated a central part of this in the analysis, the constraints and pressures stemming from quota-related dynamics, triangle manufacturing, etc., may be incorporated into the analysis of positions of power, control and vulnerability.

More specifically it is the distinction in terms of governance structure between dominant and subordinate nodes that I find to be particularly

¹⁶¹ See Gary Gereffi and Miguel Korzeniewicz (eds.), *Commodity Chains and Global Capitalism* (Westport, Connecticut: Greenwood Press, 1994); in particular the contribution therein by Gary Gereffi, 'The Organization of Buyer-Driven Global Commodity Chains: How U.S. Retailers Shape Overseas Production Networks'. Cf. also Richard P. Appelbaum and Gary Gereffi, 'Power and Profits in the Apparel Commodity Chain' in Edna Bonacich et.al. (eds.), *Global Production: The Apparel Industry in the Pacific Rim* (Philadelphia: Temple University Press, 1994); Gary Gereffi, 'Global production systems and third world development' in Barbara Stallings (ed.), *Global change, regional response: The new international context of development* (Cambridge: Cambridge University Press, 1995); Gary Gereffi, 'Global Commodity Chains: New Forms of Coordination and Control Among Nations and Firms in International Industries' in *Competition and Change*, Vol. 1, 1996; Gary Gereffi, 'International trade and industrial upgrading in the apparel commodity chain' in *Journal of International Economics*, Vol. 48, 1999; Gary Gereffi, 'Shifting Governance Structures in Global Commodity Chains, With Special Reference to the Internet' in *American Behavioral Scientist*, Vol. 44, No. 10, June 2001; Philip Raikes, Michael Friis Jensen and Stefano Ponte, *Global Commodity Chain Analysis and the French Filière Approach: Comparison and Critique*, CDR Working Paper 00.3, February 2000 (Copenhagen: Centre for Development Research, 2000).

relevant.¹⁶² To begin with, we may assume that there are *inter-nodal differences* and *intra-nodal similarities* in terms of the positions of power, control and vulnerability and therefore in terms of the constraints and potentials in relation to a problematization, politicization and resolution of certain conditions and corporate responsibility. In other words, dominant nodes face similar constraints and potentials, as do subordinate nodes, and the constraints and pressures faced by dominant nodes differ significantly from those experienced by subordinate nodes.

Subordinate nodes are, by definition, the less powerful agents within the industry. They are dependent on their industry partners, the more dominant nodes. Moreover, they tend to be under pressure from these more dominant nodes, in part related to the often more fragmented market structure and fiercer competition that tend to be characteristic of the industry bottom of the hierarchy.¹⁶³ In relation to controversies over corporate responsibility, child labor and core labor rights, the typical example would be developing country manufacturers, engaged in labor-intensive production, dependent on exports and foreign buyers (i.e., little power and quite vulnerable). Dominant nodes, in turn, are, by definition, the more powerful, key agents. They may wield considerable market power and have a strong influence on how production is organized and carried out, including where and by whom. They, too, may face severe pressures, albeit this tends to be from their nodal companions, their competitors, and the market structure tends to be comparatively more concentrated. These are, in other words, the agents that one would expect to have the power to influence and shape the practices of their partners and a controversy over corporate responsibility.

¹⁶² Another common distinction is that between buyer-driven and producer-driven chains. While buyer-driven chains to a higher degree than producer-driven chains tend to be associated with labor intensive production, and therefore might be a useful and relevant distinction in this dissertation, it is not a distinction without problems. See e.g. Raikes, Friis Jensen and Ponte, *Global Commodity Chain Analysis*, p. 7 and 22, and Gereffi, 'International trade and industrial upgrading'. Moreover, in theoretical and explanatory terms it is a less relevant distinction in that it is based on a broad typologization of industrial organization possibilities. In other words, although we may establish a broad, typological correlation between one type of chain and one type of corporate responsibility issues, for example, in order to analyze and explain concrete processes and outcomes, we need to go beyond the typology and theorize, analyze the positions of power, control and vulnerability in a given chain. This will, of course, show whether the given chain is a predominantly buyer-driven or producer-driven chain.

¹⁶³ E.g. Kate Raworth, *Trading away our rights: Women working in global supply chains* (Oxford: Oxfam International, 2004).

Yet, power is a double-edged sword, and the dominant position often comes with its own share of vulnerability and targetability: in problematizing conditions somewhere in a global commodity chain, Baptists and bootleggers alike generally acknowledge the social and symbolic power involved in focusing on the large, dominant and often well-known industry players involved – as well as recognizing that these are very often the actual power-holders of the global commodity chains and therefore have the capacity to impose changes in CSR on their subordinate GCC-partners.¹⁶⁴

In relation to struggles to define the problem, for example, I would assume that key agents within the dominant node(s) are more likely to be drawn into these, and that they are both more able and willing to engage in these than are subordinate industry players. The same applies to the processes of modelling the solution – not all companies are in a position where they are willing and able, not to mention even expected or invited, to negotiate with other non-industry players, perhaps on part of broader sections of the industry. The positions of power, control and vulnerability may also be significant in relation to targeting and economic coercion, the constraints and potentials relating both to the identity and quality of potential targets and the means of economic coercion available, but bearing also on the constraints and potentials of handling the spotlight (e.g., re-targeting by passing on the blame, which not all companies can allow themselves to do) and economic pressure, actual or threatened.

We nevertheless have to assume that there are also *significant intra-nodal variations within the dominant node(s)* as companies within the same node may occupy quite different positions and therefore face different constraints and potentials when it comes to a process related to corporate responsibility.¹⁶⁵ Not all companies have the same significance in terms of shaping industrial organization, and the same goes for corporate responsibility processes and outcomes. First of all, the sheer *size* of a company may be significant. Companies within a dominant node include larger and smaller ones, not all of which wield the same power over their

¹⁶⁴ See Utting, *Business Responsibility for Sustainable Development*, and Naomi Klein, *No Logo* (London: Flamingo, 2000) for a similar argument. Cf. also Haufler's emphasis on reputation as one of three factors driving the shift in industry self-regulation (Haufler, *A Public Role for the Private Sector*).

¹⁶⁵ There are variations within all nodes in a chain, but theoretically the emphasis is on the dominant node.

subordinates and the market. The size of a company may thus be significant, both in terms of the impacts of corporate activities and in terms of the quality of the company as a target, and larger companies are presumably more likely targets, even if they are no better or worse than the smaller companies in the same industry. This makes sense in more than one way if seen from a critic's point of view, and the symbolism involved is hardly a new phenomenon. Already in the 19th century had the large oil companies and industry in the U.S. come to symbolize 'everything that was sinister and secretive in modern industrial society.'¹⁶⁶ Yet, it is evident that size alone cannot add sufficient nuance. Indeed size may be leveled out by other variations or preconditions. For example, a comparatively smaller oil company such as the Atlantic Richfield Corporation has received much more attention than has e.g. Sinopec, the Chinese national oil company which ranks among top 10 oil companies in the world.¹⁶⁷

Thus, I would add that **corporate branding and image** – including corporate history – may be a significant characteristic.¹⁶⁸ While branding and image, unlike size, does not imply much about the (real or perceived) power to alter labor practices within the chain, returning to the argument above, corporate branding and image may be a strength to a particular corporation in some respects, but it may also be a double-edged sword: being 'branded to the bone'¹⁶⁹ not only constitutes a – material *and* ideational – 'asset' to control and protect but also makes a corporation more identifiable and symbolically salient as a target, both for NGOs and trade unions, but also for certain politicians, the media, etc.: in some cases, it is the corporate image and history that acts like flypaper on a hot summer day.

¹⁶⁶ Anthony Sampson, *The Seven Sisters: The Great Oil Companies and the World They Made* (3rd edition) (London: Hodder and Stoughton Ltd., 1993), p. 57.

¹⁶⁷ See e.g. Project Underground, 'Ecuadorian Indigenous Tribes March Against Oil Development Project', *Drillbits & Tailings*, Vol. 4, No. 14, Sept. 8, 1999.

¹⁶⁸ Haufler suggests that the degree to which reputation and brand name are important *as assets* (*A Public Role for the Private Sector*, p. 26) is significant – the more important, the more likely a race to the top.

¹⁶⁹ Klein, *No Logo*, p. 335. Cf. also Graham Knight and Josh Greenberg, 'Promotionalism and Subpolitics: Nike and Its Labor Critics' in *Management Communication Quarterly*, Vol. 15, No. 4, May 2002.

Furthermore, while companies may be comparatively more powerful in their *main markets*, their main markets also potentially constitute their main vulnerability. In other words, companies have more to lose from a controversy raging in their main market, and they are therefore assumed to be more susceptible to pressure and more likely to become involved in different parts of the process. We may, moreover, add that the main markets likely to be most significant are *the U.S. and/or Europe*: in empirical CSR terms, there are many examples where this has been the case. The assumption is moreover warranted in that, in commercial terms, these do constitute the main markets for many products.

Third, and finally, it is well-recognized within the GCC literature that power (and, I would add, control and vulnerability) may involve positions other than subordinate and dominant nodes.¹⁷⁰ One could venture into a further gradation of corporate positions within the commodity chain, but – with a view to analyzing and explaining political processes and outcomes – there is a more relevant alternative: the power, control and vulnerability of *industry associations* must be incorporated into the analysis.¹⁷¹ Such entities may be (perceived to be) in positions of considerable power and influence, potentially representing large sections of an industry/node and potentially with moral and material sanction or control mechanisms vis-à-vis industry players. Moreover, such an entity may constitute a central point of constraints and potentials vis-à-vis collective action problems within an industry. For example, from an industry outsider's perspective an industry association may be seen as a natural target, a target through which to strike at the entire industry, a target through which to achieve broad-based changes, etc., and from an industry perspective an association may provide a way of addressing certain issues behind closed doors and under a name other than company's.

4.4 Processes and interaction

As stated earlier, processes of interaction are not only part of the actual story. They are also structured and patterned, and given the complexity of reality and the multiplicity of causations, abstraction ought to involve an

¹⁷⁰ See e.g. a discussion of this in Raikes, Friis Jensen and Ponte, *Global Commodity Chain Analysis*.

¹⁷¹ Braithwaite and Drahos, *Global Business Regulation*.

attempt at conceptualizing different forms of interaction, at identifying and describing the generic logics and tendencies associated with these. Yet, conceptualizing processes is an inherently difficult task. While one may think of a process as a whole, this actually consists of, and may be conceptualized in terms of, several interrelated processes and different forms of interaction. In other words, a framework and analysis incorporating multiple and interrelated variables is demanding, and part of the challenge relates to the view that discursive struggles to define the problem and economic coercion, for example, are ontologically distinct, though interrelated.

Furthermore, the difficulty of the task is compounded by the fact that, as Oran Young has argued, ‘a major source of the limitations afflicting our understanding of regime formation lies in the facts that the process through which new institutional arrangements come into existence virtually always encompasses several distinct stages and that the political dynamics characteristic of the different stages are by no means the same.’¹⁷² In other words, the existing literature on processes of regime formation is relatively sparse when it comes to conceptualizing processes in terms of stages with potentially different dynamics – a point where Young’s argument is quite in line with e.g. Archer, in that during a process of social construction and interaction, the preconditions change. If, for example, no companies in a given industry or locality had explicit policies on child labor and core labor rights from the outset, and a significant part of them had after an initial period of focus on their labor practices, certainly the preconditions had changed for a potentially ongoing process. Thus, conceptually and analytically this implies a need to consider the potential effects on dynamics from shifting preconditions. As Oran Young has put it, ‘because the three stages of regime formation differ from one another with regard to their political dynamics, efforts to explain success or failure in this realm on the basis of propositions or models that assume a seamless or uniform process are doomed to failure. A satisfactory account of regime formation, one that can explain actual occurrences convincingly, will require separate but interconnected propositions concerning the several stages of the overall process.’¹⁷³

¹⁷² Young, *Creating Regimes: Arctic Accords*, p. 2.

¹⁷³ Young, *Creating Regimes: Arctic Accords*, pp. 2-3.

Young's distinction between three stages – agenda formation, negotiation, and implementation – may be difficult to maintain in practice, as Young himself acknowledges:

*'The three stages can and often do overlap, making it difficult to define a neat chronological separation of the stages in actual cases of regime formation. The agenda formation stage, for instance, sometimes involves hard bargaining over the identity of the parties to be accepted as participants in the negotiations to follow or the functional scope of a proposed institutional arrangement. Similarly, those negotiating the terms of a constitutive contract may seek to redefine the nature of the problem, even while they are hammering out the terms of an international accord.'*¹⁷⁴

The problem resides not only with methodologically maintaining the distinction in practice. What Young is intent on capturing with his distinction, as I see it, is the difference in dynamics between e.g. agenda formation and negotiation. These, however, are not chronologically ordered, as Young also suggests in the quote, as the first and second of three stages. Young has provided some very helpful insights concerning e.g. the fluidity and openness of the agenda formation stage and the shift in dynamics that may be significant once negotiations begin, and these will be drawn upon below. But rather than the chronologically loaded distinction above, I prefer to distinguish instead between early and later stages as well as between situations where no negotiations are going on and situations where negotiations are going on. Agenda formation may run through several stages, as Young acknowledges; struggles to define the problem may be pertinent at all stages, for example, and while the commencement of negotiations may be a significant shift from one stage to another in terms of changing dynamics, more important shifts may occur within the earlier, formative stages. Moreover, negotiations may indeed occur quite early in the process, just as several runs of negotiations may occur during a process.

Below I argue that the framework and analysis ought to include i) the struggles to define the problem, ii) targeting, iii) economic coercion, and iv) modelling the solution. I present propositions concerning the generic logics of each of these, their interrelations and the link to preconditions. By generic logics I think of, and seek to specify, the more abstract and real

¹⁷⁴ Young, *Creating Regimes: Arctic Accords*, pp. 5-6.

patterns of dynamic interaction, typically in terms of patterns of action and reaction, where i) actions and reactions are thought of as being grounded in preconditions and may relate to other parts of the process, and where ii) reactions may be similar in kind to the action (e.g. targeting leads to re-targeting on part of the target) or they may differ from this (e.g. the target succumbs to the pressures and initiates or engages in negotiations).

Struggles to define the problem

*'The President of the Chamber denied the use of child labour in any process of the manufacture of footballs.'*¹⁷⁵

Who cannot recall similar denials, whether by corporate executives, government officials or relatives in an argument over certain conditions, perhaps in reaction to allegations and assignments of blame directed at them? In any debate over responsibility – indeed, over governance per se – struggles to define the problem are a central part of the process and, thereby, of an explanation of its outcome: governance presupposes conditions or practices deemed amenable to and in need of governing, just as responsibility presupposes something for which to be (held) responsible.

In abstract terms, the struggles to define the problem may be thought of as *a process of claimsmaking*, i.e., as interaction between a variety of claimsmakers engaged in discursive actions and reactions, in presenting claims and counterclaims.¹⁷⁶ The Chamber of Commerce President above, for example, presented a claim in response to the HRCP's inquiries, but in part also a counterclaim reacting to the preceding controversy and allegations, cf. part of the HRCP's summary of the antecedents to their own report: 'While the prevalence of child labour in Pakistan has been of continuous concern, recent reports appearing in the national and

¹⁷⁵ Human Rights Commission of Pakistan. *Child labour in Pakistan*, p. 10.

¹⁷⁶ It should be noted that calling something a claim implies no evaluation of the statement per se, cf. e.g. Joel Best, 'Constructionism in Context' in Joel Best (ed.), *Images of Issues*, p. 347. Cf. also Frank B. Baumgartner and Bryan D. Jones, 'Agenda Dynamics and Policy Subsystems' in *The Journal of Politics*, Vol. 53, No. 4, November 1991, p. 1045; Joseph W. Schneider, 'Social Problems Theory: The Constructionist View' in *Annual Review of Sociology*, Vol. 11, 1985; Deborah A. Stone, 'Causal Stories and the Formation of Policy Agendas' in *Political Science Quarterly*, Vol. 104, No. 2 (Summer), 1989. See also Keck & Sikkink's treatment of the framing of problems in their *Activists beyond Borders*.

international media have drawn added attention to the issue. These reports have generated controversy not only on facts, but also attitudes towards child labour. [...] The sports goods industry, concentrated mainly in Sialkot, was the most recent target of criticism. The veracity, objectivity and motivation of reports by foreign media were challenged on the one hand by the exporters and manufacturers of these goods and on the other by the government of Pakistan.’ Similarly, based on their survey, the HRCP presented the claim, countering the Chamber of Commerce President’s claim on the previous page, that ‘Stitching constitutes 10% of the manufacturing process of a football. It is our estimate that 20 to 25% of the labour in this process is performed by children.’¹⁷⁷

More specifically, the process of claimsmaking may be thought of as being patterned in terms of typical actor positions and as having its own generic dynamics or logics, because claims reflect the underlying interests and perspectives of actors:

‘[...] political actors deliberately portray [conditions, difficulties, or issues] in ways calculated to gain support for their side. And political actors, in turn, do not simply accept causal models that are given from science or popular culture or any other source. They compose stories that describe harms and difficulties, attribute them to actions of other individuals or organizations, and thereby claim the right to invoke government power to stop the harm.’¹⁷⁸

Struggles to define the problem involve a dynamic of *minimizations and maximizations* of diverging claims masquerading as statements of fact (truth claims) about certain conditions and the characteristics of the problem, where minimization–maximization is understood in terms of a divergence of claims rather than an evaluation of the accuracy of these. Typically, those that stand accused – industry players, government officials – tend to have an interest in “minimization”. After all, the problem claim involves a statement on culpability and responsibility with both moral and material implications, and when did a corporate executive ever claim that the problem was twice as bad as the labor activist had stated? Similarly, those making allegations – e.g. trade unionists and labor rights activists or media reporters engaged in producing “negative publicity” – typically have

¹⁷⁷ Human Rights Commission of Pakistan, *Child labour in Pakistan*, pp. 1, 10, and 11, respectively.

¹⁷⁸ Stone, ‘Causal’, p. 282. Cf. also Best, *Damned Lies and Statistics*, p. 131.

an interest in “maximization”. After all, presenting a problem as serious may help grow awareness and support for a cause, and scandals may help sell more papers. As Erich Goode points out, ‘counting dead bodies is a *resource* for the “claims-maker”.’¹⁷⁹

Thus, the process of claimsmaking is not merely a free flow of ideas. As argued earlier, an important element in understanding the preconditions for this is the industry structure and relations of power, control and vulnerability, just as the existing framework of governance may be quite significant. Moreover, it may be that, as Young has argued, the struggles to define the problem in the early stages (of agenda formation) are characterized by a comparatively higher degree of fluidity and openness, compared to later (negotiation) stages (further below). Yet, struggles to define the problem also occur within a context of constraints and potentials tied to the complex and multifaceted conditions that make up the characteristics of the problem, and the minimization–maximization logic will manifest itself in claims and counterclaims revolving around and drawing on the facets defined previously under characteristics of the problem (i.e. the existence, extent, gravity, il/legality and breadth/depth). The minimization–maximization logic, then, must be analyzed in terms of these facets, asking a number of questions:

- What were the focal points, and did significant shifts occur during the process? I.e., around which facet(s) did the struggles to define the problem revolve at different stages in the process? Were some facets nonissues?
- Why? I.e., what were the underlying interests and concerns of the actors involved? How did the focusing of struggles to define the problem relate to the preconditions, in particular the conditions analyzed under the characteristics of the problem? For example, were categorical denials of the existence of a problem simply untenable even in the shorter run?
- What were the effects of this? In particular, did this result in significant shifts in other forms of interaction, and how did this contribute to creating given issues and nonissues in the modelling of the solution (further below)? I.e., did this imply that certain

¹⁷⁹ Goode, ‘The American Drug Panic’, p. 341.

conditions came to be seen as natural elements in a possible negotiation and solution?

In addition to the above, a number of more specific propositions may now be articulated with respect to the manifestation of this minimization-maximization logic and the struggles to define the problem. First of all, because of the minimization-maximization logic, struggles will often take the form of a *stat war*:

‘Some statistics – such as the number of children abducted by strangers – lead to public controversies, open debates over numbers and their interpretation. We are told that guns kept in the home are rarely – no, frequently – used in self-defense, that they often – no, only rarely – kill family members. Environmentalist scientists estimate that water contaminated by nuclear power plants will cause many cancer deaths; scientists employed by the power industry insist that such deaths will be very rare. Such stat wars also intimidate us.’¹⁸⁰

Numbers not only intimidate, they also lend credibility to the claimmaker and the truth claims vis-à-vis other claimmakers and claims, cf. the Chamber of Commerce President vs. the HRCP’s estimate above, for example.

Yet, minimizations and maximizations are not necessarily numerical, and in the concrete struggles to define the problem *relativizations* are likely to be a frequent alternative or complementary manifestation to stat wars. This is particularly evident in the case of minimizations, as in the following statement by the Pakistani Minister of State for Labour, Manpower and Overseas Pakistanis in 1996: ‘Child labour is not a serious problem in Pakistan when compared to the countries of this region.’¹⁸¹

Moreover claims evoke a variety of reactions, as Joel Best has pointed out,¹⁸² and I would argue that we may distinguish between *two types of reactions*. On the one hand, a problem claim may evoke a reaction that counters the problem claim by shifting to another of the above problem

¹⁸⁰ Joel Best, *Damned Lies and Statistics*, p. 129.

¹⁸¹ Quoted from Moosi Raza and Ansarul Haque, ‘Child labour is not a serious problem in Pakistan – Lasi’ in *Economic Review*, April 1996, Vol. 27, No. 4, p. 13.

¹⁸² Best, ‘Constructionism in Context’, p. 350.

facets. If denials are untenable, we may expect the minimization-maximization logic to manifest itself in terms of struggles over the extent and/or gravity of the problem. If the claimed extent and gravity are difficult to contest with any semblance of credibility, we may see a reaction centered on the breadth and/or depth of the problem (or we may see a reaction of the second type).

On the other, a problem claim does not necessarily result in a counterclaim focused on the problem. It may be that a claim triggers a different kind of reaction, a shift to another type of interaction. For example, a claim may have the effect of triggering the commencement of negotiations (and counterclaims may subsequently be posited in a different forum under different pretenses, e.g. the practicalities of finding a common solution). The actual occurrence of such second type reactions must be assumed to be influenced by i) the potential of credibly and directly countering the claims of extent, gravity and il/legality, and ii) the potential implications of claims seeking to broaden and/or deepen the agenda (further below). For example, if the cocoa industry is presented with solid and credible evidence that child slavery is part of the commodity chain, we may see a struggle over the exact number of children, but this may be of secondary significance compared to a reaction and shift that this claim may trigger in the modelling of a solution.

Furthermore, how the minimization–maximization logic manifests itself in terms of the *breadth and depth* of the problem is of central and fundamental significance to the struggles to define the problem – and to explaining the outcome and particular form of change in which the process results. Human rights issues do not appear with the same frequency on the agenda. Furthermore, they vary in terms of the significance they hold within the rationality expressed in particular events and sometimes also with respect to the techniques with which they become associated. In other words, issues are excluded and included, prioritized, understood and eventually governed in different ways. This has to do with issues and nonissues, with exclusions and inclusions of different facets and concerns, with the selective domestication of some, but not all, facets or issues (cf. the earlier discussion of mutual interests and distributional conflicts). Once again there is a generic logic of minimization and maximization: problem claims that seek to broaden the agenda and understanding of the problem, that seek to define the problem by also including the underlying causes or the consequences of the condition(s), and there are problem claims seeking to narrow the agenda by focusing on some facets or issues (at the expense

of other, excluded ones) and/or to water down the agenda and its potential ramifications for those responsible.

The argument that breadth and depth constitute a central facet in the struggles to define the problem finds support among other things in works that stress situations characterized by a relative fluidity and openness of the agenda and issues, by transforming hierarchy and roles of actor, cf. for example Cox' discussion of 'new medievalism', Keohane and Nye's work on 'complex interdependence'¹⁸³, or Braithwaite and Drahos' observation of the growing number of players in the international system.¹⁸⁴ Moreover, breadth and depth in the struggles to define the problem are conceptually akin to what is more broadly discussed as issue-linkage, as in Krasner's argument above that power may be significant in changing the payoff matrix (e.g. through tactical issue-linkage or threats).¹⁸⁵ In the regime theory literature, tactical issue-linkage refers to the coupling of issues through the use of threats or promises for the purpose of transforming the situation structure toward one that is more conducive to one's interests.¹⁸⁶ Linkage derives its significance from the fact that regimes and negotiation processes – or struggles – are generally 'nested' within broader regimes and processes, and linkage may serve as a mechanism to constitute a 'zone of agreement' where none such existed before. Braithwaite and Drahos

¹⁸³ In their *Power & Interdependence*, Keohane and Nye forward an ideal type – that of complex interdependence – alternative to the realist one of world politics. Complex interdependence is characterized by: a) the existence of multiple channels and participation of actors other than states; b) the existence of multiple issues and absence of clear hierarchy on international agenda; and c) the ineffectiveness of military force as an instrument (pp. 23-29). Unlike in Keohane's *After Hegemony*, the assumption that states are crucial actors is rejected, and more emphasis is put on the political processes associated with complex interdependence: issue linkage strategies and issue structures of power will become increasingly central in determining the shape of world politics and complex interdependence; agenda formation and control will become more important and politicized; transnational and –governmental relations and networks will increasingly affect political bargaining; and international organizations will increasingly affect issue-definition, linkage possibilities, agenda-setting, and coalition-formation (*Power & Interdependence*, pp. 29-37).

¹⁸⁴ Braithwaite and Drahos, *Global Business Regulation*, p. 292 and 564.

¹⁸⁵ Krasner, 'Global Communications and National Power', p. 340.

¹⁸⁶ See E. Haas, 'Why Collaborate?'; Braithwaite and Drahos, *Global Business Regulation*, p. 30; Hasenclever, Mayer and Rittberger, *Theories of international regimes*, p. 51.

suggest that this may happen in either of two ways: through the linkage of two non-reciprocal externalities with the effect of transforming the situation-structure into one characterized by a reciprocal externality and process of adjustment; linkage by a hegemonic actor of issues on its own terms, creating a situation of non-reciprocal coordination.¹⁸⁷ Examples of relevance to CSR include attempts to link trade and core labor standards at various levels, the linkage of property rights and trade, or – in the case of the pharmaceutical industry – of property rights and the rights to health and life of millions of South Africans.

Braithwaite and Drahos suggest that trade issues and the trade regime are the most significant linkage targets for those seeking to strengthen their agenda on another issue.¹⁸⁸ More narrowly conceived, it might be argued that child labor constitutes such a linkage target or focal point in relation to a number of other labor standards and human rights. Yet, one may also speak of de-linkage when exclusions of issues or concerns are involved. As the following quote illustrates, the power of focal points may be a double-edged sword, both a resource with respect to placing something on the agenda, but potentially also so much of a focal point that other things remain nonissues or are more easily excluded:

‘The particularization of children’s rights issues – isolating children’s rights issues from issues of class, race, and gender – has become a convenient means of avoiding direct engagement with the political and economic realities of the emerging global economy.’¹⁸⁹

Thus, while issue-linkage may serve a wide variety of interests, de-linkage is directly related to the selective domestication of certain “new” ideas and to the exclusion of others.¹⁹⁰

In the final part of this subsection, let me seek to clarify what has already been commented upon a couple of times above: how the struggles to define the problem relate to different stages in a process as well as to the other

¹⁸⁷ Braithwaite and Drahos, *Global Business Regulation*, p. 292 and 317.

¹⁸⁸ Braithwaite and Drahos, *Global Business Regulation*, p. 536.

¹⁸⁹ Jude L. Fernando, ‘Children’s Rights: Beyond the Impasse’ in *The Annals of The American Academy of Political and Social Science*, AAPSS, 575, May 2001, p. 12.

¹⁹⁰ Utting, *Business Responsibility for Sustainable Development*, p. 23.

types of interaction. As for the former, we may follow Young in seeing earlier stages, and certainly stages where no negotiations have yet begun, as being characterized by a comparatively higher degree of openness and fluidity with regards to the definition of the problem (among other things), where the struggles to define the problem to a considerable extent are shaped by i) the agency of maximizing claimsmakers – e.g. labor rights activists or trade unionists as well as media reporters – for whom symbolic focal points, issue-linkage and targeting are essential, and ii) either flat-out denials of the existence of the claimed conditions or the scattered and cautious minimizing counterclaims of some business, state and possibly some NGO actors. We may, of course, see a significant shift of the second type above – i.e., a problem claim is followed by a different type of interaction – for instance if the maximizing claimsmakers are successful in pushing a symbolic issue onto the agenda. Short of this, however, active and open counterclaims seeking to minimize the problem are not likely to be significant in the very early stages. Attempts at re-defining and minimizing the problem are likely to become more significant if/when agenda formation proceeds and/or industry actors are targeted or see a potential role in building a compromise.

In the later stages, and if/when negotiations get underway, we may assume that certain givens concerning the definition of the problem have been established, and that the stakes have become more real for those involved or affected – both of which constitute a shift in the dynamics. The struggles to define the problem, now involving more clearly defined issues and nonissues, have now become more directly related to the modelling of the solution, and a variety of models may already be in play. Under such circumstances, struggles to define the problem are likely to continue, but they are likely to become more focused on a few points of contention, where a) activists and critics will continue to struggle for a broadening or a deepening of the agenda to incorporate more of their concerns, and where b) business and state actors, and possibly some moderate NGOs, will continue minimizing the problem by attempting to define the problem as less problematic or differently, while also struggling to narrow or water down the implications of the prevailing definition so as to be able to selectively domesticate the most prominent and/or less demanding aspects into a solution, and where c) back channeling and what may be termed the inside-outside dynamics – i.e., the struggles inside and outside the negotiation group are intertwined and deliberately aimed at influencing one another – significantly shape the struggles to define the problem.

It is obvious, then, that the struggles to define the problem are closely related to modelling in the process. First of all, the struggles to define the problem are central to the establishment of given issues and nonissues at the commencement of negotiations (but struggles to define the problem do not end here). Moreover, in addition to what was stated just above, the early and sometimes isolated and individual modelling efforts occur within the context of more open and less structured definitions of the problem. Yet, struggles to define the problem, even in the early stages, are often be shaped by the fact that actors are precipitating the process of modelling the solution later in the process.¹⁹¹ That this applies in particular to struggles over breadth and depth was argued above, yet (de-)linkage is more directly related to modelling than that: both linkage and de-linkage may seek and/or rely heavily on forum-shifting¹⁹² – and vice-versa – for the achievement of the underlying purpose (further below).

Struggles to define the problem are moreover closely related to economic coercion. The availability of particular mechanisms of economic coercion, the potential application thereof as well as the potential ramification of such an application may i) have profound effects on how different actors seek to define the problem, and ii) be significant in terms of profoundly influencing the likely shape and success of different definitions, e.g. by forcing others to react to and/or accept certain problem claims rather than others. For example, if trade regulation bans the importation of goods made using slave labor, allegations of the use of slave labor may not only be a symbolically powerful way of framing the issue. It may also be a problem claim that forces others, in part through the potential economic implications of a stop to imports, to react and to react in certain ways.

Targeting: struggles over blame and responsibility

‘Problem definition is a process of image making, where the images have to do fundamentally with attributing cause, blame, and responsibility.’¹⁹³

¹⁹¹ Cf. e.g. Young, *Creating Regimes: Arctic Accords*; Stone, ‘Causal Stories’, p. 283.

¹⁹² As the word indicates, this has to do with shopping around and attempting to select or shift to the forum that will increase the possibility of achieving one’s interests.

¹⁹³ Stone, ‘Causal Stories’, p. 282; emphasis added.

Problem claims and the attribution of blame and responsibility, while intricately related, are two different things, and they ought therefore to be conceptualized and analyzed separately. Problem claims, as defined above, relate to the minimization-maximization logics and the multifaceted conditions, whereas targeting has to do with the focusing in on particular actors or groups of actors in attributing blame and ascribing responsibility during the process (including the possibility that blame and responsibility are attributed to a broader range of actors and/or systemic pressures). In short, my argument is that targeting may be of fundamental significance (to explaining the coming into existence and form of a particular piece of governance) in that it involves the selection of actors – the inclusion and exclusion of actors, the creation of “natural” participants in negotiations, of “obvious” partners to agreements – which may obviously have profound implications for modelling efforts and the particular form of agreement that may or may not subsequently be entered into.¹⁹⁴

In abstract terms, we may think of targeting as involving a generic logic consisting of actions or claims, focusing on particular actors or groups of actors in attributing blame and responsibility, and of reactions or counterclaims, which include various forms of rejections, denials and acceptances as well as potential re-attributions of blame and responsibility (further below). Moreover, struggles over the attribution of blame and responsibility revolve around and are partially determined by (causal beliefs and stories of) **controllability and intentionality**: blaming someone that was obviously well-intentioned and/or unable to control a certain event is unlikely to result in any negative evaluation and assignment of responsibility, whereas blaming the cynically ill-intentioned actor in full control stands a better chance of creating such an evaluation and assignment. Similarly, the demonstration of good intentions and/or uncontrollability – for instance by locating the “true” cause elsewhere (e.g., blaming others) or by claiming the cause to be unstable and temporary (e.g. isolated and short-lived incidents) – are conducive to less negative, if not sympathetic or positive, evaluations and a non-attribution of responsibility.¹⁹⁵

¹⁹⁴ Cf. e.g. Young, *Creating Regimes: Arctic Accords*, pp. 9-10, and Krasner (above) on the selection of participants and the use of power in determining who gets to play.

¹⁹⁵ See e.g. Bernard Weiner, 'An attributional approach to perceived responsibility for transgressions: Extensions to child abuse, punishment goals and political ideology' in Ann E. Auhagen and Hans-Werner Bierhoff (eds.), *Responsibility: The many faces of a social phenomenon* (London: Routledge, 2001), pp. 50-51.

As Deborah Stone has put it,

*'In politics, causal theories are neither right nor wrong, nor are they mutually exclusive. They are ideas about causations, and policy politics involves strategically portraying issues so that they fit one causal idea or another. The different sides in an issue act as if they are trying to find the "true" cause, but they are always struggling to influence which idea is selected to guide policy. Political conflicts over causal stories are, therefore, more than empirical claims about sequences of events. They are fights about the possibility of control and the assignment of responsibility.'*¹⁹⁶

Yet, it is not the *stories* of controllability and intentionality per se that are central: we need instead to take the attribution-reaction logic above one step further in terms of *patterns* of attribution and reaction. In doing so, controllability and intentionality – in their capacity as prerequisite elements in targeting claims and as partial determinants (constraints and potentials) of the struggles over blame and responsibility – are helpful in conjunction with the preconditions discussed in the previous section.

Let us begin by considering attribution. First of all, if we assume that there will always be more than one potential culprit to blame and hold responsible, it follows that we need to see ***the selection of targets*** as part of the pattern of attribution (it also follows that we need to incorporate the possibility of re-attributions as part of the pattern of reactions below). What determines the selection of targets? Short of coincidence and idiosyncratic reasons for attributions of blame and responsibility, in many cases the selection of targets will in part be determined by a combination of on-the-ground and “local” concerns and opportunities – for instance if a “local” NGO, trade union or reporter are not just thinking, but also acting and organizing locally (whether by need or volition).¹⁹⁷ In many cases, however, even such “local” concerns will result in targeting that turns the

¹⁹⁶ Stone, ‘Causal Stories’, p. 283.

¹⁹⁷ That is, as opposed to linking up with transnational networks and to thinking and acting in the ways prescribed by Stefano Varese, ‘Think Locally, Act Globally’ in *NACLA Report on the Americas*, Vol. 25, No. 3, 1991; cf. also Michael Kearney and Stefano Varese, ‘Latin America’s Indigenous Peoples: Changing Identities and Forms of Resistance’ in Sandor Halebsky and Richard L. Harris (eds.), *Capital, Power, and Inequality in Latin America* (Boulder: Westview Press, 1995).

process into a transnational one, even if this is not necessarily ideal in the eyes of all “locals.”¹⁹⁸

In both local and transnational cases, however, the selection of targets is shaped by the quality of targets. It may be argued that the possibility of credibly claiming some degree of controllability and intentionality will vary across the range of potential targets: some are (seen to be) more powerful than others, some (seen to be) more closely involved in daily and practical management of those conditions concerned. In addition, the quality of targets depends on those industry characteristics treated earlier.¹⁹⁹ So, the initial discussion of inter-nodal differences would suggest that actors within the dominant node are more likely targets, in part because of the power they hold or are seen to hold. In addition, the subsequent discussion of intra-nodal differences within the dominant node suggests that the more likely and prominent targets are i) companies within the dominant node of their particular commodity chain, ii) relatively large companies and/or industry leaders, iii) high-profile brands (reiterating that this includes corporate history, and that the profile may be a negative social responsibility track record), and iv) in particular U.S./European companies.

As argued, such characteristics are double-edged swords in that they increase the likelihood of being targeted: symbolically powerful dichotomies appear to be a general feature of the discursive practices of those critical of business conduct, suggesting that targeting is shaped by the way in which these are drawn upon in combinations of characteristics of the problem and the above industry characteristics, for instance in victim-perpetrator dichotomies (e.g. young child laborer in poor developing country vs. giant branded corporation from the West) or in symbolic contrasts between facets of the labor conditions associated with the production processes and the use and/or marketing of the products made (e.g. slavery in production of leisure products, child labor in sports and kids' products). The characteristics above imply that those to which they apply are likely to be of greater interest to the media, and the power implied in the characteristics also imply the power of acting as a setter of standards for practice (controllability, intent) as well as potential

¹⁹⁸ Cf. e.g. Henry Frundt, 'Cross-Border Organizing in the Apparel Industry: Lessons from Central America and the Caribbean' in *Labor Studies Journal*, Spring 1999.

¹⁹⁹ See e.g. Keck and Sikkink, *Activists beyond Borders*, pp. 207 – 209, for a discussion of target characteristics, vulnerability and sensitivity.

ramifications of achieving a change in corporate practices, i.e. a spread of responsibility to their GCC subordinates, that industry critics may cherish.

Yet, it also follows that actors in subordinate nodes may be likely targets if the problematized conditions are within their factory gates (i.e., they are in daily and practical control). In particular, they may be secondary targets in the sense that they are not the “real” culprits – they are simply part of a story where the blame and responsibility are actually attributed to more powerful economic agents and/or the economic system as such.

Finally, the selection of targets may, in combination with the above, be significantly influenced by the availability to those attributing blame and responsibility of *specific mechanisms of economic coercion*.

Secondly, the pattern of attribution may furthermore be specified and analyzed in terms of a number of *characteristics of the targeting* that influence the potential outcomes. More specifically, the persistency of the attributions may be significant, where persistency is understood in terms of the number of attributing acts *and* the period of time over which these attributions are actualized: the more attributing acts and the longer the period, the heavier the pressure. In addition, the degree of unanimity in attributions may also be significant: if all fingers are pointing in the same direction, the heavier the pressure; in contrast, the more directions in which fingers are pointing, the easier to duck. Furthermore, the voices of attribution may be significant, both in terms of the position and prominence of the attributor (being hung out to dry on national television may be worse than an obscure web log that nobody reads anyway) and in terms of the number of voices (the more, the merrier – or, for the target, possibly the greater the number of voices, the worse).

Third, the pattern of attribution may involve one or more potentially quite significant *shifts*, i.e. shifts in target selection and in the quality of targeting. For example, attributions may shift from subordinate to dominant node agents, from companies to industry associations, from industry players to governmental bodies. Such shifts, of course, may be significant if the selection of a new target that is more vulnerable and susceptible to pressure helps break futile targeting efforts (or, perhaps, a negotiation deadlock).

In moving on to the pattern of reactions, let us begin by considering the potentials for counterclaims and reactions by targets. Here, we may draw upon Leo Montada's typology of a variety of reactions or counters to 'deny or reduce an actor's responsibility':²⁰⁰

- i) Denial of agency
- ii) Lack of foreseeability of consequences
- iii) Lack of intent
- iv) Assigning co-responsibility to others
- v) Displacing responsibility
- vi) Mental retardation and developmental immaturity
- vii) Lack of adequate socialization and education
- viii) Denial of having caused damages or harm

The last reaction – the denial of having caused damages or harm – is a counter that shifts to another type of interaction in my terminology: the reaction takes the form of a (re-)definition of the problem – it does not exist! The other reactions, in turn, are responses that, in my terminology, “stay” within targeting and counter the attribution, as opposed to a reaction shifting to another form of interaction. While vi) and vii), as formulated by Montada, do not seem directly applicable to many CSR cases, the core of the two reactions corresponds to arguments by companies that, for example, they had just entered into the market or production of a certain product, had just taken up production in a certain locality, that they had not been aware of or capable of dealing with the problem – or society's changing expectations.²⁰¹ Thus, these two reactions may be grouped together with the first three as forms of denial of responsibility, i.e. reactions that simply deny responsibility without seeking to deny or otherwise re-define the problem as posed and without seeking to divert blame and responsibility onto others. The assignment of co-responsibility to others and the displacement of responsibility onto others, in turn, are reactions re-targeting others, in part or in whole denying and diverting or re-attributing responsibility. In other words, we may distinguish between two overall types of reactions that do not shift to another type of interaction: *denials and diversions*.

²⁰⁰ Leo Montada, 'Denial of responsibility' in Ann E. Auhagen and Hans-Werner Bierhoff (eds.), *Responsibility*, pp. 82-84.

²⁰¹ See e.g. Philip Watts, 'The international petroleum industry: economic actor or social activist?' in John V. Mitchell (ed.), *Companies in a World of Conflict*.

Not all targets, however, are equally willing and able to deny and divert. First of all, as noted above, subordinate agents within a commodity chain may be vulnerable targets, but they also tend to be dependent upon their more dominant business partners. Thus, if targeted, they may seek to cautiously deny and/or divert (to *their* subordinates), but they are in a difficult position where persistent denials may end up being costly, and where diverting responsibility onto the dominant actors may not be a wise course of action. The dominant companies, in turn, are in a better position, vis-à-vis their subordinate business partners, to expend energy in denying and/or diverting responsibility, but the extent to which they choose to do so in part depends upon their own potential vulnerabilities: companies that are vulnerable on a number of counts, cf. the previous subsection, may not be able to persistently and exclusively rely on denials of responsibility, nor may they be able to publicly and directly persist in diverting responsibility onto unfortunate others.

However, in many such cases, we may see an alternative reaction that does not involve a denial or diversion of responsibility but instead an attempt to deny or reduce *blameworthiness*, i.e. reactions that ‘confirm the actor’s responsibility for their actions but give reasons why they acted or had to act the way they did, reasons which are intended to deny or reduce blameworthiness.’²⁰² Such reactions, however, will often involve not only an *acknowledgement* of responsibility *but also* a shift in the process to another type of interaction, i.e. modelling the solution – where, it is worth noting, actual and economic responsibility may in practice and less publicly be diverted onto others.

As far as different stages in a process are concerned, a number of propositions can be made concerning targeting. We may, again, follow Young’s observation that the early stages tend to be characterized by fluidity and openness, and this applies not only to the problem definition but also to targeting. Here, the selection of the “right” targets and the quality of targeting are essential to the formation of an agenda, coupled with the availability of economic coercion (below). If less prominent and less vulnerable targets are selected, an agenda may fail to develop and it may turn into a drawn-out war of positions, which may place unexpected strains on the resources of the attributing party or parties. Moreover, this

²⁰² Montada, ‘Denial of responsibility’, p. 82 and 84-85. These arguments include references to benevolent intent, to positive effects or benefits, to the “victim” being informed and consenting, etc.

may be exacerbated by a poor quality in targeting, and a combination may result in the slow death of a process.

This being said, however, it should be pointed out that in cases where trade sanctions or other forms of economic coercion are available, the above may look very different. The selection of targets as well as the reactions of these may be shaped by the particular form of economic coercion available. Moreover, in many cases, the preconditions are not a clean sheet, and situations may, in other words, often be much less fluid and open: attributors and targets as well as audiences and publics will in many cases have a history, an experience and a recollection of earlier or similar precursors. It could therefore be argued that targeting in the concrete case will increasingly be characterized by i) a tendency in the selection of targets where the targets are the usual suspects, some of which become symbols (either the prominent do-gooders or the obstinate no-gooders), and by ii) a tendency toward more acknowledgements and shifts to other types of interaction due to growing constraints in terms of denying or diverting.²⁰³ Similarly, where a broader agenda has been developing on certain issues related to corporate responsibility and/or where the particular targets have been in the spotlight before, the likelihood that a reaction to new attributions of blame and responsibility results in a shift to modelling – even in the early stages of a particular process – is much greater.

In the later stages of a process, assuming that multi-party negotiations or some other form of broader modelling efforts have begun, targeting may be very significant if i) attempts at forum-shifting and/or issue-linkage are made, either by industry or nonindustry players, or if ii) such modelling efforts either do not involve a sufficient number of targets, and/or iii) if the efforts are torn by conflicts (in which case, outside pressure through sustained targeting may interact with the interaction inside the negotiating group). If, on the other hand, the targets involved in such modelling efforts have been successful in engaging other “stakeholders” and in demonstrating a degree of willingness to contribute to resolving the problem, actual targeting may become irrelevant in the later stages (although the potential of being targeted for a failure of such efforts continues to be significant). The rise to dominance of the notions and techniques of partnership and stakeholder dialogue, which have been important in all three of my cases and well beyond, and which are often “debated” in policy-oriented and positive discourses that ask few if any

²⁰³ This is in line with Keck and Sikkink’s discussion of accountability politics; *Activists beyond Borders*, pp. 24-25.

critical questions,²⁰⁴ may be seen to reflect not only broader ideological tendencies, but also in the concrete as reflecting attempts at internalizing targeting to some extent via the creation of a new forum. This may, of course, be referred to as a “learning network” of some sort,²⁰⁵ as the only way of moving beyond the blindness of one-dimensional codes and traditional decision-making criteria of business, etc.²⁰⁶ Partnerships and stakeholder dialogues, however, must also be seen as having potentially significant effects on the structural pre-conditions for and patterns of interaction related to targeting.²⁰⁷

The above, of course, relates explicitly to modelling the solution. To be specific, targeting is seen to relate to modelling in two main ways: one, it potentially influences the selection of actors, “natural” partners or parties to an agreement or a negotiation group; two, it may significantly influence the negotiation dynamics, in particular through forum-shifting and issue-linkage, but also through the inside-outside pressures mentioned above.

Economic coercion

As argued earlier, and as with the other explanatory elements, we cannot simply treat the changes in corporate responsibility in ahistorical and apolitical terms and ignore the productive potentials of economic power and influence. As Garvey and Newell have argued, ‘What may be labelled CSR issues today are often a product of many decades of conflict over

²⁰⁴ E.g. Jane Nelson and Simon Zadek, *Partnership Alchemy: New Social Partnerships in Europe* (Copenhagen: The Copenhagen Centre, 2000). One exception is Bryn Jones, *Citizens, Partners or Patrons? Corporate Social Responsibility and Patronage Capitalism* (Draft working paper presented to the Work, Employment & Society Conference, University of Nottingham, September 2001). Haufler also includes a critical discussion in her *A Public Role for the Private Sector*.

²⁰⁵ John G. Ruggie, ‘The Theory and Practice of Learning Networks’; George Kell and John G. Ruggie, *Global Markets and Social Legitimacy: The Case of the ‘Global Compact’* (Paper presented at the conference “Governing the Public Domain beyond the Era of the Washington Consensus? Redrawing the Line Between the State and the Market”, November 4-6, 1999, York University, Canada).

²⁰⁶ Peter Pruzan and Ole Thyssen, ‘Conflict and Consensus: Ethics as a Shared Value Horizon for Strategic Planning’ in *Human Systems Management*, Vol. 9, No. 3.

²⁰⁷ See Utting, *Business Responsibility for Sustainable Development*. Cf. also Jones, *Citizens, Partners or Patrons?*

resources that constitute ongoing historical struggles for corporate and state accountability and should be understood in this context.²⁰⁸ Moreover, recalling the earlier discussion of materialism and idealism, and bearing in mind Cox' suggestion that we may distinguish between three interrelated types of social forces, the preceding elements in the present section may be said to have emphasized the ideational and normative, discursive aspects of interaction, whereas economic coercion entails an incorporation of a more material emphasis.

The point of departure, more specifically, for this element of the explanatory framework is that economic coercion or pressure is likely, in one way or the other, to be significant both to the coming into existence and to the particular form of change in corporate responsibility and governance, both in and of itself and through interrelating with other forms of interaction, e.g. shaping struggles to define the problem above. Yet, if the literature on sanctions and economic coercion does not immediately seem to lend support to such a point of departure, in the sense of being rather skeptical towards the 'success rate' of such sanctions, let us begin by considering the following findings and arguments of Daniel W. Drezner on economic coercion:

'Game-theoretic models of economic coercion point out that the success rate of sanctions may be understated because of selection effects: the most successful coercion episodes are likely to end before sanctions are imposed. A preliminary test of 195 episodes of sanctions used or threatened in the pursuit of economic or regulatory goals supports this argument. A majority of these cases ended without sanctions being imposed. The correlation between sanctions imposition and a failure to generate concessions is statistically significant. [...] in focusing only on those instances when sanctions have been imposed, policy analysts have overlooked the significant number of instances in which the threat of coercion did not have to be carried out. These cases are far more likely to generate successful outcomes than when sanctions are imposed.'

²⁰⁸ Garvey and Newell, *Corporate accountability to the poor*, p. 3. While this is not my errand, the theoretical and analytical incorporation of economic coercion (in conjunction with the other theoretical elements) may be seen as an alternative formulation of "the business case for CSR": where such a case may be found, it may be argued that its coming into existence and/or the acknowledgement of the situation as a business case for CSR, in no small measure stems from economic coercion and changes in the underlying structural constraints and potentials through this and the other, related forms of interaction. See Blowfield and Frynas' 'Setting new agendas' for a more elaborate critique, in particular pp. 511-513.

*Underestimating the utility of economic coercion calls into serious doubt the argument that economic inducements are a more useful tool of statecraft than economic coercion. This does not mean that sanctions are a magic bullet to generate concessions. It does mean that the tool is more useful than currently understood.'*²⁰⁹

In other words, economic coercion may be more significant than currently understood in the sanctions literature, and it is perhaps, as suggested by Braithwaite and Drahos, unjustly underrated in comparison to positive inducements and systems of rewards.²¹⁰ Moreover, these observations are even more to the point in the present framework and study: the sanctions literature is predominantly concerned with nation-states as receivers of sanctions, whereas cases of corporate responsibility will tend to involve profit-seeking capitalist enterprises as the most likely receivers. There is a marked difference between these two types of actors when it comes to the frequency with which actual entities within them tend to “go out of business.” And, even if survival is not immediately at stake, in general terms corporations may be assumed to have comparatively less staying power. More importantly, however, the quote from Drezner also demonstrates that economic coercion must be seen as more than actual impositions. Economic coercion also includes threats. I will even go one step further: for economic coercion to be at work in a significant way, neither an actual imposition nor an actually articulated threat is necessary; if such an imposition exists as a realistic potential or risk, this may be sufficient for economic coercion to be at work and to have an effect. As argued by Braithwaite and Drahos:

*‘The more profound the hegemony of a state, the less it has to resort to the threat or use of economic sanctions, yet the more the compliance it secures is grounded in the fear of that possibility.’*²¹¹

²⁰⁹ Daniel W. Drezner, ‘The Hidden Hand of Economic Coercion’ in *International Organization*, Vol. 57, Summer 2003, pp. 654-655.

²¹⁰ Indeed, the significance of economic coercion could be seen as much more far-reaching if we consider it indirectly as a factor in shaping the preconditions and existing models in subsequent, concrete situations, cf. e.g. Braithwaite and Drahos’ conclusion that ‘Global modelling often proceeds by piggy-backing on a bilateral agreement initially settled on the basis of a significant dose of economic coercion.’ Braithwaite and Drahos, *Global Business Regulation*, p. 541.

²¹¹ Braithwaite and Drahos, *Global Business Regulation*, p. 536. This is the logical extension of Drezner’s observation and, moreover, a logical consequence of the earlier

In abstract terms, then, economic coercion may be thought of as a form of interaction that is patterned in terms of actual or threatened impositions (as well as realistically potential risks of this) of different forms of economic coercion, and of the reactions thereto.

Moreover, economic coercion involves a receiver or a target, and this begs the question, of course, of how economic coercion differs from targeting. As defined above, targeting has to do with focusing in on certain actors, with patterns of discursive actions and reactions involving attributions of blame and responsibility. Targeting has a very material side to it, and in some respects moral and material leverage, to use the terms applied by Keck and Sikkink,²¹² are seemingly empirically inseparable. For example, a consumer boycott may involve both moral-discursive actions and pressures, while also seeking and/or resting on material pressures. Indeed, in many cases, should we not expect the focusing in on and the patterns of actions-reactions associated with blame and responsibility as well as economic coercion to be closely related? Yes. But does it follow from their empirical co-existence and entanglement that ‘the mobilization of shame’ and the threat of economic coercion are ontologically and in real terms the same? No. They are different kinds of things, and they need not co-exist. As argued above, the attribution of blame and responsibility may be strongly influenced by mechanisms of economic coercion, but shaming does not necessarily involve a great deal of economic pressure – nor does the imposition of trade sanctions necessarily involve a great deal of blaming. Yet, their empirical co-existence and entanglement do pose certain difficulties of a more practical and analytical nature, that we shall have to consider in the following.

More specifically, we may distinguish between different types or mechanisms of economic coercion that must be assumed to be potentially significant to corporate responsibility processes.²¹³ First of all, ***trade sanctions or restrictions*** related to child labor and core labor rights may be

discussion in chapter 2 of generative mechanisms and the stratification of reality in terms of the real, the actual, and the perceived. See also Haufler’s discussion of risk, *A Public Role for the Private Sector*, pp. 20-26

²¹² Keck and Sikkink, *Activists beyond Borders*, p. 23.

²¹³ The three types that I focus on and include here are not an exhaustive list of such types. One might also include CSR demands of institutional investors and stock market reactions to adverse publicity, the rise of shareholder activism, and CSR requirements in government procurement policies.

significant. As noted earlier, trade issues and the trade regime was found by Braithwaite and Drahos to be the most significant linkage targets, and trade regulation where import restrictions are tied to working conditions are in place in a number of countries, including the U.S. (cf. sections on the governance framework and struggles to define the problem). Thus, even short of actual impositions, we may expect that the mere threat or risk – as in trade practices reviews by the U.S. State Department, for example – may be significant in certain cases, *in particular* where i) the (potential) sanctions relate to major markets such as the U.S. and Europe, and where ii) the characteristics of the problem – i.e., the conditions – are relatively grave (e.g. slavery) and of considerable scale (size and extent of problem).

Second, other (non-trade related) *regulatory interventions* related to working conditions may also be significant. Such regulatory interventions include i) the (potential) adoption of new (non-trade related) legislation, ii) a (potentially) more effective enforcement of existing legislation (and the therewith associated sanctions, such as fines or penalties, business unit shut-downs, or confiscations), or iii) legal proceedings (and law suits in particular).²¹⁴

Third, *boycotts and adverse consumer reactions* may be significant, in particular if combined with one of the first two types of economic coercion.²¹⁵ Clearly, the assessment of the risk of adverse consumer reactions in the absence of actual calls for a boycott is difficult. Short of a comprehensive and accurate picture of how such risks were perceived by those potentially at risk,²¹⁶ the alternative to excluding this – in my opinion, important – element from the framework and analysis is to conceptualize and analyze risk in terms of the necessary ingredients to its potential significance. A necessary ingredient to any reaction is

²¹⁴ Cf. Haufler's discussion of the risk of re-regulatory intervention in *A Public Role for the Private Sector*, pp. 21-22. For lengthy treatment of the legal dimensions of corporate citizenship, see also Halina Ward, *Legal Issues in Corporate Citizenship*.

²¹⁵ Adverse consumer reactions may, in part relate to articulated and called-for boycotts, but the term also comprises the risk of a de facto boycott, the threat of which has not been articulated. I use the term 'consumer' here, since intra-industry pressures are conceptualized as a reaction to the three types of economic coercion below, and the term 'buyer' would suggest that these were also included here.

²¹⁶ Ideally, in assessing such risks, one would in part also attempt to uncover how these were perceived in different quarters at the time. Yet, is anyone likely to admit to reacting on such risks, if neither imposed nor articulated? Not really.

information: if “consumers” know nothing about “the problem”, they cannot react. Moreover, the information must not only be accessible, it must also be visible on a broad scale and in a persistent manner.²¹⁷ Furthermore, we may focus on two main providers of information – the media and activist campaigns – *and* require that both, as precautionary measure due to the alternative approach, be actively “informing” in the concrete case. With these requirements, we may say that there is a potentially significant risk where the receiver is subject to negative media exposure and campaign activities, and where both are of a considerable visibility, scale and persistency.

Turning to the reactions to economic coercion we may distinguish between different types of reactions. There is the possibility that the economic coercion is simply ignored, on the one hand, and the possibility that the receiver simply caves in, on the other. Caving in may involve bearing the burden oneself, of course, but in many cases there will be a significant diversion of economic pressures, in particular from dominant to subordinate economic agents within the commodity chain. Thus, we should pay attention to the potential of intra-industry diversions of economic pressures – that will (unlike the diversion of blame) generally necessitate a shift to modelling efforts involving intra-industry diversions of pressures.

Furthermore, we may assume that receivers are in different positions of power, control and vulnerability, and are therefore faced with different constraints and potentials as regards their reactions. That is, subordinate actors may be less able to ignore economic coercion – the assumption being that they are in a competitive and structural situation characterized by less power and more vulnerability than their dominant partners – in particular if also faced with intra-industry diversion from the latter. Similarly, the more likely and prominent targets (see selection of targets above) may be assumed to be in a different position than their subordinate partners, enabling some of them to divert pressures to the latter, if not entirely ignoring the pressures. Unlike targeting, however, the first two mechanisms of economic coercion may be such that the leverage potential is very much so related to the subordinate actors as well: legally, they are be the ones that may be held responsible in many cases; moreover, they

²¹⁷ Where visibility, broad scale and persistency, in part, relate to the concrete case and the characteristics of the receiver. For example, for a small company generating most of its revenue in a small geographical area, the front page of the local newspaper may be sufficiently visible and broad. We should not, however, expect the global oil or apparel industries to feel at risk from such an article alone.

may be much more vulnerable to other types of regulatory intervention, just as trade restrictions may be much more significant to the manufacturing industry unable to export to its major markets than to a large retailer sourcing from a number of other countries.

Finally, how may we expect economic coercion to be patterned at different stages throughout a process, if we assume that the early stages are more fluid and open-ended and that an agenda is still in the early stages of formation. To begin with, during the early stages, economic coercion may be assumed to primarily combine with (and influence) the other forms of interaction in the building and formation of an agenda and in the mounting pressures for change. In those cases where shifts to modelling do occur due to economic coercion, the modelling will be of an individual actor and/or relatively informal and less committing dialogue. The intra-industry coercion that this entails will generally pertain to specific company supply chains (as opposed to industry commodity chains more broadly). In exceptional cases, however, economic coercion may be significant in triggering a shift to modelling on a broader and more solution-focused scale. For this to be the case, we should expect certain preconditions to prevail. On the one hand, that there is a broader or longer history tied to the issue and/or the industry than the concrete problem narrowly perceived could suggest. On the other, that one of the first two types of economic coercion above are in effect in such a way as to place a substantial pressure on a broader segment of the industry, thereby forcing an attempt at overcoming any collective action problems that may exist.

In the later stages of a process, we may assume that economic coercion will primarily be significant in situations of non-involvement – e.g., in potentially pressuring stonewalling parties to engage in the process (modelling or another form of interaction above) – or in situations where negotiations are deadlocked over conflict points or otherwise bogged down. As noted earlier, the significance of economic coercion in the latter situation is not restricted to the pressure on or risk faced by industry players: intra-industry coercion may be assumed to be highly significant in this respect in some cases, in particular when de-linkage and forum-shifting are involved as well.

Modelling the solution

In seeking to understand and explain specific changes in corporate responsibility and the ways in which e.g. child labor and core labor rights are governed, the notion of “learning” could be a useful concept. In Virginia Haufler’s contribution, for example, learning is one of three factors driving the rise of industry self-regulation, and learning is seen in terms of the ‘spread of knowledge, information, and ideas within the business community regarding the relative costs and benefits of voluntary initiatives.’²¹⁸ Cutler, Haufler and Porter use ‘learning processes’ in a similar way – referring to the social interaction of leaders, management literature ‘isomorphism’, educational and environmental similarities, industry-specific issues and processes, development of common expectations – as one of their factors for explaining the rise of private authority in international affairs.²¹⁹ Both appear to be drawing on some of the earlier works on learning, although without any seeming emphasis on how learning might relate to changes in identities of actors, as in Nye’s notion of complex learning,²²⁰ and there seems to be a marked inspiration from neo-institutional organizational theory.²²¹

The concept of learning is not without its problems, however.²²² I will therefore suggest that a notion of ‘modelling the solution’ allows us to better capture the form of interaction and its ingredients that the politics of corporate responsibility tend to involve: an interaction through which “solutions” are devised and “negotiated”, and which is seen to involve

²¹⁸ Haufler, *A Public Role for the Private Sector*, p. 27.

²¹⁹ Cutler, Haufler and Porter, ‘Private Authority and International Affairs’, pp. 7-9.

²²⁰ Nye, ‘Nuclear Learning and US-Soviet Security Regimes’.

²²¹ See e.g. D. Eleanor Westney, ‘Institutionalization Theory and the Multinational Corporation’ in Sumantra Ghosal and D. Eleanor Westney (eds.), *Organization Theory and the Multinational Corporation* (New York: St. Martin’s Press, 1993).

²²² Firstly, the concept is associated with a number of analytical problems (cf. Levy, ‘Learning and Foreign Policy’, p. 282). Secondly, the question of identities and interests is often not included (see Wendt, *Social Theory*, p. 326ff. for discussion of social learning that draws on the notion of complex learning). Thirdly, learning has connotations of progress and bettering of knowledge and beliefs, and it seems to overly emphasize consensus-formation and nonconflictive situations, to the detriment of aspects of struggles, conflicts and power relations.

struggles to shape and re-shape corporate responsibility and the governance of child labor and core labor rights – struggles that involve both conflicts and dissensus as well as shared interests and consensus and in which power relations are far from irrelevant.²²³

In abstract terms, we may thus begin to think of modelling the solution as that form of interaction which involves negotiating and devising solutions, and we may further conceptualize this form of interaction by a number of propositions.

First of all, such interaction may occur in a range of organizational forms, in a continuum of possibilities ranging from the interaction internal to an individual organization to that which involves the interaction between several organizations. In other words, it may be a multi-party process, but it may also be a process that occurs inside the house, so to speak, but which nevertheless also involves a “negotiation” with the perceived expectations and interests of external others.

Second, such interaction may differ substantially and dynamically in terms of the solution focus, i.e. the degree to which a concern with providing and devising a solution predominates. In other words, it includes, on the one hand, interaction (internal or multi-party) that is not immediately or directly intended to produce (part of) a solution, but which nevertheless constitutes a search for answers, such as early and informal dialogues and exchanges of information. On the other hand, it includes negotiations that are first and foremost intended to produce a solution.

Combining these two propositions, we may thus think of four potentially different types of modelling interaction, as illustrated below with alphabetical designations used in the following:

²²³ The notion of modelling the solution presented here *differs from*, but was initially inspired by Braithwaite and Drahos’ notion of modelling, defined by the two authors as ‘action(s) that constitute a process of displaying, symbolically interpreting and copying conceptions of action (and this process itself). A model is a conception of action that is put on display during such a process of modeling. A model is that which is displayed, symbolically interpreted and copied.’ Braithwaite and Drahos, *Global Business Regulation*, p. 581.

Figure 4.3 A modelling matrix

Internal, individual process; high solution focus (B)	Multi-party process; high solution focus (D)
Internal, individual process; low solution focus (A)	Multi-party process; low solution focus (C)

Third, a process may involve several streams of such interaction in a succession of different types of modelling, *and* different types of modelling and more than one stream of modelling may occur at the same time (actually or as real potentials).²²⁴ Thus, prior modelling interaction may influence the subsequent modelling efforts, and shifts (or the absence thereof) from one type of modelling to another are indicative of a significant change in the process. More importantly, though, the dynamics of actual modelling interactions are in part shaped by the actual or potential (non-) occurrence of other modelling efforts. In other words, if solutions are devised and negotiated in (B), this cannot be understood (and interpreted in terms of explanatory significance) in isolation from any actual occurrences in (D), or the potentials and constraints relevant to (D) – nor in isolation from any preceding interactions in (A) and/or (C). Similarly, interactions in (D) are assumed to be dynamically shaped by the actual or potential interactions in (B) (for example, through threats of abandoning a given forum and/or going it alone) and/or alternatives within (D) (for example, countermodelling efforts and attempts at forum-shifting), just as prior interactions in (B) may have brought into existence particular models that may significantly shape a solution in (D).

Fourth, the interaction or negotiation involves a minimization - maximization logic of concessions and interests related to the constellation of givens and conflict points. In other words, there will always be i) a number of givens, i.e., solution elements, the inclusion or exclusion and/or particular form of which are undisputed, unquestioned and/or seen to be

²²⁴ That is, modelling the solution is not confined to the later stages of a process. Rather, the intention is that the framework and analysis cover the whole process, even if a multi-party agreement to be explained only began to be negotiated late on.

“natural” to the problem-solution complex, and ii) a number of conflict points, i.e., objects of contention with dissensus stemming from the wholly or partially incompatible material, ideational and/or institutional preferences of actors in different positions.²²⁵ Central to the configuration of givens and conflict points, and hence to the interaction and explanation of its outcome, are:

- i) inclusions and exclusions of issues or problem characteristics: the inclusion or exclusion of issues, in particular the breadth and depth of the problem-solution, may have profound (normative and material) ramifications for the parties involved;
- ii) inclusions and exclusions of actors: this relates both to matters of expertise, legitimacy, and the acceptability of a given solution to concerned others, but it may also be fundamentally important to the creation or existence of a zone of agreement in the first place;²²⁶
- iii) sanctions and compliance or enforcement mechanisms (including monitoring and verification): these have not only potentially quite substantial normative and material implications (for violators, of course, but more importantly for the costs and credibility of the solution), but also relate to fears of cheating and the sanctioning problem, both among industry actors and between industry and nonindustry actors;²²⁷

²²⁵ See e.g. Hasenclever, Mayer and Rittberger, *Theories of international regimes*, pp. 59-68, for discussion of the problem-structural approach within regime theory.

²²⁶ In addition to the earlier arguments, for a discussion of framing of the problem and actor selection, see also Oran R. Young and Gail Osherenko, ‘International Regime Formation: Findings, Research Priorities, and Applications’ in Young and Osherenko (eds.), *Polar Politics*, , pp. 227-228.

²²⁷ The fear of cheating and the sanctioning problem are prominent in the discussions of obstacles to international cooperation in the literature on international regimes, cf. Hasenclever, Mayer and Rittberger, *Theories of International Regimes*, p. 34-35, 48-55, 76, 105, 115, 170. In particular contractualist, functionalist, interest-based approaches have emphasized this as a central obstacle as it potentially hinders or prevents the pursuit of shared interests and a strategy of reciprocity. Neorealist or power-based approaches – e.g. Krasner and Grieco, cf. above – have, in turn, tended to emphasize more significant obstacles, because of the difference in underlying assumptions. If we assume a situation with industry actors that are in different positions and with divergent preferences as to modelling outcomes, and if we add to this the potential presence and

- iv) the distribution of costs and funding: costs may be significant, and the location of the burden may involve distributional conflicts among industry and non-industry actors (including intra-industry conflicts or diversions, cf. above); moreover, the “burden” may come with considerable power in terms of shaping the particular form of a solution.

Fifth, the exercise of power through forum-shifting and/or issue (de-) linkage may be central to the resolution of the above: both linkage and de-linkage may seek and/or rely heavily on forum-shifting²²⁸ – and vice-versa – for the achievement of the underlying purpose. De-linkage, for example, may only be possible if a shift of venue is achieved, and reversely forum-shifting may require the linkage of certain issues to be meaningful in any sense. As with linkage, forum-shifting is a mechanism for transforming the situation structure. Again, Braithwaite and Drahos’ study is instructive, and the two authors provide a distinction between three different strategies of forum-shifting: moving an agenda from one organization to another, abandoning an organization, and pursuing the same agenda in more than one organization.²²⁹ Both empirical examples and an approach emphasizing hegemonic struggles suggest that two combinations of linkage and forum-shifting are particularly central to the explanation of changing CSR: tactical issue-linkage of symbolically less powerful and highly symbolic issues, implying that the agenda is moved to the forum of the latter and/or that the agenda is expanded; de-linkage of less salient issues and/or issues that are less compatible with dominant ideas and principles in order to narrow the agenda, achieved primarily through a shift of forum.

Sixth, modelling interaction occurs within the constraints and potentials inherent in the preconditions (i.e., the characteristics of the problem, the characteristics of the framework of governance, and the industry characteristics) *and* those produced within the context of the other types of interaction (i.e., the concrete struggles to define the problem, targeting and

direct or indirect involvement of nonindustry players with far-reaching demands (modelling outcome preferences), this only serves to underline the possibility of sanctions and compliance mechanisms being central to the configuration of givens and conflict points.

²²⁸ See e.g. Baumgartner and Jones, ‘Agenda Dynamics and Policy Subsystems’, p. 1047 onwards for a discussion of ‘the venue problem’ and venue bias.

²²⁹ Braithwaite and Drahos, *Global Business Regulation*, p. 564.

economic coercion). In other words, the state of the struggles to define a problem, for example, at a certain point in a process will combine with the preconditions to shape e.g. the configuration of givens and conflict points.

On the basis of the above, let me finally present a number of more specific propositions concerning the modelling of solutions. First of all, we may assume that earlier stages tend to a greater degree to involve modelling interaction confined to (A) and (C) above, whereas (B) and/or (D) are more likely later in the process – with prior history associated with the industry and/or corporation and economic coercion being seen as the main factors in enabling exceptions to this.

Second, where a shift from (A) and/or (C) to (B) and/or (D) occurs, this will occur as a result of prior modelling interaction combined with other forms of interaction, and it will take the form of either i) nonindustry efforts at modelling solutions, or ii) industry attempts at foreseeing modelling by others, where both may in no small measure relate to the potential of another stream of modelling and the leverage of modelling first-mover advantages with respect to conflict points and forum matters.²³⁰

Third, we may assume that the higher the solution-focus and the greater the number of parties involved, the harder and more conflictive the bargaining: conflict points are *ceteris paribus* more pronounced and likely to affect the interaction in (B) and in particular (D) than in (A) and (C). In other words, the more solution-focused and the more actors involved, the more the interaction will be patterned by the configuration of givens and in particular conflict points, and the more likely that this will manifest itself in actual or threatened/potential acts of issue (de-) linkage, forum-shifting and/or –competition.

4.5 Summary

In this rather lengthy treatment I have sought to argue that if we are to explain the three agreements, indeed changes in corporate responsibility and the governance of child labor and core labor rights in concrete cases, we need to analyze a complex of preconditions and interrelated processes and interaction.

²³⁰ See Braithwaite and Drahos, *Global Business Regulation*, pp. 582-593, for a treatment of the patterning of modelling according to their terminology.

To summarize, the preconditions that are seen to be central to this analysis and explanation are the following:

- The characteristics of the problem: existence, extent, gravity, breadth and depth, and il/legality;
- The characteristics of the framework of governance: national and international regulation, associated patterns of enforcement, and prevailing norms and practices of corporate conduct;
- Industry characteristics, structures of power, control and vulnerability: inter-nodal differences, intra-nodal similarities (dominant and subordinate nodes), intra-nodal differences (dominant node: size, corporate branding and image, main markets the U.S. and/or Europe) and industry associations.

In the analysis of these, one should seek to clarify and characterize any dramatic shifts in the above (whether actual or impending), and emphasis should be placed on those constraints and potentials of (de-) politicization potentially shaping the processes and interaction.

As far as these are concerned, four forms of interrelated interaction and processes were specified, that may be summarized as follows:

- Struggles to define the problem: claims and counterclaims, a problem minimization-maximization logic; stat wars and relativizations - existence, extent, gravity (il/legality), and breadth and depth
- Targeting, struggles over blame and responsibility: controllability and intentionality; attributions (the selection of targets, the characteristics of targeting) and patterns of reactions (denials, diversions (re-attributions))
- Economic coercion: actual or threatened imposition as well as realistic risk of trade sanctions or restrictions, other regulatory interventions, boycotts and adverse consumer reactions; diversions (intra-industry economic coercion)
- Modelling the solution: types of interaction (organizational form and solution focus); configuration of givens and conflict points, a

problem/solution minimization-maximization logic (inclusion / exclusion of issues and actors, sanction and enforcement mechanisms, distribution of costs and funding); forum-shifting and issue (de-)linkage.

5. The politics of corporate responsibility and child labor in the Bangladeshi garment industry²³¹

5.1 Introduction

On the 4th of July, 1995 - after more than two and a half years of controversy and going to and from the negotiating table - a Memorandum of Understanding (MOU) concerning child labor in the Bangladeshi garment industry was signed between the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), UNICEF Bangladesh, and the International Labour Office (ILO) Bangladesh.²³²

Looking back at the 1990s, the Bangladesh case was quite a prominent one in the wider, re-emerging politicization of corporate responsibility in relation to child labor and labor rights more broadly. Arguably, it was a uniquely important one, both in terms of the significant changes brought about in the agreement (such as the ILO's involvement in monitoring and verification) and in terms of the role that the process and the agreement have played (and continue to play) in informing certain norms and practices related to corporate responsibility and child labor. By all means, the Bangladesh case also ranks among the most controversial and widely debated of such conflicts. A dominant theme in the process was the negative consequences for the child workers of the so-called Harkin Bill (a proposal to ban the importation into the U.S. of goods made with child labor) and the later boycott threat. The pressure on the Bangladeshi garment industry was widely seen as misplaced, and the application of the

²³¹ An alternative and shorter version of this chapter was published in an International Affairs special issue on Critical Perspectives on Corporate Social Responsibility; see Michael E. Nielsen, 'The politics of corporate responsibility and child labour in the Bangladeshi garment industry' in *International Affairs*, Vol. 81, No. 3, 2005.

²³² The Memorandum and other documents referred to here are on file with the author.

pressure was characterized as either self-interested protectionism in disguise or as well-intended, but uninformed and misguided. There are clear links to broader debates about boycotts, trade sanctions, social clauses and the “real” motives of industry critics; more specifically, the lessons from Bangladesh subsequently influenced – and have often served as the explicit basis for sustaining – some of the views and actions of key players in the field, such as UNICEF, ILO and Save the Children, and also more widely shared elements of “common sense” concerning child labor.²³³

The analysis below offers a fundamental challenge to some of these beliefs, albeit as an unintended consequence of my setting out to explore a question which remains virtually un-asked: why did the MoU come into existence and take that particular form? To be sure, most treatments of the Bangladesh case give answers to this question, but these tend to be provided in passing, as background information on journeys departing from somewhat different questions and traversing other terrain. For example, discussions of the positive and negative consequences of the MOU for the children, descriptive and/or prescriptive treatments of new approaches to child labor and best corporate practice, the pros and cons of linking trade and labor standards, or of boycotts. While these are important considerations, one of the effects of the emphasis on them is that, in spite of all that has been said and written about this case, the above question has not really been asked yet. Except for once, that is: an occasional paper was published by UNICEF Bangladesh in 1996. It was written by Babar Sobhan and UNICEF’s daily point person in the negotiations of the MoU, Susan Bissell, and I shall return to this later.²³⁴

²³³ See e.g. testimony of Gabriela Stoikov, Manager of ILO’s International Programme on the Elimination of Child Labour (ILO-IPEC), in U.S. Department of Labor, Bureau of International Labor Affairs, *Public Hearings on International Child Labor*, 12 April, 1994, Official Record (Washington, D.C.: U.S. Department of Labor, Bureau of International Labor Affairs, 1994); Marcus and Harper, *Small hands*; Bissell and Sobhan, *Child labour*. See also Jo Boyden, ‘Postscript: implementing the Convention on the Rights of the Child – who decides about children’s welfare?’ in Allison James and Alan Prout (eds.), *Constructing and reconstructing childhood: contemporary issues in the sociological study of childhood*, 2nd Edition (London: RoutledgeFalmer, 2003), and Naila Kabeer, *The Power to Choose: Bangladeshi Women and Labour Market Decisions in London and Dhaka* (London: Verso, 2000).

²³⁴ Bissell and Sobhan, *Child labour*. The paper is quite elaborate and provides for an excellent reading of a certain perspective on the issues and events, but it also has its problems (further below).

5.2 Industry characteristics²³⁵

After a few slow years following the inception in the late 1970s of the Bangladeshi garment industry, from the mid-1980s onwards the industry went through a period of ‘phenomenal growth.’²³⁶ By the early 1990s, the Bangladeshi garment industry had become the nation’s primary earner of foreign exchange - accounting for 52 percent of total national exports in 1992/93²³⁷ - and, arguably, its most important industry. This also entailed a high degree of dependency on export markets, with North America and Western Europe accounting for more than about 95 percent of the industry’s exports, and the world’s importer of apparel – the U.S. – accounted for approximately half of industry exports.²³⁸

The rise of garment manufacturing in Bangladesh must be seen within the context of a much broader, ongoing and fundamental change in the territoriality of global garment production and trade.

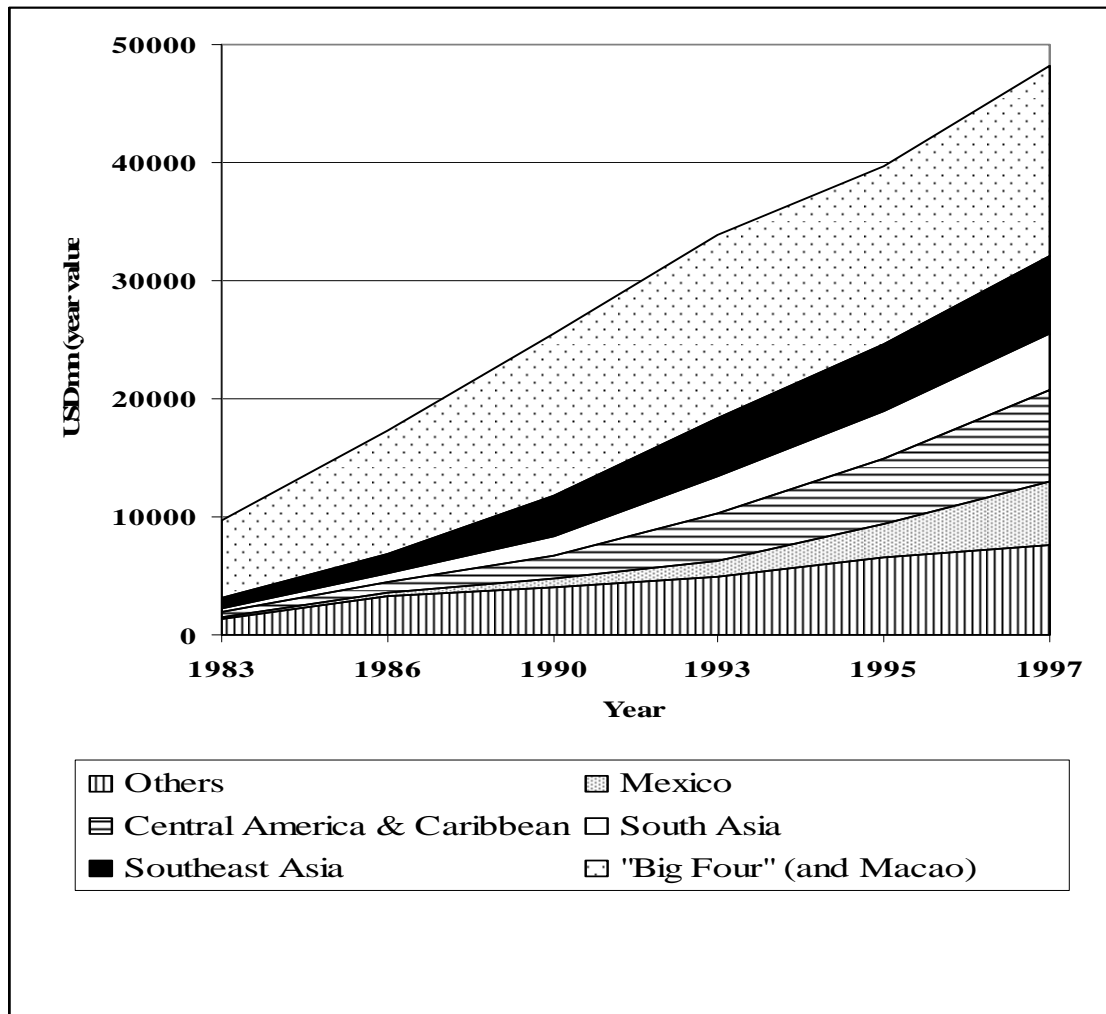
²³⁵ The term “apparel” covers a broad range of products (accessories, various types of garments and clothing). Apparel is frequently used interchangeably with terms such as clothing or garment, the latter being understood in their wide sense. Apparel does not include other uses of the textile industry’s output, i.e. the household goods (such as curtains and draperies, home furnishings, etc.) and industrial goods (such as automotive and apparel trimmings) also referred to under one as “fabricated textile products.” See U.S. Department of Commerce/International Trade Administration, *U.S. Industry & Trade Outlook 2000* (New York: McGraw-Hill Companies, 2000), p. 33-1.

²³⁶ Mojibul H. Bhuiyan and Harvey Shaw, ‘Profile of the Textile and Clothing Industry in Bangladesh’ in *Textile Outlook International*, May 1994, p. 91.

²³⁷ The World Bank, *Bangladesh: From Stabilization to Growth* (Washington, D. C.: The World Bank, 1995), p. 27.

²³⁸ The World Bank, *Bangladesh*, p. 76; GATT Secretariat, ‘GATT Trade Policy Review: Bangladesh’, *World Trade Materials*, Vol. 4, No. 4, July 1992, p. 6. See also Anisul M. Islam and Munir Quddus, ‘The Export Garment Industry in Bangladesh: A Potential Catalyst for Breakthrough’ in Abu N. M. Wahid and Charles E. Weis (eds.), *The Economy of Bangladesh: Problems and Prospects* (Westport, Ct.: Praeger, 1996), p. 187.

Figure 5.1 U.S. apparel imports by regions and selected countries²³⁹



In the 1980s, this primarily involved a migration of production from the “Big Three” Asian countries (Hong Kong, Taiwan and South Korea) to mainland China (hence, the designation “Big Four”) and a number of Southeast and South Asian countries. The increasing prominence of China, particularly from the late 1980s and through the 1990s, is of course remarkable: by the mid-1990s it had become the world’s leading clothing exporter.²⁴⁰ If we take a look at the growth and changing geographical composition of U.S. apparel imports since the early 1980s, another significant shift lies in the growing share of Central America and the Caribbean as well as Mexico: from generating a combined 6 percent of U.S. apparel imports in 1983, by 1997 the combined share of these

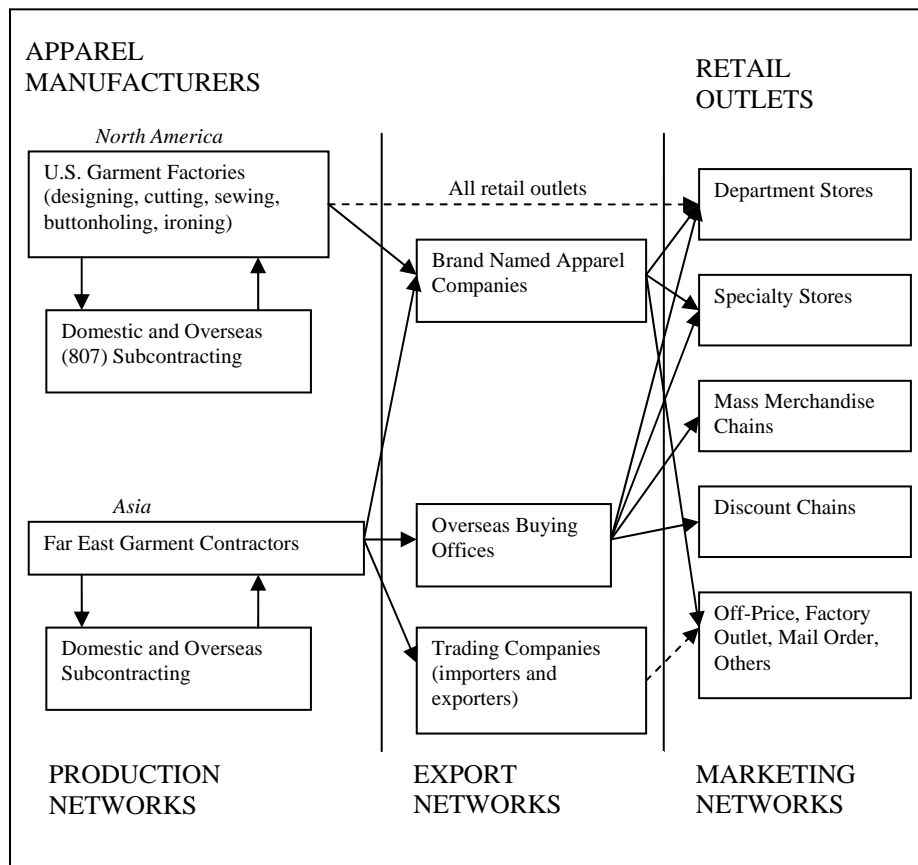
²³⁹ Based on Gereffi, ‘International trade and industrial upgrading’, p. 50.

²⁴⁰ Peter Dicken, *Global Shift: Transforming the World Economy* (Third Edition), (London: Paul Chapman Publishing Ltd., 1998), p. 291.

Southern neighbors had grown to 27 percent, nearly as much as China, Hong Kong, Taiwan, South Korea and Macao together (33 percent). In this picture, the Bangladeshi garment industry accounted for a quite insignificant share of U.S. apparel imports.²⁴¹

The apparel commodity chain may be illustrated as follows:

Figure 5.2 The apparel commodity chain²⁴²



In a global commodity chain dominated by U.S. and European buyers, the Bangladeshi garment industry occupied a subordinate role, in part because of its large supply of low cost labor and the low entry barriers associated with the production processes carried out in Bangladesh. These were fairly simple (mainly the cutting and making, and sometimes trimming, of garments), the technology used was uncomplicated, infrastructural requirements low (simple factory space, electricity), and the investment

²⁴¹ 2.18 percent in 1993, according to Gary Gereffi, 'International trade and industrial upgrading', p. 50.

²⁴² The figure is based on Appelbaum and Gereffi, 'Power and Profits', p. 46.

requirements were likewise modest. Production was predominantly organized as international subcontracting, through about 250 buying houses, and the international buyers not only provided designs and specifications, but also undertook the supply of imported fabrics and quality monitoring.²⁴³

The shift in the early 1980s towards an export-oriented strategy in Bangladesh obviously influenced the development of the industry, granting the industry a variety of economic concessions from the Bangladeshi state such as an exemption of corporate taxation on export profits and a concessional duty rate on capital equipment imports.²⁴⁴ Yet, the rapid growth and the high share of total export earnings were far from unique to Bangladesh, and the rise of garment manufacturing in Bangladesh must be seen within the context of a much broader, ongoing and fundamental change in the territoriality of global garment production and trade, cf. above. This shift was an expression of the changing global sourcing patterns of the dominant retailers and “manufacturers,” shaped in part by the changes in the underlying competitive dynamics – the retail revolution and the double squeeze on “manufacturers”²⁴⁵ – and in no small measure by the peculiar dynamics generated by the international trade regime and the GATT Multi-Fibers Arrangement (MFA) in particular:

‘International buyers were initially attracted to Bangladesh by its favorable situation under the Multi Fibre Agreement. As a least developed country it could benefit from the quotas which otherwise limited the supply from more traditional garment producers such as Hong Kong and the Republic of Korea.’²⁴⁶

In spite of quotas being imposed on certain items in the mid-1980s, the Bangladeshi garment industry in general continued to hold a favorable position and sustained its rapid growth, cf. above. In 1992, however, it was

²⁴³ See The World Bank, *Bangladesh*, for a more elaborate treatment of this.

²⁴⁴ The New Industrial Policy of 1982 implied a fundamental shift from an import substituting to an export-oriented industrialization strategy, a shift which was reinforced in the Revised Industrial Policy of 1986 and in the Industrial Policy of 1991. This, of course, mirrored similar shifts in so many other countries at that time.

²⁴⁵ This has been analyzed extensively elsewhere; cf. Appelbaum and Gereffi, ‘Power and Profits’.

²⁴⁶ The World Bank, *Bangladesh*, p. 76.

the likely negative effects on the Bangladeshi garment industry of the likely phasing out of the MFA which constituted the real worry for the Bangladeshi manufacturers.²⁴⁷

In a poverty-ridden and largely agricultural economy, in which the more traditional exports were stagnant, by the early 1990s the garment industry had become extremely important, both by virtue of its centrality to the new private sector, export-oriented development ideology and corresponding institutional framework and, of course, by its material importance to the nation's exports. So much so, in fact, that the industry association, the BGMEA, was now a central political player. In the words of the World Bank, '*the special status which the industry earned by its impressive early contribution to exports enabled the emergence of BGMEA as a strong industry association that could command the direct attention of the political establishment [...]*'²⁴⁸ Moreover, in some cases the links between industrialists and the political elite were even very direct: Redwan Ahmed, who became President of the BGMEA in 1993, was not only a garment manufacturer but also a member of parliament for the ruling right-wing Bangladesh Nationalist Party (BNP).²⁴⁹ Furthermore, since the administration of export quotas had been placed in the hands of the BGMEA, the association also had a remarkable degree of politico-administrative power over its members, controlling the right to do lucrative business, in that 'you have to be a member of BGMEA to have the right to legally export clothing made in Bangladesh.'²⁵⁰

²⁴⁷ The MFA was a multilateral system of 'voluntary export restraint' agreements first signed in 1973. Negotiations to phase out the MFA had been underway since the mid-1980s as part of the GATT Uruguay Round, and an agreement was reached in late 1993. For an in-depth analysis, see Geoffrey D. Underhill, *Industrial Crisis and the Open Economy: Politics, Global Trade and the Textile Industry in the Advanced Economies* (London: Macmillan Press Ltd., 1998).

²⁴⁸ The World Bank, *Bangladesh*, p. 78.

²⁴⁹ *The Telegraph* (Dhaka), 'US team calls on BGMEA president: no child labour in any garment factory', October 14, 1993. For a broader analysis of the role of business in Bangladeshi politics, see Fahimul Quadir, 'Legitimization, Patrimonialism, and Regime Consolidation: The Myth of Market Reform in Bangladesh' in Ananya Mukherjee Reed (ed.), *Corporate Capitalism in Contemporary South Asia: Conventional Wisdoms and South Asian Realities* (Houndmills, Basingstoke: Palgrave Macmillan Ltd., 2003).

²⁵⁰ Samuel Grumiau, *Garments "Made in Bangladesh" - The Social Reality Behind the Label* (Brussels: ICFTU, 2000), p. 3; Asian-American Free Labor Institute (AAFLI),

The industry also had its vulnerabilities, however, and faced a number of uncertainties relevant to the process analyzed below. To begin with, the growth of the industry was based on production processes and working conditions directly and clearly linked to consumption in Europe and North America – markets on which the industry had become highly dependent and where most consumers arguably found the former processes and conditions unacceptable. Moreover, the “return of the sweatshop” was increasingly on the agenda in the U.S., and several groups were conducting child labor and labor rights campaigns (cf. the following chapters). Moreover, the Child Labor Deterrence Act, which would ban the importation into the U.S. of products made using child labor, had already been introduced in the U.S. Congress, and its re-introduction in 1992 was important in this case (further below). Moreover, the characteristics of the garment industry – a prominent and visible industry, consisting primarily of formal-sector, large-scale enterprises geographically located in Dhaka and Chittagong – were generally favorable to labor organizing. The Asian-American Free Labor Institute (AAFLI, part of the AFL-CIO) was already engaged in labor organizing in the garment sector in Bangladesh, when the process below started.²⁵¹ What is more, there were some very close links between AAFLI and the other U.S. NGO involved in the process, the Child Labor Coalition (CLC): AAFLI’s Country Director, Terry Collingsworth, was also legal counsel to the U.S.-based International Labor Rights Fund (ILRF); the ILRF, in turn, was a member of the Child Labor Coalition, whose co-chair was the ILRF’s executive director, Pharis Harvey.

5.3 Characteristics of the framework of governance

As the controversy arose in 1992 Bangladesh had not ratified the ILO Convention 138 Concerning Minimum Age for Admission to Employment (1973), although virtually all of the other fundamental conventions of the ILO were ratified as early as 1972.²⁵² Bangladesh had ratified, however,

Report on *child labor in Bangladesh*. Prepared for the U.S. Department of Labor (no place: AAFLI, 1994), p. 22.

²⁵¹ See Marilyn Rock, ‘The Rise of the Bangladesh Independent Garment-Workers’ Union (BIGU)’ in Jane Hutchison and Andrew Brown (eds.), *Organising Labour in Globalising Asia* (London, Routledge, 2001).

²⁵² ILO Conventions 29, 87, 98, 105, and 111 were ratified on June 22, 1972. Convention 100 was ratified in 1998, and Convention 182 in 2001; cf. International

the UN Convention on the Rights of the Child on September 2, 1990.²⁵³ In addition, child labor was regulated by a number of laws and ordinances, ‘a confusing maze of conflicting provisions relating to the regulation of child labor.’²⁵⁴ However confusing, though, the national framework pertaining to child labor in Bangladeshi garment factories was ‘generally in agreement with similar provisions’ of the ILO C138.²⁵⁵ There was one notable difference, though, which played into the process below: unlike the ILO C138, Bangladeshi laws on child labor did not allow for light work of older children.²⁵⁶

In other words, a regulatory framework was in place, but it was not enforced – a situation far from unique to Bangladesh.²⁵⁷ The Bangladesh Department of Labor and Inspectorate of Factories lacked ‘sufficient

Labour Organisation, *Ratifications of the ILO Fundamental Conventions (As of 25 Sep 2003)* (at www.ilo.org, accessed on September 25, 2003).

²⁵³ Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties (As of 07 July, 2003)* (at www.unhchr.ch, accessed on September 25, 2003).

²⁵⁴ AAFLI, *Report*. A National Labor Law Reform Commission was established in 1992, but this did not play into the MOU process.

²⁵⁵ The Embassy of Bangladesh to the U.S., ‘Written testimony’ in U. S. Department of Labor, Bureau of International Labor Affairs, *Public Hearings on International Child Labor, April 12, 1994* (Washington, D.C.: U. S. Department of Labor, Bureau of International Labor Affairs, 1994).

²⁵⁶ Bissell and Sobhan, *Child labour*, p. 14. The key laws relevant to child labor include The Mines Act (1923), The Employment of Children Act (1938), The Factories Act (1965), and The Shops and Establishments Act (1965). With respect to child labor in the garment industry, The Factories Act of 1965 and The Employment of Children Act of 1938 (as amended in 1974) both prohibit the employment of children below the age of 15 in factories, and the first also contains provisions limiting the work day to 5 hours between 7 a.m. and 7 p.m. for young workers. Cf. e.g., U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume I): The Use of Child Labor in U.S. Manufactured and Mined Imports*, (Washington, D. C.: U. S. Department of Labor, Bureau of International Labor Affairs, 1994), p. 32.

²⁵⁷ Cf. Assefa Bequele and Jo Boyden (eds.), *Combating Child Labour* (Geneva: International Labour Office, 1988).

resources, staff and logistical support to adequately perform the task of monitoring child labor laws.’²⁵⁸ In the words of an ICFTU report:

*‘A hundred or so labour inspectors for a population of 125 million inhabitants is negligible, even if it must be acknowledged that the financial resources of the public authorities in Bangladesh are commensurate with the poverty which predominates the country. The Ministry of Labour is counting on civil society (unions, NGOs, the press and so forth) to bring violations of labour laws to its attention, but rarely does it act effectively.’*²⁵⁹

As far as the dominant norms of corporate responsibility and the state of self-regulatory initiatives at the time, with respect to the Bangladesh case it is worth noting that the “second wave” of recent developments in this area was only emerging in the early 1990s. As noted, along with Reebok, Levi Strauss claims to have been a first mover in taking a new stand on child labor and other labor practices. This was to some extent connected to the Bangladeshi garment industry, where Levi Strauss developed a program of its own that was quite similar to the eventual MOU.²⁶⁰ As for the other international buyers, when the process started rolling in late 1992, there were no signs of formal policies on the issue. Thus, the understandings and practices of corporate responsibility in relation to child labor may be characterized primarily in terms of a more or less tacit acceptance that ‘that’s just the way things were done over there.’²⁶¹

²⁵⁸ U.S. Department of Labor (Bureau of International Labor Affairs), *By The Sweat and Toil of Children (Volume I)*, p. 32-33.

²⁵⁹ Grumiau, *Garments*, p. 16.

²⁶⁰ William Maroni (responsible for government affairs and public policy at Levi Strauss), testimony, in U. S. Department of Labor, Bureau of International Labor Affairs, *Public Hearings on International Child Labor, June 28, 1996* (Washington, D.C.: U. S. Department of Labor, Bureau of International Labor Affairs, 1996); Karl Schoenberger, *Levi’s Children: Coming to Terms with Human Rights in the Global Marketplace* (New York: Grove Press, 2000), pp. 139-140.

²⁶¹ Meryl Davids, ‘Global Standards, Local Problems’ in *Journal of Business Strategy*, January/February, 1999.

5.4 Characteristics of the problem

The number of children working in the Bangladeshi garment industry in 1992 is difficult to ascertain with any degree of precision.²⁶² Reasonable estimates range between 50,000 and 100,000 children (the Government of Bangladesh as the source of the higher figure). This was only a tiny fraction of the total number of working children in Bangladesh, the work of the children in the garment industry was generally not hazardous, and the AAFLI survey (referenced frequently in this chapter) furthermore found no incidences of bonded labor in the industry.

As Naila Kabeer has forcefully argued (mainly focusing on adult workers), in spite of the working conditions in the garment industry, in some respects employment in the industry also entailed a positive social potential for the women workers at the micro-level and at the macro-level, in terms of gender relations and traditions in Bangladesh.²⁶³ Thus, in a context of deeply patriarchal traditions and a general undervaluing of the girl child, working in the garment industry might even be seen as preferable by the children and their parent(s). Moreover, the prevalence of child labor in the industry must be seen within the context of deep and widespread poverty, the poor state of the education system and the general absence of day-care options (related both to the absence of social services as well as changes in the social and geographical foundations of kinship associated with flows of migration).²⁶⁴ The industry workforce consisted predominantly of women, and female child workers were found to account for roughly 60 percent of

²⁶² To begin with, statistics on child labor are generally notoriously difficult, cf. e.g. Fyfe and Jankanish, *Trade unions and child labour*, pp. 13-14. The problem is aggravated in the concrete case by the fact that the Bangladeshi manufacturers started to lay off children already before the spotlight really turned on the problem in late 1992. What is more, the figures reported at the time should be approached with more than a little caution as they also reflected the narrow self-interests of those reporting them. Statistics on child labor in the Bangladeshi garment industry, in other words, were part and parcel of the politics of child labor and corporate responsibility analyzed below.

²⁶³ Kabeer, *The Power to Choose*.

²⁶⁴ Primary education in Bangladesh was both free and compulsory, the education system was of a very poor quality, school accessories still had to be paid for, and formal education was often (perceived to be) of little use in future. See e.g., U.S. Department of Labor (Bureau of International Labor Affairs), *By The Sweat and Toil of Children (Volume I)*, p. 33; AAFLI, *Report*, p. 14.

the child workers. A common explanation for child labor was that ‘mothers bring their children to work in the garment factory and the owner kindly allows the children to earn some money by helping out.’²⁶⁵

Thus, we find that child labor in the garment industry can be characterized in ways that – to some – makes it acceptable in some forms and under certain conditions, i.e. as a “necessary evil” at some stages of economic development and in the face of widespread poverty. Such a characteristic, it might be said, implies an injustice and the existence of certain ideals from which the unjust practice is nevertheless to be temporarily exempted. As the Director of the ILO’s IPEC put it in 1994: ‘Few human rights abuses are so unanimously condemned, while being so widely practised, as child labour.’²⁶⁶

However, as a characteristic of child labor in the garment industry, the above may be seen as problematic on a number of counts. That is, in a number of respects, the above does not bring out the problematization and conflict potential inherent in the conditions: the work of underage children in the industry was clearly *illegal*, and production in the garment industry did entail widespread violations of basic labor rights.²⁶⁷ Even if the ILO C138 had been ratified or national laws had provided for light work, the work of the older children would generally not have qualified as such, among other things because ‘Where children work long hours [...] the work they do, cannot qualify as “light” by the standards of Convention No. 138.’²⁶⁸ More broadly, working conditions in the garment industry have been characterized as generally involving working 10-14 hour days, often without breaks and with only half a day off in a week, late payments and sometimes no payment at all, overtime being frequently required and rarely entailing extra pay, frequent violations of employment formalities such as being given no employment letter (enabling employers to terminate workers without the statutory termination benefits), physical working environments characterized by poor lighting and ventilation and often hot,

²⁶⁵ AAFLI, *Report*, pp. 13-14.

²⁶⁶ Stoikov, Testimony.

²⁶⁷ See e.g., U.S. Department of State, *Bangladesh Economic Policy and Trade Practices* (Washington, D.C.: U.S. Department of State, 1994).

²⁶⁸ Stoikov, Testimony.

crowded and locked factory buildings, and the ‘imposition of harsh forms of discipline and supervision.’²⁶⁹

Beyond legality and the broader context of labor rights violations, however, the above moreover characterizes child labor in the garment industry as a “lesser” problem, when – on a number of counts and with a view to the politicization and conflict potential – it was precisely the opposite: a key characteristic of child labor was that it was prevalent in the country’s leading and most important export industry. This relates to the industry’s vulnerability and susceptibility to external pressure, of course, but it also indicates that the potential for forcing change in this ‘limited sphere’ was perhaps quite considerable; the problem was certainly much more visible; and factory work has tended to be perceived as more exploitative. And, it may be pointed out, the explosive growth of the industry had been accompanied by an actual and equally marked, numerical increase in the incidence of child labor in it.²⁷⁰

Furthermore, the link between child labor and poverty may be said to cut both ways (that is, while children’s earnings may be important in poor households, child labor, in turn, perpetuates poverty), and rather than a natural law related to stages of economic development, the persistence/eradication of child labor is a matter of social forces for and against it. Thus, the simple logics of household poverty and the absence of day-care options may not be as straightforward as sometimes suggested. The survey conducted by AAFLI, for example, found that adult unemployment in the immediate family of child workers was quite common, and that ‘Very few (less than 15%) of the child workers interviewed had an immediate family member (father, mother, brother, sister) working in the same factory.’²⁷¹ Moreover, in relation to day-care options, the report noted: ‘Interestingly, section 47 of the Factories Act of 1965 requires that in any factory with more than 50 women workers, the owner is required to provide a child care room for the children of the

²⁶⁹ Rock, ‘The Rise’; AAFLI, *Report*, pp. 12-14; U.S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume I)*, p. 30.

²⁷⁰ This is not to suggest that the children employed in the industry would otherwise have been attending school. It is important, however, to point out that there was a change in the real social relations of production and not merely in the discursive politics of child labor.

²⁷¹ AAFLI, *Report*, p. 13.

workers. None of the workers interviewed for this report was aware of any factory that met this requirement.’²⁷²

As for the material interests in using child labor, children were generally paid less than adults in the industry, but this wage differential was ‘primarily because of the jobs held by the children, who tend to be given the less skilled jobs [...] In cases in which a child worker is able to obtain promotion to a job as a sewing machine operator or ironer, they are paid the same wages as adult workers.’²⁷³ While the direct labor cost advantages of using child labor were thus rather limited in the sense of being confined to certain types of tasks, other facets of child labor - e.g. child workers being more easily disciplined - have been claimed to be important.²⁷⁴ Moreover, in competitive labor market systems, child labor may serve as a substitute for adult workers, putting a downward pressure on adult wages and enabling local manufacturers to increase their sometimes meager profits, not only in terms of adult unemployment (cf. above) but also in terms of serving to obstruct labor organizing. As the following comment of a garment manufacturer illustrates, not all garment manufacturers were that keen supporters of trade unions: ‘If it is necessary to kill workers, they will be killed, but there will not be a trade union in this factory.’²⁷⁵

All of the above, of course, may be somewhat irrelevant if child labor is seen more or less exclusively as a practice rooted in local culture and traditions, the implication being, of course, that rather than a divergence in practice from a shared ideal, there are fundamentally different sociocultural values. Obviously, child labor was widely accepted and condoned in Bangladesh, and gender values and traditions in particular played an important role in shaping the characteristics of child labor in the garment industry. The sovereignty of culture argument, however, has often been used as an excuse for many horrors, and its invocation often leads to a very abstract discussion. While one may find such a discussion very interesting, it also tends to draw attention away from any discussion of how the growth of the garment industry and its entry into a transnational production chain

²⁷² AAFLI, *Report*, p. 13; underlined in original. See also Bissell and Sobhan, *Child labour*, pp. 8-9; Grumiau, *Garments*, p. 14.

²⁷³ AAFLI, *Report*, p. 12.

²⁷⁴ See e.g. U.S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume I)*, p. 31.

²⁷⁵ Cited from Rock, ‘The Rise’, p. 40.

also involved some profound changes in the rationalities of the Bangladeshi politicians and manufacturers: child labor in the garment industry co-existed with some – much more significant – changes in values with the widespread acceptance of “new” and “alien” values associated with global capitalism and a neoliberal world order – values that, in some quarters, are seen as highly contentious and in no small measure tied to the powerful material and political forces underlying the continued use of child labor.

5.5 A chronology of events

In late 1992 the spotlight was turned onto the use of child labor in the Bangladeshi garment industry.²⁷⁶ Two events played a crucial role in this. The first was the introduction – or, more precisely, the use of this in Bangladesh – in the U.S. Congress in August of 1992 of the Child Labor Deterrence Act (also referred to as the Harkin bill) to ban the importation into the U.S. of products manufactured using child labor.²⁷⁷ In October, the Chief of the Economic Commercial Section of the U.S. Embassy in Bangladesh, Phillip Carter III, wrote to – and subsequently met with representatives of – the BGMEA. Then-BGMEA President, Mohammad Mosharraf Hossain, subsequently sent a letter to BGMEA members, transmitting Carter’s warnings of the pending Harkin Bill and the serious mood in the U. S. Congress as well as the possibility of another GSP petition, and urging them to ‘take note of the above developments for

²⁷⁶ Child labor in the Bangladeshi garment industry had not gone entirely unnoticed, and there had been skirmishes between American trade unions and the local manufacturers. See e.g. Denis Campbell, ‘Young Guardian: Slaves to our appetites – The exploitation of child workers around the world’ in *The Guardian* (London), 21 June 1989; Robert A. Senser, ‘On Their Knees’ in *America*, Vol. 167, Issue 7, Sept. 1992.

²⁷⁷ The bill had been introduced earlier, but had not yet been passed. See *Congressional Record*, ‘Statements on Introduced Bills and Joint Resolutions (Senate, August 5, 1992)’; *Congressional Record*, ‘The Introduction of The Child Labor Deterrence Act of 1989 (House of Representatives, 24 May 1989)’; *Congressional Record*, ‘Statements on Introduced Bills and Joint Resolutions (Senate, 24 May 1990)’; *Congressional Record*, ‘Introduction of the Child Labor Deterrence Act of 1991 - Hon. Donald J. Pease (Extension of Remarks, House of Representatives, 15 Nov. 1991)’.

information and appropriate necessary action to maintain smooth flow of our exports to the United States.’²⁷⁸

The second was an NBC Dateline segment broadcast on December 22, which charged Wal-Mart with mislabeling Chinese clothing to avoid import quota restrictions and with buying clothing from Bangladesh made by illegal child labor.²⁷⁹ In the run-up to the program, on December 12, the BGMEA had sent a letter to Wal-Mart’s Vice President, Arthur Emmanuel, assuring the company that ‘all necessary steps had been taken to ensure that BGMEA garments would be child free. The BGMEA also indicated to Mr. Emmanuel that it was going to open some schools for the working children in areas where there was a high concentration of garment factories.’²⁸⁰

Terry Collingsworth from AAFLI was already in Bangladesh, where he had met with Carter from the U.S. Embassy to discuss child labor and the garment industry. On December 26, 1992, Collingsworth met with the President of the BGMEA and proposed a collaborative effort to combat the problem.²⁸¹ A few days before the NBC program aired, Pharis Harvey of the ILRF (and CLC) had written to Wal-Mart’s President, David Glass, requesting further information about the company’s buying practices and policies. ‘Reeling from the negative exposure from the Dateline program, Mr. Glass responded with a detailed letter which included commitment by Wal-Mart to establish “a fund for factories and/or garment associations in order to help educate the children of Bangladesh.”’²⁸²

²⁷⁸ Mohammad Mosharraf Hossain (BGMEA President), letter to BGMEA members, November 14, 1992.

²⁷⁹ Don Longo, ‘Wal-Mart must address some ‘press’ing issues’ in *Discount Store News*, January 4, 1993, vol. 32, no. 1, p. 14; *The Wall Street Journal*, ‘Wal-Mart Stock Falls Ahead of TV Show’s Report on Imports’, December 22, 1992.

²⁸⁰ AAFLI, *Report*, p. 21.

²⁸¹ AAFLI’s proposal is described in more detail in section 5.9. Terry Collingsworth, Telefax to Pharis Harvey, March 23, 1993. Cf. also *The Telegraph* (Dhaka), ‘US labour body offers to train garment workers’ and ‘Garment manufacturers likely to clean low-age workers to protect US market: BGMEA warns members of dire consequences of employing children’, December 31, 1992; *The Bangladesh Times*, ‘AAFLI, BGMEA to solve problems of child labour’, December 31, 1992.

²⁸² AAFLI, *Report*, p. 21.

At this point, however, the garment manufacturers were already ‘contemplating to clean up low-age workers from their factories’ and – according to Rosaline Costa, a Bangladeshi human rights activist – as many as 5,000 children had already been displaced in December of 1992.²⁸³ This “cleaning up”, however, did not involve the provision of educational alternatives or any substitute income for the children, and the concern with the potentially worse fate of the displaced child workers soon became an important issue as the debate continued. Both the Harkin bill and the NBC segment caused considerable debate in Bangladesh as well as in the U.S., and representatives of the BGMEA and the government of Bangladesh engaged in talks with a number of different parties, including the U.S. Embassy and AAFLI. Wal-Mart, Levi Strauss and other international buyers of Bangladeshi garments sent representatives to ‘visit’ the country in the beginning of 1993.²⁸⁴ Neither Wal-Mart nor Levi Strauss chose to pull out of Bangladesh, however. Instead, Wal-Mart actually increased its buying in Bangladesh and announced a new set of sourcing standards, whereas Levi Strauss developed what it sees as a model program of its own.²⁸⁵

In March of 1993 the Child Labor Deterrence Act was re-introduced in the U.S. Congress, giving rise to further debate and talks, and in late spring an informal working group was formed with representatives from the government of Bangladesh, the BGMEA, UNICEF and the ILO, AAFLI, and several local NGOs.²⁸⁶ The working group had a wider mandate on

²⁸³ *The Telegraph* (Dhaka), ‘Garment manufacturers’; Collingsworth, telefax to Harvey, March 23, 1993.

²⁸⁴ Cf. *The Morning Paper*, ‘Malpublicity in United States against Readymade Garments of Bangladesh’, January 6, 1993 (AAFLI’s translation); United States Information Agency (Dhaka), *Bangladesh Atmospherics for 1/13/93: Child labor in the garment industry*, Memorandum 0340, January 13, 1993; *The Daily Star* (Dhaka), ‘Unwanted Garment Workers’, January 18, 1993; AAFLI, *Report*.

²⁸⁵ *The Morning Paper*, ‘Malpublicity’; *The Daily Star*, ‘US companies start taking actions against Bangladeshi contractors’, March 15, 1993; AAFLI, *Report*; Louise Kehoe, ‘Bold fashion statement: Levi Strauss’s decision not to invest in China’, *Financial Times*, May 8, 1993; Joanna Ramey, ‘Wal-Mart sets sourcing rules to monitor labor conditions’, *Women’s Wear Daily*, June 10, 1993.

²⁸⁶ See e.g. *The Daily Star* (Dhaka), ‘US companies’; *Congressional Record*, ‘Statements on Introduced Bills and Joint Resolutions (Senate, March 18, 1993)’; AAFLI, *Report*; United States Information Agency (Dhaka), *TPC on child labor*, Memorandum 02339, March 29, 1993; United States Information Agency (Dhaka),

child labor than just the garment industry. The group did, however, meet periodically to discuss the issue of child labor in the garment industry, and – although this did not entail negotiations of an MOU as such – among other things UNICEF conducted a study and also prepared a project proposal. The proposal was never accepted, though, and the group’s work was made difficult, among other things, by polarized views and discussions on the Harkin bill, as well as by the quite vague position and promises of the ILO.²⁸⁷

In early July 1994, the Child Labor Deterrence Act was introduced once more. The BGMEA announced that factory owners would cease to employ all child workers by October 31 and provide schooling for them.²⁸⁸ However, neither schooling nor alternative employment nor income for the child workers was forthcoming, and concerns over the potentially negative effects on the children were raised again. When October came, an appeal on behalf of a number of child workers was directed to UNICEF and the ILO (and the broader public), and the lay-offs were postponed. Subsequently, the negotiations that would eventually lead to the MOU began in a group consisting of representatives of the BGMEA, the ILO,

Bangladesh Media Reaction - March 31, Memorandum 02432, March 31, 1993; United States Information Agency (Dhaka), *Bangladesh Media Reaction - March 31*, Memorandum 02523, April 2, 1993; United States Information Agency (Dhaka), *TPC on child labor/the Harkin bill*, Memorandum 02622, April 7, 1993; United States Information Agency (Dhaka), *Bangladesh Media Reaction - April 7*, Memorandum 02705, April 8, 1993.

²⁸⁷ See Bissell and Sobhan, *Child labour*; AAFLI, *Report*. See also *The Daily Star* (Dhaka), ‘BGMEA can help avert adverse effect of Harkin Bill’, August 3, 1993; *The Morning Sun*, ‘Harkin Bill ‘won’t hit local industries’’ and ‘Harkin Bill a reflection of protectionism’, August 3 and 9, 1993; *The Telegraph* (Dhaka), ‘Harkin Bill to damage garment industry in Bangladesh’, August 10, 1993; *The New Nation*, ‘AAFLI working against interest of workers’, August 10, 1993; Nur Khan Liton, ‘Fair deal for the kids: Harkin’s Law will do more harm than good to Bangladesh’s working children’ in *Dhaka Courier*, September 10, 1993; *The Telegraph* (Dhaka), ‘No child labour’, October 14, 1993.

²⁸⁸ *Congressional Record*, ‘Introduction of the Child Labor Deterrence Act of 1994 - Hon. George E. Brown, Jr. (Extension of Remarks, House of Representatives, July 1, 1994)’; *Agence France Presse* (AFP), ‘Bangladesh’s garment industry to end use of child labour’, July 5, 1994; Rahman Jahangir, ‘US pressure forces Dhaka to free 36,000 child labourers’ in *Saudi Gazette*, July 6, 1994; *Agence France Presse* (AFP), ‘Bangladesh garment exporters ban child labour’, July 24, 1994; U.S. Department of Labor (Bureau of International Labor Affairs), *By The Sweat and Toil of Children (Volume I)*, pp. 34-35; Grumiau, *Garments*.

UNICEF, the U.S. Embassy and AAFLI.²⁸⁹ The negotiations, accompanied by a continued media attention on the industry, involved a number of thorny issues and disagreements, and they were further slowed down by the sweeping victory of the Republicans in the U.S. mid-term elections as well as by the fact that two different versions of an agreement were in play.²⁹⁰

On January 30, 1995, Pharis Harvey (executive director of the ILRF) and Linda Golodner (President of the National Consumers League), co-chairs of the Child Labor Coalition, representing more than 10 million members, wrote to Redwan Ahmed, President of the BGMEA:

*'[...] we have recently learned that very little if any progress has been made since last October, and that the BGMEA has expressed reluctance to allow independent monitoring of compliance with the program. This is disturbing [...] If the BGMEA does not intend to participate in the program as designed, then it can expect that organizations such as the Child Labor Coalition will be forced to publicize the continued use of child labor in the making of garments in Bangladesh.'*²⁹¹

Ahmed and the BGMEA did not reply, and at the Annual General Meeting of the BGMEA on March 11 a decision on the agreement was postponed until late May – in spite of a tremendous publicity opportunity for the BGMEA to sign and present an agreement in conjunction with the forthcoming visit of the U.S. First Lady, Hillary Clinton, to Bangladesh. According to the BGMEA, however, the agreement could only be accepted at an Extra-Ordinary General Meeting.²⁹²

²⁸⁹ International Labour Organisation, *International Programme on the Elimination of Child Labour (ILO-IPEC), Action against Child Labour: Lessons and Strategic Priorities for the Future* (Geneva, 1997), pp. 23-24; *Agence France Presse (AFP)*, 'Bangladeshi child labour lay-offs postponed', October 31, 1994; Bissell and Sobhan, *Child labour*.

²⁹⁰ See Nick Nuckley and Nick Fielding, 'Why I'll never buy a pair of Levi's again: Just 3p on the price of jeans would double the wages of these sweatshop girls in Bangladesh' in *Mail on Sunday* (London), November 27, 1994.

²⁹¹ Linda Golodner and Pharis Harvey, telefax to Redwan Ahmed, January 30, 1995.

²⁹² Redwan Ahmed, telefax to Pharis Harvey, April 25, 1995; Humayun Kabir (Bangladesh Ambassador to the U.S.), telefax to Pharis Harvey, April 25, 1995; *United Press International (UPI)*, 'Bangladeshi child labor takes spotlight', April 2, 1995.

More communication ensued from D.C. to Dhaka, the tone increasingly sharp, and the threat now taking the form of a boycott in case the agreement was not formalized in May.²⁹³ On May 17, the BGMEA Extraordinary General Meeting ended with a rejection of the agreement (by 311 of 352 members) – and the BGMEA once again announced that it would terminate all child workers by October 31.²⁹⁴ The Child Labor Coalition then called for the boycott, and the BGMEA came under heavy pressure from various quarters.²⁹⁵ The BGMEA stood firm for a couple of days, at one point even threatening a “counter-campaign” abroad, but then – at an Emergency Executive Committee Meeting on May 24 – the BGMEA decided to return to the negotiating table.²⁹⁶ Ironically, this coincided with UNICEF headquarters announcing a vow not to buy from companies that exploit children – a vow which, as it were, followed a CBS exposé on child labor in the production of surgical instruments and other items in Sialkot, Pakistan (and the exposé was one of the first major events in the ensuing controversy over child labor in the soccer ball industry, cf.

²⁹³ Pharis Harvey, telefaxes Redwan Ahmed, March 13, April 14, April 19, April 20, 1995; *Women's Wear Daily*, ‘Bangladesh, Guatemala under fire’, April 25, 1995; *Women's Wear Daily*, ‘Bangladesh makers: we’ll try’, April 26, 1995.

²⁹⁴ Tabibul Islam, ‘Bangladesh – child labor: Bangladesh, U.S. clash over child labor’, *Inter Press Service/Global Information Network*, Dhaka, June 7, 1995.

²⁹⁵ Linda Golodner and Pharis Harvey, telefax to members of the Child Labor Coalition, May 18, 1995; Pharis Harvey, telefax to Terry Collingsworth and Lydia Sigelakis (AAFLI-Bangladesh), May 19, 1995; Pharis Harvey, telefax to Redwan Ahmed, May 20, 1995; Jack Sheinkman and Carolyn Kazdin (President and Legislative Director, respectively, of the Amalgamated Clothing and Textile Workers Union, ACTWU), telefax to Redwan Ahmed, May 25, 1995; Pharis Harvey, telefax to Redwan Ahmed, May 26, 1995; Jay Mazur and Evelyn Dubrow (President and Vice President/Legislative Director, respectively, of the International Ladies’ Garment Workers’ Union, ILGWU), telefax to Redwan Ahmed, May 26, 1995; Linda Golodner, telefax to Redwan Ahmed, May 31, 1995; Nadeem Qadir, ‘Bangladesh garment exports to US threatened by row over child labour’, Dhaka, *Agence France Presse* (AFP), May 20, 1995; Joanna Ramey, ‘Bangladesh apparel seen facing boycott’ in *Women's Wear Daily*, May 22, 1995; Joyce Barrett, ‘Boycott of apparel made in Bangladesh planned’ in *Women's Wear Daily*, May 23, 1995.

²⁹⁶ *Agence France Presse* (AFP), ‘Bangladeshi clothes trade hits at US protest against child labour’, May 22, 1995; *United Press International* (UPI), ‘Bangladeshi manufacturers to protest boycott’, May 23, 1995; *Agence France Presse* (AFP), ‘US welcomes call for talks on child labour by Bangladeshi garment exporters’, May 25, 1995; Redwan Ahmed, telefax to Linda Golodner, June 3, 1995.

the next chapter).²⁹⁷ The talks continued throughout June, and eventually the agreement was signed and presented on the 4th of July, timed in part to show appreciation of the important role of the U.S. Ambassador in the process.²⁹⁸

5.6 Struggles to define the problem

One of the most significant aspects of the struggles to define the problem in this case is that, throughout the process, it was defined almost exclusively in terms of child labor. Of course, child labor *was* used and this *was* largely acknowledged and undisputed, but why this narrow definition, when other basic labor rights issues could also have been on the agenda?²⁹⁹ Certainly, AAFLI did have an interest in defining the problem in broader terms that included other labor rights issues and concerns - and these were brought up in the discussions, including in the December 1992 meeting with and proposal to the BGMEA, cf. above. Indeed, as Pharis Harvey recollects, the AFL-CIO were actually ‘not that happy with child labor being a major part of Terry’s work [...]’³⁰⁰

For a number of reasons, however, there was no concerted or sustained effort to change the agenda in this way. To begin with, the NBC exposé focused on Wal-Mart and illegal child labor in Bangladesh (and most of

²⁹⁷ Barbara Crossette, ‘Unicef Vows Not to Buy From Companies That Exploit Children’ in *The New York Times*, May 25, 1995; Maggie Jackson, ‘Children make US soccer balls, UNICEF tools in Pakistan’, Associated Press (AM cycle), April 5, 1995.

²⁹⁸ Redwan Ahmed, telefax to Linda Golodner, June 3, 1995; Lydia Sigelakis (AAFLI Bangladesh), telefaxes to Pharis Harvey, June 5 and 7, 1995; Pharis Harvey, telefax to David N. Merrill (U.S. Ambassador to Bangladesh), June 9, 1995; Lydia Sigelakis, telefax to Pharis Harvey and Terry Collingsworth, June 21, 1995; Joanna Ramey, ‘Bangladesh apparel agreement may be inked as soon as today’ in *Daily News Record*, Vol. 25, No. 123, June 27, 1995; *Women’s Wear Daily*, ‘Pact nearly set on child labor in Bangladesh’, June 27 1995; *Agence France Presse* (AFP), ‘Bangladesh garment manufacturers sign child labour agreement’, July 4, 1995.

²⁹⁹ In other words, the existence of the problem – i.e., the actual use of illegal child labor – was not a central facet in this case. There were some the occasional denials by the BGMEA, but altogether there was ‘little room for any credible denial that there are significant numbers of child workers in the Bangladesh garment industry.’ AAFLI, *Report*, p. 4.

³⁰⁰ Interview with Pharis Harvey, Corralitos (CA), May 6, 2003.

the ensuing media attention in Bangladesh likewise focused on child labor only). It was to some degree a coincidence, however, that the focus was on Bangladesh and child labor, since the initial interest of the NBC crew was in Wal-Mart's 'Buy America' campaign:

*'So this reporter with a television crew goes into a Wal-Mart. Underneath the banner 'Buy America' there's these shirts, and he starts looking at them, and they all say 'Made in Bangladesh' – 'Made in Bangladesh'! [...] if they had said 'Made in Mexico,' he would have gone to Mexico.'*³⁰¹

The NBC Dateline segment certainly was important in putting child labor in the Bangladeshi garment industry on the agenda, and it thereby also contributed to defining the problem as one of child labor. On the other hand, the focus was not entirely coincidental and unrelated to actual conditions on the ground: after all, children were actually working; the work was to a considerable extent illegal under national and international law; child labor was widespread in the large-scale formal sector production of the nation's main export industry (thus, highly visible and more readily seen as exploitative) – in a direct causal link to U.S. companies and consumers. As far as the Bangladeshi media and debate were concerned, the treatment of the issue was very much driven by the threat of the Harkin Bill – a threat related to child labor.

Indeed, the potential enactment of the Harkin Bill played a key role in relation to the narrow definition of the problem. Although the Bill was neither directed at the garment industry nor at Bangladesh specifically, it was used and affected the situation on the ground in Bangladesh in a number of ways. For one thing, it constituted a source of leverage – a leverage that was tied directly and narrowly to child labor – over the Bangladeshi garment industry on labor issues, both for Carter from the U.S. Embassy in Dhaka and for AAFLI's Terry Collingsworth:

*'He's in there, trying to talk to people about organizing, and what does he see? It's full of children! Now, Terry is a very good labor rights activist, and he said, "We can't have this." He also sees that this is a wedge.'*³⁰²

³⁰¹ Interview with Terry Collingsworth, Washington, D.C., 20 Mar. 2003.

³⁰² Interview with a former senior official of the U.S. Department of Labor, Bureau of International Labor Affairs, Washington, D.C, April 15, 2003; see Rock, 'The Rise'.

More importantly, the Harkin bill led to a very polarized debate, in which the negative consequences of the elimination of child labor quickly became a dominant theme. This was a point on which UNICEF, IPEC, the majority of the local NGOs involved *and* the local manufacturers agreed, focusing the debate on the depth of the problem (causes and consequences) rather than the breadth (related labor rights issues) and a potential broadening of the agenda. By re-defining the problem under this theme, the focus was arguably shifted somewhat away from the real and pre-existing exploitation of children in the industry and the responsibility of the manufacturers in this, and the BGMEA used it as part of the delaying tactics in the drawn-out process. Moreover, the Harkin bill and the emphasis on negative consequences also had a significant impact on the discussions of the size of the problem, that is, how many children were actually working in the industry. Thus, the figures reported during the process varied widely, from the occasional denials by the BGMEA that the problem existed to claims that up to 250,000 children were involved. The logic of this number game or stat war was in a sense turned upside down and closely tied to the above:

‘Those who want to emphasize that the Harkin bill will result in the displacement of large numbers of children cite very high figures.’³⁰³

Moreover, this dominant theme and re-definition of the problem had some profound impacts on targeting and the struggles over blame and responsibility in this process, as we shall see shortly.

5.7 Targeting

During the process there were two primary targets - Wal-Mart and the BGMEA. As we have seen above, Wal-Mart was a target in the initial stage, but after this Wal-Mart and other international buyers did not play a central role as targets. The BGMEA, in turn, was a target from the very beginning, and from early on it was the sole target. This made sense for a number of reasons. Not only did the BGMEA have a considerable control over the entire formal sector garment industry in Bangladesh through its administering of export licenses, but the local manufacturers were also vulnerable and susceptible to pressure from the very beginning:

³⁰³ AAFLI, *Report*, p. 6.

‘While Hossain and the other BGMEA members have demonstrated through their past conduct that they are willing to do and say almost anything to maintain the cheapest possible labor costs, AAFLI has a unique opportunity to force them to make substantial improvements. They are genuinely concerned that the AFL-CIO will take action under GSP or the Harkin bill if the BGMEA does not comply with the minimum standards in the law. AAFLI should keep the pressure on to ensure actual implementation of the proposal.’³⁰⁴

Furthermore, it might be said that the BGMEA represented the entire local industry, whereas targeting a few specific international buyers would amount to only a fraction of the industry.

It is furthermore worth noting that the government of Bangladesh was not targeted directly. Part of the reason was that the government both lacked the resources and the political will to act effectively, and it had been so ineffective for so many years in enforcing its own laws. Yet, the Harkin bill constituted a threat not just to the garment manufacturers but also to the national economic interests of Bangladesh. As mentioned above, however, the BGMEA had very strong political ties and seeking to change the practices of its members indirectly through the government - even if it could be argued that this would be compatible with the export-oriented policy of the government - would most likely not have led anywhere. As AAFLI put it, when commenting on the drawn-out negotiation process:

‘Another problem is the close relationship between the BGMEA and the government’s ruling BNP party. BGMEA President Ahmed is a Member of Parliament from the BNP party. Some of the most powerful BNP politicians either own garment factories or members of their immediate families do. The result of these close connections is that the BGMEA is not getting significant pressure from the government to act. Instead there are spectacles like Minister of Information Huda’s speech that the Harkin bill is an “international conspiracy.”’³⁰⁵

Moreover, as the above suggests, the orientation and prioritization of central IGOs such as the ILO and UNICEF was toward eliminating the worst and most hazardous forms of child labor first, and the two IGOs did

³⁰⁴ Comments of Terry Collingsworth following the meeting with the BGMEA in December 1992, in his telefax to Pharis Harvey, March 23, 1993.

³⁰⁵ AAFLI, *Report*, p. 17.

not enter the public blaming of the garment industry. In the words of Fyfe and Jankanish, ‘It makes strategic sense to concentrate on the removal of child workers from hazardous work and forced labor [...]’³⁰⁶ Furthermore, the focus was not on child labor in export industries, ‘first because it represents a small proportion of the child labour problem and secondly because work carried out so far confirms the need for a multidimensional approach to this complex issue.’³⁰⁷ Thus, the ILO at this point (mid-1994) was not even considering the option of getting involved in independent monitoring and verification – which the Bangladesh MOU entailed.

As far as the reactions by the Bangladeshi garment industry are concerned, these were intricately related to the above re-defining of the problem as Harkin bill/negative consequences/malicious critics (as opposed to the exploitation of children in the industry and the responsibility of the manufacturers in this). This served not only as criticism of the Harkin bill, but simultaneously to delegitimize AAFLI and other labor rights activists, charging them with an international conspiracy against the Bangladeshi garment industry, U.S. protectionism, and with being against the interests of the children in question: AAFLI and the CLC were charged with being uninformed about the realities in Bangladesh and with not listening to the children and families – in spite of the fact that AAFLI and the CLC were both rather well-informed, that key individuals (such as Pharis Harvey and Terry Collingsworth) were far from unfamiliar with the lives and working conditions of workers in developing countries, and that the project that Terry Collingsworth of AAFLI had proposed to the President of the BGMEA as early as December 26, 1992, in fact did have as a major concern the fate of the child workers (further below).³⁰⁸ All of this enabled the BGMEA to approach the controversy the way it did, and it constituted the background for the industry’s repeated threats to terminate the child workers within short periods of time – the blame had been diverted:

‘So, when the garment manufacturers got scared and fired all these kids, everybody blamed us. And I turned blue in the face saying to people, “Why are you blaming us? The garment manufacturers knew all along they were using and exploiting children. They could have done something about it for

³⁰⁶ Fyfe and Jankanish, *Trade unions and child labour*, p. 19.

³⁰⁷ Stoikov, Testimony.

³⁰⁸ See *The Telegraph* (Dhaka), ‘Garment manufacturers’; *The Morning Paper*, ‘Malpublicity’.

*years. They didn't. It was their choice to fire people. [...] Now you are blaming us? I don't think so." But nobody sees it that way.*³⁰⁹

Would this have occurred, one might wonder, had the two international organizations – UNICEF and IPEC – not been “specialized” (i.e., working from a mandate narrowly focused on children), or if they had played a different role in the debate?

Finally, the *critique* of the industry's labor practices was largely “Northern driven” – coming primarily from AAFLI and the CLC. This is a frequently used characteristic in the discourse on corporate social responsibility, in some cases pointing to an exclusion of key “stakeholders” by powerful interests, in other cases delegitimizing – rightly or wrongly – the critics as not acting in the best interests of the intended beneficiaries. The latter was also the case in the Bangladesh process, cf. above. Yet, the repercussions against Rosaline Costa in this process, for example, also point to another facet of “Northern driven” criticism which is less often discussed: namely, the intimidation, repression and physical violence, which local critics often face, and which may be part of the reason why “Northern” critics are not always too keen on naming their “Southern” partners.³¹⁰

5.8 Economic coercion

To begin with, let us look at economic coercion between companies. As we have seen, Wal-Mart was targeted initially in the NBC segment, and had already received inquiries from the ILRF. As was also mentioned, the U.S. corporations did not become involved in the negotiations and talks that led to the MoU, but they were generally concerned with the risk of being accused with child labor. That the fear of losing important international buyers was important to the BGMEA seems obvious and is apparent from early on in the process. As mentioned, both Wal-Mart and Levi Strauss, for example, sent senior representatives to Bangladesh. Yet, neither of the two companies left Bangladesh.

³⁰⁹ Interview with a former senior official of the U.S. Department of Labor, Bureau of International Labor Affairs, Washington, D.C, April 15, 2003.

³¹⁰ E.g. *The Morning Paper*, ‘Malpublicity’; *Daily Janakantea*, ‘Harkins bill is going to be passed in the current month’, May 4, 1994.

The threat of trade sanctions against the industry from the U.S. under the Child Labor Deterrence Act was a much more important, key driver in this process. If such sanctions were imposed, the effects on the industry would have been devastating, and it was an important factor in the negotiation process:

*'The entire public debate [in Bangladesh] seems to center on whether or not the [Harkin] Bill will be passed, and accepts as a foregone conclusion that if the law is passed, the garment industry will not be able to meet the requirements.'*³¹¹

As mentioned, this was used from the very beginning by the U.S. Embassy and by AAFLI to put pressure on the BGMEA, and initially the forthcoming inauguration of the Clinton Administration was used to heighten the uncertainty of the situation for the BGMEA. Each of the subsequent reintroductions caused not only debate but also renewed uncertainties for the BGMEA, and gave AAFLI renewed leverage. At the same time, the potential negative consequences of the bill were used by the BGMEA as a power resource: in late 1992, 1993 and again in July 1994 the threat of its passage was followed by announcements by the BGMEA that it would start terminating all child workers in the industry. Moreover, each time the bill failed to gain passage the uncertainties diminished, and the threat became less effective. As the 1994 AAFLI report put it:

*'While waiting for the fate of the Harkin bill to be decided, it is difficult to motivate the BGMEA to take action or the NGO sector to devote resources to a problem that to date is only a potential problem. The possibility of the Harkin bill's passage has been virtually the exclusive force in focusing attention on the problem of child labor, but now the momentum is stalled along with the Harkin bill.'*³¹²

In late 1994, just after the MOU negotiations had begun, the Republicans took Capitol Hill, and the Child Labor Deterrence Act ceased to constitute a driving force in the Bangladesh process. A few months later, the CLC became involved in the process and, after four months of stepping up the pressure, the BGMEA's postponement and rejection of the MOU, eventually called for a boycott. Thus, in the end, it was the use of this

³¹¹ AAFLI, *Report*, p. 15.

³¹² AAFLI, *Report*, p. 23; underlined in original.

second type of economic coercion that forced the BGMEA back to the negotiating table within a few days.

In short, the threat of the Harkin bill was instrumental in driving the BGMEA to engage in any kind of talks at all, and the later boycott threat was also of fundamental significance. Yet, the use of economic coercion was highly contested (it still is, of course, and it is not uncommon for arguments against this to be based on the “lessons” of Bangladesh). Bissell and Sobhan, for example, have argued that the softer tactics involved in the “formation of trust” were central in the process: ‘Perhaps the most important investment of time during the course of the project was in the development of a rapport with industry representatives.’³¹³ This is illustrative of a more general dichotomy between the use of softer tactics (trust-building, dialogue, learning, etc.) and blunter ones (e.g., trade sanctions, boycotts, lawsuits, etc.). This begs the question of what it takes to make ‘global capital more responsible’³¹⁴ – and whether there would be any “inside” or any “trust-building” or “dialogue” at all without the “outsiders” employing more “radical” means? As a former senior official from the U.S. Labor Department put it:

‘The fact of the matter is that Terry [Collingsworth] was going to all of these people and getting the door slammed in his face. It’s not that the companies didn’t know it. It’s not that anybody didn’t know. And they were not interested in responding. In any way, shape, or form... And they knew what was happening. They were being approached. They had no incentive to change their way of working. None at all. So, what is incentive? It seems to me that this day and age, there is only one incentive: money. And if their purse is threatened, they will come to the table and begin talking. And that’s what we did. Nothing else got those people to the negotiating table.’³¹⁵

³¹³ Bissell and Sobhan, *Child labour*, p. 10.

³¹⁴ Pharis Harvey cited from ‘Working for Labor Rights: An Interview with Pharis Harvey’ in *Multinational Monitor*, December 1993.

³¹⁵ Interview with a former senior official of the U.S. Department of Labor, Bureau of International Labor Affairs, Washington, D.C, April 15, 2003.

Or, as Pharis Harvey put it, ‘trade sanctions are a very blunt instrument, but we were dealing with some very blunt people, and we got their attention.’³¹⁶ Or again, in the words of Terry Collingsworth:

‘[...] my role was to scare the industry. I mean, we were the activists and we were there talking about what we would do if they didn’t clean up their act... UNICEF was a terrible negotiator, because they did not accept the bad faith of the industry. They took what the industry said at face value, and I’d be sitting there, just shaking my head, saying, “You’re kidding! Do you believe that?” I would say back to UNICEF - and I have - “Well, fine. Please tell me what your alternative is!” Because they seem so willing to put their head in the ... and trust that the government says they’re going to fix the problem. They’ve been saying that for 20, 50 years!’³¹⁷

Soft vs. tough tactics, then, is a false dichotomy, and in this case the BGMEA was ‘led’ to compromise by both. Without the threat of the Harkin bill, however, negotiations of the MoU may never have gotten underway, and without the boycott an agreement would probably not have been reached. Of course, the uses of economic coercion in this case and the negative consequences for the children have been identified as among the “lessons” from Bangladesh. Very often, this involves – as it did during the process – claims that this was simply self-interested U.S. labor protectionism in disguise and/or that the CLC was, at best, naïve and uninformed:

‘While not wanting to question the CLC’s commitment to the abolition of child labour, it was clear that they were poorly informed about the prevailing economic conditions in Bangladesh, the reasons why children work and the steps that need to be taken to address this issue in a way that truly safeguards the child. Without this basic information, one could argue that it was inappropriate for the CLC [...]’³¹⁸

The latter is basically an unsubstantiated characteristic, which results from – at best – being unaware of the close links between the CLC, AAFLI and the U.S. Embassy in Dhaka. As for protectionism in disguise, it appears

³¹⁶ Interview with Harvey.

³¹⁷ Interview with Collingsworth.

³¹⁸ Quote from Bissell and Sobhan, *Child labour*, p. 14; see also Kabeer, *The Power to Choose*.

that any kind of trade-labor linkage is presumably and automatically protectionism? Should one not consider the fact that AAFLI was working to establish BIGU in Bangladesh, that child labor was seen as a problem and a leverage, which could provide AAFLI with access to the factories? In Bissell and Sobhan's impression,

*'AAFLI had been trying to open a field office in Bangladesh for some time [...] AAFLI sought to work (and head) the monitoring cell of the CLWG [Child Labour Working Group] which would have provided them with immediate access to garment factories.'*³¹⁹

Furthermore, it is worth noting that AAFLI's December 1992 proposal to the BGMEA did include the provision of educational alternatives, and the above characteristics virtually never mention this proposal – in spite of the local media coverage after the meeting.

Finally, as noted earlier, this critique of blunter instruments and the emphasis on negative consequences served to misplace the moral responsibility for both the previous exploitation and the displacement of children into worse situations: what about the Bangladeshi government, the garment manufacturers, the international buyers?

5.9 Modelling the solution

As mentioned, Terry Collingsworth of AAFLI already tabled a fairly elaborate program in the December 26, 1992, meeting with the BGMEA. In light of what happened subsequently – both what was discussed above as well as the particularities of the modelling process – and AAFLI's role in modelling, the proposal is an interesting early attempt at modelling a solution. Its main elements were:³²⁰

- The establishment of a central organization to coordinate the work of other NGOs and the government in setting up schools for the child workers.

³¹⁹ Bissell and Sobhan, *Child labour*, p. 14; see also Rock, 'The Rise'.

³²⁰ Based on Collingsworth, telefax to Pharis Harvey, March 23, 1993.

- The BGMEA ‘would provide access to the workers to inform them of the program, physical space for the classrooms where possible, and some degree of financial support.’
- The BGMEA ‘would permit access to the adult workers for AAFLI to provide education and training. Again, the BGMEA would provide physical space and some degree of financial support, as well as cooperation in arranging times when the workers could attend our programs.’
- The BGMEA would meet regularly with an AAFLI representative to be presented with information about labor law violations of BGMEA members, and BGMEA would then have opportunity to correct the problems ‘before AAFLI used all available means to force compliance with the law.’

According to Collingsworth, Hossain was appreciative of the cooperative attitude, and said that ‘the BGMEA would cooperate in all respects with the program I had proposed.’ However, the meeting did not lead to any immediate cooperation between the BGMEA and AAFLI, but instead what ensued was a drawn-out process.

In this, the defining of the problem in terms of child labor and the emphasis on the negative consequences for the displaced children were two important factors in shaping the givens of a potential solution: the agreement would eventually center on child labor, and the provision of educational alternatives for the child workers and a survey to find them were more or less natural components. This was proposed by AAFLI from the very beginning, much in line with dominant ideas on childhood and child labor. Furthermore, it might be noted that the targeting of the BGMEA throughout the process, and the fact that other targets were not important through most of the process, implied that the BGMEA was a “natural” partner to any possible agreement, and this had implications for the eventual scope of the agreement.

The critical issues or conflict points, in turn, in the modelling process were i) education for all or education for the youngest and light work-school for the older children; ii) funding - by whom, how, and for what; iii) monitoring - by whom?

When the negotiations re-started following the boycott in May, 1995, two versions of an agreement were still on the table. Briefly put, one version (which became *the* MOU) would move all underage child workers to school; the other version would move the younger children to school, *but* introduce a combination of work and education for those above the age of 11. The U.S. Embassy and Department of Labor, the CLC, the ILRF, and AAFLI were willing to accept either version:

*'We in the Child Labor Coalition are prepared to accept either Option #1 or Option #2, as long as either option provides sufficient oversight from international agencies in the survey and in monitoring compliance, and is carried out in a way that provides schooling for all retrenched child laborers.'*³²¹

While consistent with international law, the school/work for older children version would not have been consistent with Bangladeshi law. An exception could have been sought, but this would have required more time than some of the parties involved saw fit: although the BGMEA appears to have been willing to accept either solution earlier on, in the final stages the BGMEA expressed concern that this version would not be acceptable to the international buyers.³²² Thus, the BGMEA and the government of Bangladesh opted for the pure education version, and the MoU ended up with this formulation: 'October 31, 1995 is the target date for all workers who have not attained 14 years of age to be terminated from employment and placed in school programmes [...]'³²³

The issue of monitoring was another conflict point. By 1995 independent monitoring had become a fundamental demand of AAFLI, the CLC, the U.S. Embassy and Department of Labor. The BGMEA, on the other hand, was reluctant to accept this intrusion, in particular if it was to be headed by AAFLI, which had offered to monitor the program, and which was suggested as an obvious candidate for doing so by the CLC.³²⁴ Indeed, the delaying tactics of the BGMEA were closely related to this reluctance. In

³²¹ Harvey, telefax to Merrill, June 9, 1995; Sigelakis, telefaxes to Harvey, June 5 and 7, 1995.

³²² Faruque Ahmed (BGMEA), telefax to Joanna Ramey, reporter at the Women's Wear Daily, April 25, 1995; Collingsworth, telefax to Harvey, May 19, 1995.

³²³ MOU.

³²⁴ E.g., Golodner and Harvey, telefax to Ahmed, January 30, 1995.

the MOU that had been rejected in May 1995, however, the BGMEA had already achieved important concessions:

*‘At BGMEA’s insistence, the MOU provided that AAFLI and the other international organizations would not be permitted to do the inspections themselves. Instead, a Board of Directors, which included BGMEA, would hire a staff of inspectors to do the verification, and the MOU expressly provided that the information gathered could only be used for the purpose of implementing the MOU.’*³²⁵

Furthermore, AAFLI was excluded from the negotiations, and the BGMEA pointed to UNICEF and the ILO as the only actors acceptable for the role as external monitors, in spite of the fact that, until then, the ILO had not been willing to accept the role.³²⁶ In the final stages, however, the U.S. Embassy and Department of Labor played an important role in pushing not only for independent monitoring but for the involvement of the ILO in this.³²⁷

The eventual inclusion of the ILO-IPEC was, in part, tied to funding aspects. Until quite late in process, crucial aspects of funding had not yet been decided upon. Shortly after the negotiations were re-opened in May of 1995, the ILO decided to become involved in monitoring, although it was still uncertain if it would be a formal partner to the agreement:

*‘The ILO, of all people, has agreed to do the monitoring... Currently the MOU would be signed by BGMEA and UNICEF. ILO is checking with Geneva to see if they can sign.’*³²⁸

³²⁵ Collingsworth, telefax to Harvey, May 19, 1995.

³²⁶ Harvey, telefax to Ahmed, May 20, 1995.

³²⁷ The U.S. Labor Department and the U.S. Embassy, along with the government of Bangladesh, also played a role in the exclusion of AAFLI: ‘At some point [Terry Collingsworth’s] personal influence was becoming a hindrance; he was just becoming a lightning rod... And so we talked to him about it and said, “We’ll continue to talk to you, let you know what’s going on, and you can continue to work on the sidelines, but right now you’re the lightning rod, and so, can you step back?”’ Interview with former Labor Department official.

³²⁸ Sigelakis, telefax to Harvey, June 5, 1995; Harvey, telefax to Ahmed, May 20, 1995; Harvey, telefax to Laura E. Jones, USAITA, May 31, 1995.

There were several reasons for this late entry, including tripartite nature of the ILO, but the involvement of the U.S. Department of Labor played a crucial role in this. A main concern there at the time was independent monitoring, and senior Labor Department officials had strong ties to and sympathies for the ILO. Moreover, the wider political backing for some of the Labor Department's work restricted this to child labor, and the ILO-IPEC, in turn, 'was also a place you could put your money and have the discussions.'³²⁹

Until quite late in process, however, crucial aspects of funding had not yet been decided upon - most importantly, the percentage of the BGMEA's contribution to stipends had not yet determined at this point. From early on, the BGMEA sought to link a possible program to development assistance funds from the U.S., but this was rejected at the time.³³⁰ An early proposal by UNICEF had also suggested levying a small tax on garments to finance action on child labor in the industry, but this was not accepted with references to the pressures of international competition. In the late stage of the process, the U.S. Ambassador to Bangladesh was 'working on increasing the original amount' of the U.S. contribution to the program.³³¹ As mentioned above, UNICEF was involved in relation to the education aspect from early on, conducting a massive study of educational alternatives and making the aforementioned project proposal, and eventually UNICEF ended up contributing financially to the education program. What is more, during the final stages of negotiations, the BGMEA was forced to contribute to this:

*'UNICEF will contribute US\$ 175,000 in 1995, and additional support later, and BGMEA will contribute to the UNICEF sponsored school-programme US\$ 50,000 per year, towards the costs of educating underaged workers.'*³³²

More importantly, perhaps, the BGMEA would make contribute with 50 percent of the cost of income maintenance stipends for displaced child workers sent to school, up to a maximum of USD 250,000 per year for

³²⁹ Interview with former Department of Labor official.

³³⁰ See e.g. United States Information Agency, April 7, 1993.

³³¹ Telefax from Sigelakis dated June 5, 1995, to Harvey.

³³² MOU; Sigelakis, telefax to Harvey, June 5, 1995.

three years. As noted above, the size of the BGMEA's funding responsibility appears to have influenced its preferences of model, and it should be added that reports indicate that the BGMEA members started to fire children as soon as the negotiations were resumed in late May, 1995, and continued to do so up until the survey was conducted. Still, the number of children being found would go above the commitments of the BGMEA to stipends, and more funding would be needed.³³³ Thus, it is worth noting that in spite of program components such as the survey and the monitoring – intended to counteract negative consequences and enhance the effectiveness of the solution – the funding responsibilities of the BGMEA and the rationalities and concrete actions of its members appear to have worked against this. The questions related to funding of the eventual program appears, in other words, to have been central in relation to determining both the pace of the solution as well as its practical implications for child workers at different ages.

5.10 Concluding remarks

This chapter set out to explore why the 1995 MOU came into existence and took on that particular form.

In broad terms, there were signs of an emerging politicization of corporate responsibility in the early 1990s. Yet, the analysis suggests that while it may be relevant to speak of CSR as going beyond the law in terms of the changing boundaries of responsibility of dominant retailers and branded marketers, the leap from illegality to compliance is not a less significant one: working conditions in Bangladesh's leading export industry were far from being in compliance with national and international law, the applicable regulation was not enforced, and corporate labor practices were a far cry from the good examples that one may find in the CSR literature.

More specifically, the re-introductions of the Harkin bill were of fundamental importance in driving the process. It was a leverage, which was used on the ground in Bangladesh to put pressure on the industry, in particular by AAFLI, which was already engaged in labor organizing in the industry. It was also a significant threat that caused a polarized debate with profound implications for the way the problem was defined: the potentially

³³³ Sigelakis, telefax to Harvey, June 5, 1995; Harvey, telefax to Ambassador David N. Merrill, June 9, 1995; Collingsworth, telefax to Harvey, July 28, 1995; Sigelakis, telefax to Harvey, September 13, 1995.

negative consequences of the Harkin bill cum an elimination of child labor for the child workers became a dominant theme early on, blame was redirected at the industry's critics, the agenda became narrowly focused and locked in on child labor alone, and the logics of the stat war that played out were turned upside down. Hence, while being attentive to the negative consequences of eliminating child labor (and other problems) is highly important, the above analysis also pointed to some negative consequences of being so: it may serve to redefine the problem, to narrow the agenda and/or to transfer moral culpability from corporations to critics.

When negotiations were slow, and the Harkin bill had ceased to be an effective driver, the Child Labor Coalition entered the process to keep up the pressure, and arguably the close links between AAFLI, the ILRF, and the CLC played into this. The BGMEA, in turn, constituted an obvious target: it was vulnerable and susceptible to pressure, and it was a potential way to overcome collective action problems. Moreover, as the negotiations dragged on with delays and postponements and a rejection by the BGMEA of a draft agreement, the CLC boycott threat was crucial in bringing the BGMEA back to the table.

Hence, two forms of economic coercion were centrally significant in this case, and the analysis thus challenges some of the more or less established "truths" about the Bangladesh case, some of which are of much wider relevance and use. To begin with, considering the lengthy process and the pushing and shoving it took to move the BGMEA in this case (which is far from unique), the praise of softer tactics and the critique and/or rejection of tougher ones is as naïve as trade sanctions are blunt. Compromising often takes moderate compromisers *and* more radical critics, and it is often the critique that sets the wheels turning – and keeps them going. If more moderates would explicitly accept this, perhaps businesses and governments could be made to stretch just a little further. In extension, warnings against tougher tactics sometimes come in the form of a mantra: "Do not rush into a boycott!" When based on the Bangladesh case, such a mantra becomes problematic – claims that the Child Labor Coalition or AAFLI did so in Bangladesh are simply historically incorrect. Moreover, the mantra ignores the issue of what to do if the "target" refuses to talk in the first place, or if the talks begin to seem endless (and hopeless).

The analysis also found that, in the final stages, the choice between the two versions of the agreement was determined by Bangladeshi laws on child labor being stricter than international law, and by the industry's concerns

with losing international buyers. In these negotiations, the exclusion of AAFLI and the entry of the ILO (IPEC) to a considerable extent resulted from the delaying tactics and reluctances of the BGMEA in combination with the specific political preferences and realities as well as funding practicalities of the U.S. Department of Labor.

6. The big game: corporate responsibility and child labor in the production of soccer balls

6.1 Introduction

Remember Silvers' description at the very beginning of this dissertation of the conditions under which children were allegedly toiling in the production of hand-stitched leather soccer balls? Could you imagine a starker contrast between those abysmal conditions and the other reality of those soccer balls – the passion, the glamour and the big business of the world's biggest sport?

This chapter focuses on the controversy over child labor in the soccer ball industry and the 'Partner's Agreement to Eliminate Child Labour in the Football Industry in Pakistan' between – as formal signatories – the Sialkot Chamber of Commerce and Industry (SCCI), the ILO and UNICEF. The so-called Atlanta Agreement, to reiterate, was signed and presented at the sporting goods industry's Super Show in Atlanta, Georgia, on the 14th of February, 1997.

6.2 Industry characteristics

Approaching the big business of soccer and soccer balls

The balls produced by the children at the center of this controversy are also the central objects of contention on millions of pitches across the globe: soccer is the world's biggest sport with more than 240 million regularly playing the game, more than 1.5 million teams and 300,000 clubs, the U.S. being the nation with the highest proportion of soccer players (18 million,

not including children and unregistered players).³³⁴ Moreover, major sporting events attract considerable media attention and marketing money – and increasingly so – and soccer events are certainly no exception. The viewing figures for the FIFA World Cup, for example, more than doubled between 1986 and 1994, growing slightly in subsequent World Cups, and – as FIFA notes with pride – the 2002 World Cup in Korea and Japan was ‘the most extensively covered and viewed event in television history.’³³⁵

In the mid-1990s, the Pakistani town of Sialkot and the hundreds of villages in the area surrounding it had obtained a quite remarkable position in the manufacture of hand-stitched soccer balls:

*‘Pakistan is the source of approximately 75% of the world’s annual sales of hand-stitched soccer balls, a market totaling close to \$1 billion/year in retail sales.’*³³⁶

A second tier of ball producers consisted of manufacturers in China, India and Indonesia, followed by a third group of producers with only very small shares of global production. The balls were predominantly made for European and North American ball marketers, and the main geographical markets for soccer balls were Europe and North America.

The different nodes in the soccer ball commodity chain may be described as follows. The ball marketers constitute the dominant node in the chain and include most of the world’s largest sporting goods companies and numerous smaller ones (in terms of revenue). They focus on product development, design and marketing, relying on different strategies for marketing their balls to the retail sector, clubs, associations and other businesses. Ball marketers typically did not own their own production facilities, but instead contracted out the production to manufacturers in Sialkot and elsewhere, and often the ball marketer would have a long-running relationship with one core supplier – while keeping a few others

³³⁴ FIFA, *FIFA Survey: approximately 250 million footballers worldwide*, press release, April 3, 2001.

³³⁵ FIFA, *41,100 hours of 2002 FIFA World Cup TV coverage in 213 countries* (at www.fifa.org, accessed March 24, 2004).

³³⁶ Sporting Goods Manufacturers Association (SGMA), *Soccer Manufacturers Pledge to Eliminate Child Labor: THE PLEDGE*, press release, February 14, 1997.

on the side, just in case...³³⁷ In 1994, all major brand companies were sourcing their balls in Pakistan (on Nike and Reebok, which were new entrants, see further below), but several ball marketers sourced their balls in other countries as well, i.e., engaging in a price averaging similar to that known from the apparel industry. In some cases licensees or import companies functioned as intermediaries dealing with the manufacturers.³³⁸ There are no indications that retailers, clubs, etc., were engaged in sourcing directly from manufacturers in the early 1990s. The manufacturers, in turn, typically relied on a multi-tiered network of subordinates for making the balls (further below).

In addition, there was a multi-layered set of business, industry and sports associations, facilitating and promoting either local industry or sports participation and the interests of sporting goods companies. This included the World Federation of the Sporting Goods Industry (WFSGI) at the global level, and in the U.S. the Sporting Goods Manufacturers Association (SGMA) and its soccer subcommittee, the Soccer Industry Council of America (SICA) were the main characters. Members included associations and individual corporations – ball marketers and manufacturers alike – but it is worth noting that, even at the national level of the SGMA, many smaller ball marketers did not find a membership worthwhile.³³⁹ In other words, these organizations may be characterized as fora in which the interests of ball marketers and manufacturers were to some extent defined and driven by the lead companies in the respective categories. Looking to Sialkot, the Sialkot Chamber of Commerce and Industry (SCCI) was the main industry body – and one in which the local

³³⁷ Interview with President of ball marketing company, New York City, 25 March 2003. The Danish ball marketer, Select Sport, appears to have been an exception with its partial ownership of its sole ball supplier since 1976, Anwar Khawaja Industries, Ltd. Cf. Erland Vendelbo, 'Interview med Eigil Nielsen: Fantasten og de titusinde fodbolde' in *TIPS bladet*, Vol. 49, No. 30, April 11, 1997, p. 7.

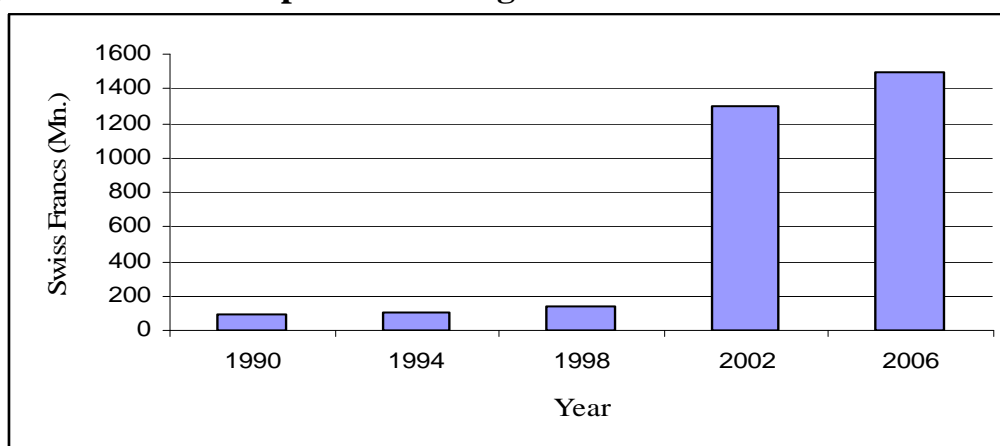
³³⁸ Adidas, for example, sourced balls through a Japanese company, Molten, cf. U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume IV): Consumer Labels and Child Labor* (Washington, D. C.: U. S. Department of Labor, Bureau of International Labor Affairs, 1997); Craig S. Smith and A. Craig Copetas, 'For Adidas, China Could Prove Trouble --- Dissident Says Political Prisoners Sewed Souvenir Soccer Balls' in *Wall Street Journal*, June 26, 1998.

³³⁹ Interview with President of ball marketing company, New York City, 25 March 2003.

sporting goods industry was one of the two major, dominant industry groupings.

In addition to these industry organizations, of course, there were the soccer organizations proper – the whole array of national associations (the English FA, the U.S. Soccer Federation, etc.), the regional confederations such as UEFA, and the global FIFA. Soccer being the world’s biggest sport, and the 2002 FIFA World Cup being the most extensively covered and viewed event in television history, cf. above, soccer had also become big business.

Figure 6.1 World Cup television rights revenues³⁴⁰



Moreover, in FIFA’s own words, ‘the FIFA World Cup has become quite simply the biggest single-sport event in the world and therefore makes it the perfect platform for marketing licensed products. [...] The licensing and merchandise of sports properties has been transformed from a relatively small and fragmented sideline into a highly sophisticated US\$ 17 billion global industry.’³⁴¹ Another indication of the increasing marketing value of such international sporting events, and the amount of dollars being poured into exploiting these, is the growth in licenses and proceeding sales associated with the World Cup. Thus, in relation to the 1994 World Cup, the estimated worldwide retail sales of licensed products were USD 550 million. By 1998 the figure had grown to 1.2 billion (the largest ever for an international sports event at the time), and by 2002 to USD 1.5 billion.³⁴²

³⁴⁰ Figures from FIFA, *FIFA World Cup & Television*.

³⁴¹ FIFA, *FIFA World Cup Licensing Programme*; FIFA, *2002 FIFA World Cup Licensing Programme*.

³⁴² FIFA, *FIFA World Cup Licensing Programme*; FIFA, *2002 FIFA World Cup Licensing Programme*.

Soccer balls in Sialkot

The first ball out of Sialkot to be approved for match play by FIFA was made by Anwar Khawaja Industries in 1967, but it was not until the run-up to the 1982 World Cup that the “football craze” really began, as Pakistan supplied its first World Cup ball.³⁴³ Somewhat ironically, perhaps, the organization and social relations of production that existed when the subsequent child labor controversy arose had been created after a return to more decentralized forms of production, in part following labor-friendly legislation a couple of decades earlier.

Traditionally speaking, the sporting goods industry had consisted of relatively small production units, but during the 1960s the formation of larger industrial units was encouraged, among other things through an Export Bonus scheme facilitating the importation of technologically advanced machinery – part of a broader policy shift from the import-substitution and high protection of the 1950s toward an export-promotion strategy, which nevertheless contained considerable protection of the domestic industry. Child labor was reportedly not very common during the centralized, factory-production period.

During the 1970s, as in many other countries, there was an increase in government ownership, management and regulation within industry. This, and particularly the growing “labor unrest” and new labor legislation in Pakistan, had profound impacts on the Sialkot industry:

‘The social organization of industry in Sialkot dramatically changed once again during the Bhutto period. Unions, demanding increased representation, higher pay, periodic bonuses and better working conditions, organized strikes at many of the Sialkot factories. Concurrently, the government passed a number of far-reaching labor laws

³⁴³ The manufacture of sporting goods in the Sialkot area in the Punjab Province dates back to the 19th Century, and at some point this came to include the production of soccer balls. In the latter half of the 1960s Western sporting goods companies began shifting their production of soccer balls to Sialkot - with plenty of low-cost labor and a manufacturing tradition enabling the production of very high quality products. See Anita M. Weiss, *Culture, Class, and Development in Pakistan: The Emergence of an Industrial Bourgeoisie in Punjab* (Boulder: Westview Press, 1991), p. 127; Human Rights Commission of Pakistan, *Child labour in Pakistan*, pp. 5-6; Schrage, *Promoting International Worker Rights*, pp. 13-14.

designed to reform the “national economic life” in Pakistan, to balance the inequities which had developed over time. The effects of these laws and increased union power in Sialkot was not what the government nor the labor leaders had intended: instead, many factory owners decentralized their operations and sent their employees home to work once again, thereby limiting opportunities for collective discourse and dissent. This was possible due to the very nature of the industry which had been highly decentralized since its inception given its labor-intensive character. [...] Most of the new labor laws were inapplicable to units employing less than ten full-time workers. Amenities such as education benefits, social security, old age pensions and medical insurance only had to be given to salaried employees, not to those (not in the majority) working on a piecework basis. Factory owners rarely had to contend with labor organizations as their workers were now so dispersed.’³⁴⁴

From the perspective of the manufacturers, the “decentralization” of production made sense for another reason: the global demand for balls tends to vary considerably in cycles correlated with the major international tournaments. Thus, for many manufacturers the farming out the most space and labor consuming part of the production constituted one strategy for externalizing some of the risks associated with volatile demand cycles – i.e. reducing capital requirements and fixed investments in buildings, etc. – without foregoing the business opportunities associated with the marked spurts in demand. Furthermore, the stitching of the balls was the most labor intensive, lowest paid and least skill intensive part of the production. Externalizing this process, therefore, was a way for the manufacturers to enhance their own profits and/or their prices to foreign buyers by flexibilizing, minimizing and putting an additional squeeze on these less profitable but nonetheless major cost components.

Thus, as the controversies over child labor in the soccer ball industry began to emerge, the production was predominantly organized in terms of multi-tiered networks involving manufacturers, middlemen and stitchers. The manufacturers typically handled warehousing and inventory, the printing of panels, the cutting of pieces, packaging and quality inspections. The actual stitching of the balls - and this was where the working children were found - was predominantly farmed out by the manufacturers through one or more middlemen, the largest of which in turn handled up to 300

³⁴⁴ Weiss, *Culture, Class, and Development in Pakistan*, pp. 135-136. See also Farhad Nomani and Ali Rahnama, *Islamic Economic Systems* (London: Zed Books Ltd., 1994), p. 122.

stitchers. The middlemen were typically in the business of collecting ball parts from the manufacturers, distributing these to their stitchers, compensating the stitchers, and finally collecting the balls and returning them to the manufacturer for further processing and packaging. The stitchers would stitch together the ball panels and glue on the bladder. They were typically paid on a piece rate basis by their middleman, and most of the work was conducted in village homes or workshops. Piece rates depended on the quality of the ball, with wages for high quality balls being almost the double of those for lower quality balls.³⁴⁵ Furthermore, in its 1995 survey, The Human Rights Commission of Pakistan (HRCP) found that

*'While the rates paid to the contractor are fixed by the factories according to the quality of the balls, there did not seem to be any uniformity of rates paid by contractors to workers. The contractors claimed that their margin of profit per ball was no more than 2 to 4 rupees. While it cannot be said that any particular fact indicated exploitation by the contractors, there did seem to be an element of arbitrariness on the part of the contractor in fixing the rates. That contractors do hold a position of patronage over the stitchers is obvious. They can distribute work at their discretion. In many cases contractors provide the premises for workshops where workers can sit and work.'*³⁴⁶

According to the so-called Raasta report, the stitchers were being paid \$0.50 to \$0.75 per ball, whereas on average children were paid about \$0.50 to \$0.55.³⁴⁷

By the mid-1990s the Sialkot ball industry had emerged as *the* global manufacturer of hand-stitched balls. In the late 1970s, the above course of a growing state presence in the economy was reversed as the private sector was once again assigned a leading role in industrialization - still, under a mix of export-promotion and import-substitution. Deregulation and liberalization continued throughout the 1980s, with a growing emphasis on structural adjustments and the influence of IMF/World Bank

³⁴⁵ U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume IV)*, p. 101.

³⁴⁶ Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 12.

³⁴⁷ Raasta Development Consultants, *An Assessment of the Working Child in the Soccer Ball Industry, Sialkot* (No place: Raasta Development Consultants, 1996), p. viii.

conditionalities. By the early 1990s, the strategy involved ‘comprehensive liberalization, deregulation, privatization, and investment promotion,’³⁴⁸ and the government placed high hopes on growth through exports: the Eighth Plan (1993-1998) thus projected an ‘average increase in export volumes of nearly 11 per cent, principally in higher value-added textile products, light and medium engineering goods and sport and surgical goods.’³⁴⁹ In other words, the highly export-oriented sporting goods and surgical instruments industries in Sialkot played a relatively significant role in the economic strategy of the Pakistani government:

*‘Manufacturing industries like Sialkot’s play an important role in Pakistan’s economy. In 1995-96, football exports brought in nearly Rs. 1.3 billion, while the value of surgical instruments exported was nearly Rs. 1.5 billion. In 1993-94, when demand was boosted because of the 1994 World Cup tournament in the United States, around 35 million balls were exported, to a value of nearly Rs. 3.2 billion.’*³⁵⁰

Being an exporting ball manufacturer in Sialkot implied membership of the earlier mentioned Sialkot Chamber of Commerce and Industry (SCCI), since all importers and exporters in Pakistan were required to be members of ‘a professional trade, commercial or industrial association.’³⁵¹ In the mid-1990s the SCCI had around 3,000 members, most of them connected with sporting goods and surgical instruments as well as a few other industries.³⁵²

³⁴⁸ Robert E. Looney, *The Pakistani Economy: Economic Growth and Structural Reform* (Westport: Praeger, 1997), p. 9.

³⁴⁹ WTO Secretariat, ‘Trade Policy Review Body: Pakistan’ (Report by the Secretariat - Summary of Observations), *World Trade and Arbitration Materials*, Vol. 7, No. 2, Mar. 1995, p. 21.

³⁵⁰ International Labour Office, ‘The Sialkot Story: Making villages “child labour free”’ in *World of Work – The Magazine of the ILO*, No. 19, March 1997, p. 14.

³⁵¹ WTO Secretariat, ‘Trade Policy Review Body: Pakistan’, p. 21.

³⁵² Nasir Dogar, ‘Corporate Social Responsibility & The Sialkot Chamber of Commerce and Industry’ in André Gorgemans (ed.), *Official International Handbook for the Sporting Goods Industry, 2004: Corporate Social Responsibility* (Verbier: World Federation of the Sporting Goods Industry, 2004), p. 26; The Sialkot Chamber of Commerce and Industry, *Profile* (at home.scci.com.pk/profile.asp, accessed March 23, 2004); U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume IV)*, p. 114.

During and after the process analyzed below, the Pakistani ball manufacturers were experiencing a number of pressures apart from the child labor issue as well as the usual time and price pressures: pressures from retailers and ball marketers seeking to minimize inventory meant that inventory responsibility was increasingly being pushed onto the ball manufacturers, and lead times were being drastically reduced.³⁵³ Furthermore, the Pakistani manufacturers - especially those at the low-cost, low-quality end - were under increasing competition from low-cost manufacturers in other countries, especially India and China. Chinese manufacturers in particular were becoming an important threat, albeit not so much during the process as after the Atlanta Agreement. This was related not only to the broader political and economic changes in China but also to technological change: Chinese ball manufacturers were leading the invention and improvement of machine-stitching, and as the quality of machine-stitched balls coming out of China improved, this put additional pressure not only on the smaller, low-quality end but also on the medium-quality, middle-sized Sialkoti manufacturers.³⁵⁴

Brands at war - the ball marketers

As mentioned above, ball marketers included most of the world's largest sporting goods companies – e.g. Adidas (and subsequently Nike and Reebok) – and numerous smaller ones (measured in global sales, that is), e.g. Mitre, Umbro, Select, Puma, American Challenge, Brine, Wilson, Baden Sports, Inc., Seneca Sports, Inc., Franklin Sports, Inc., etc. Looking at the marketing strategies of ball marketers, a distinction can be made between two fundamentally different types. The first one was predominantly chosen by a great number of smaller companies mainly selling less expensive, lower-quality balls. These did not sell through retail at all but relied instead on direct sales to other business (promotional balls), smaller clubs and local communities and institutions; they did virtually no advertising, but relied instead on personal selling and highly targeted promotions; and they were not involved in the more costly layers of sponsoring.

³⁵³ Schrage, *Promoting International Worker Rights*, p. 15.

³⁵⁴ The Economist, 'After the children went to school: ending child labour can have unexpected consequences', *The Economist*, April 8, 2000.

In the second type of strategy companies relied on a combination of retail distribution, advertising and high profile sponsorships of national teams, national and/or subnational leagues, and football clubs. This group included some of the major companies in the industry with their long-established brands, such as Adidas, the long-entrenched global leader in balls and supplier of the FIFA World Cup match balls since 1970.³⁵⁵ This group of companies also included several smaller ones, typically occupying strong market positions in one or a few countries for historical and national reasons, and typically supplying balls of above-average quality. The Danish ball marketer, Select Sport, is a good illustration of this. With an annual sale of 1 million balls, the company was nowhere near the size of Adidas (nor Nike and Reebok if measured by corporate turnover or marketing expenditures, obviously). Since its inception in 1946, the company has been one of the industry's pioneers in product development, and its balls have long been considered among the best in the world. The company held an 80 percent share of Danish market for soccer balls, these being sold both through retail and to clubs and associations. Top clubs and national teams played an important role for the company's marketing efforts: in addition to being the long-standing official supplier of the Danish national team, 14 other national teams also used the Danish balls, and Select was furthermore supplier to the majority of top clubs in Denmark and to quite a few international top clubs.³⁵⁶ UK-based Mitre – which was acquired by the Pentland Group in 1995 – is another example, holding a 60 percent share of the UK's £40 mn. football market and being the official ball supplier of the Premier League and all but two Premier League clubs at the time.³⁵⁷

The controversy over the use of child labor, including allegations of child slavery, in the production of soccer balls, coincided with one of the most dramatic periods in the history of soccer and soccer balls as both Reebok and Nike decided to start marketing soccer balls. In 1994, neither of them was marketing soccer balls. As noted by Himelstein, 'Before 1994, Nike had all but ignored the multibillion-dollar world soccer market, depending

³⁵⁵ FIFA, *Official FIFA World Cup Match Footballs* (at www.fifa.org, accessed March 24, 2004).

³⁵⁶ Vendelbo, 'Interview med Eigil Nielsen'; Lise L. Hjorth, 'Børnearbejde en dårlig forretning' in *Berlingske Tidende*, March 26, 1997.

³⁵⁷ Christian Aid UK, *A Sporting Chance: Tackling child labour in India's sports goods industry* (London: Christian Aid UK, 1997).

instead on its core basketball and running-shoe franchises and apparel for growth.’³⁵⁸ By 1994, however, Nike Inc. Vice President and General Manager, Tom Clark, proclaimed that

*‘One of our big objectives here in the U.S. and around the world is to position ourselves in soccer. And that’s not something that happens overnight. There are some companies that have been there and strongly positioned for a number of years. We have the talent for product innovation and also for the marketing presentation that we are now starting to focus on soccer. Not just in the U.S., but all around the world. We are in the early stages of that, but by the year 2000 [...] we’re going to be a dominant player in soccer.’*³⁵⁹

The two new-comers were both heavily reliant on their sales of athletic footwear, in particular on the U.S. market. As this was expected to slow ‘dramatically’, the two were looking to other categories and their international divisions for growth.³⁶⁰ Soccer, being the world’s biggest sport and a growth area too, was an important vehicle for international expansion and sales growth. With the 1994 World Cup in the U.S., a period of intensified competition and sky-rocketing sums of marketing dollars ensued.³⁶¹ Both Nike and Reebok were very aggressive in this war of the brands, with Nike in particular pouring loads of money into soccer and especially the battle for high-profile sponsorships:

‘And with Nike’s vast resources, that effort is changing the economics of the game. Over the past three years, it has spent hundreds of millions of dollars to gain sponsorship of world-class teams and players. It has launched a series of global ad campaigns promoting its newfound soccer

³⁵⁸ Linda Himelstein, ‘The swoosh heard ‘round the world’ in *Business Week*, Issue 3526, May 12, 1997.

³⁵⁹ Cited from Andrew Gaffney, ‘Nike, Inc.’ in *Sporting Goods Business*, Vol. 27, No. 2, February 1994.

³⁶⁰ Bernstein Research, *NIKE and Reebok: The Sneaker Wars Heat Up*, February 19, 1993; Melissa Chapman, ‘Ball games’ in *Sporting Goods Business*, Vol. 30, Issue 8, June 2, 1997; William Echikson and Ian Katz, ‘Pele vs. Nike: Guess who won’t score’ in *Business Week*, Issue 3565, February 16, 1998; Stanley Holmes, ‘The real NIKE news is happening abroad’ in *Business Week*, Issue 3842, July 21, 2003.

³⁶¹ SGMA, *1996 State of the Industry Report*, February 3, 1996, pp. 17-18.

*allegiance, and it has beefed up its already extensive international infrastructure to handle demand for soccer and other sports gear in the next century. This is spending the likes of which world soccer has never seen.*³⁶²

In December of 1996, Nike agreed to pay an astounding USD 200 million to become the new sponsor of Brazil's national team for the following 10 years (not including an undisclosed amount compensating Umbro for the remaining two years of its contract with Brazil).³⁶³ While those ball marketers following the first type of strategy described above were obviously also affected by these new entries, the escalating sponsorship costs, and the fierce competition between especially Adidas and Nike, the effects were more significant to those following the second type.³⁶⁴ In the words of Steve Preston, CEO of Umbro International:

*'This period of '94 to '98 has been absolutely a nightmare for anyone in [soccer].'*³⁶⁵

The entry of Nike and Reebok was significant for a somewhat different reason, too. Unlike the other ball marketers, both of these companies had adopted codes of conduct following critiques of the working conditions and labor practices at their foreign suppliers. Moreover, Nike had already for some time been a main target for labor rights activists,³⁶⁶ while Reebok

³⁶² Himmelstein, 'The swoosh'.

³⁶³ Linda Himmelstein, 'The game's the thing at NIKE now' in *Business Week*, Issue 3511, January 27, 1997. For further on the marketing war in soccer, see Greg Pesky, 'Taking the field' in *Sporting Goods Business*, Vol. 28, Issue 4, April 1995; Echikson and Katz, 'Pele vs. Nike'; Jeff Manning, 'Nike gets on the ball for youth soccer' in *The Sunday Oregonian*, October 6, 1996.

³⁶⁴ Interview with President of ball marketing company, New York City, 25 March 2003; Vendelbo, 'Interview med Eigil Nielsen'. On Adidas' long-standing dominance and political ties within the world of sports, see e.g. Roger Thurow, 'Shtick Ball: In Global Drive, Nike Finds Its Brash Ways Don't Always Pay Off' in *Wall Street Journal*, May 5, 1997, A1.

³⁶⁵ Cited from Chris McEvoy, 'The SGB interview: Steve Preston, Peter Draper' in *Sporting Goods Business*, Vol. 32, No. 7, April 16, 1999. Preston referred primarily to the effects of the intensified competition between Nike and Adidas, although Umbro also had other problems at that time.

³⁶⁶ See e.g., Knight and Greenberg, 'Promotionalism and Subpolitics'.

was widely considered a pioneer in the corporate world with its Human Rights Programs – both in the sense of being truly progressive in the eyes of some, and ‘the most hypocritical of them all’ in the eyes of others...³⁶⁷

6.3 Characteristics of the framework of governance

As was the case in Bangladesh, Pakistan had signed most of the core labor rights conventions when the controversy broke out in the mid-1990s – and Pakistan had, similarly, not ratified the ILO Minimum Age Convention.³⁶⁸ Pakistan had, however, signed the UN Convention on the Rights of the Child in 1990, and Pakistan had also ratified the older ILO Convention No. 59 Concerning Minimum Age for Employment in Industry.³⁶⁹ Given the nature of the work in stitching soccer balls and Pakistan’s laws on education, under the Minimum Age Convention (138) Pakistan would be permitted to set the minimum age of employment as low as 14, to allow light work for children of 12 years of age, and to limit the applicability and scope of the convention - for example by excluding certain types of employment. The national legislation in place did precisely these things.

Under Pakistan’s Constitution of 1973 children under the age of 14 were prohibited from working in ‘any factory, mine or any other hazardous employment.’³⁷⁰ According to the studies carried out during the process

³⁶⁷ Klein, *No Logo*, p. 422.

³⁶⁸ ILO Conventions 29, 87, 98, 105, and 111 were ratified in the 1950s and 1960s, whereas Convention 100 and 182 were ratified in 2001; cf. International Labour Organisation, *Ratifications*.

³⁶⁹ The Embassy of Pakistan to the U.S., written testimony, in U.S. Department of Labor, Bureau of International Labor Affairs, *Public Hearings on International Child Labor, April 18, 1997*, Official Record, Proceedings (Washington, D. C.: U.S. Department of Labor, Bureau of International Labor Affairs, 1997); International Labour Organisation, Bureau for Workers’ Activities, *ILO Partnership to eliminate child labour in the soccer ball industry in Pakistan*; U.S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume I)*, p. 134. In addition, Pakistan signed a Memorandum of Understanding with the ILO on June 21, 1994, to become an IPEC partner country, and a Basic Cooperation Agreement with UNICEF furthermore entered into force in November of 1995. Child labor in the production of soccer balls, however, was initially neither a priority nor subject to concrete initiatives under any of these relations.

³⁷⁰ Schrage, *Promoting International Worker Rights*, p. 29.

below, stitching soccer balls generally involved minor hazards and took place not in factories but in homes and small workshops, and was therefore not subject to the prohibition in the Constitution. Shortly before the controversies, however, Pakistan had passed the Employment of Children Act in 1991 and the Bonded Labor System (Abolition) Act in 1992.³⁷¹ Under the latter, ‘all bonded persons including children stand freed and discharged from any obligation to render any bonded or forced labour. All bonded debt is also extinguished.’³⁷² Bonded child labor nonetheless was still widespread in Pakistan in the mid-1990s, and there were several media reports indicating the existence of bonded labor in the production of soccer balls. However, all of the key studies came to the conclusion that bonded labor (adult and child alike) was not generally characteristic of the social relations in the production of soccer balls.³⁷³

The Employment of Children Act (1991) in turn prohibited the employment of children under 14 in certain occupations and in workshops where certain processes were undertaken. This prohibition, however, did ‘not apply to labour by children in an establishment where such processes are carried out as family labour, or to any school established, assisted or recognised by the government’ - in line with the Minimum Age Convention.³⁷⁴ In other words, a substantial part of the child labor involved in the stitching of soccer balls was actually permitted under the law, either that which was carried out under parental supervision or that which qualified as light work: ‘When performed in the home or under the supervision of a parent, the stitching may constitute permissible family

³⁷¹ Embassy of Pakistan to the U.S., written testimony.

³⁷² Embassy of Pakistan to the U.S., written testimony.

³⁷³ Cf. Human Rights Watch, *Contemporary Forms of Slavery in Pakistan* (United States: Human Rights Watch, July 1995); Raasta Development Consultants, *An Assessment*; Federal Bureau of Statistics, Ministry of Labour, Manpower and Overseas Pakistanis, International Labour Organization, and International Programme on the Elimination of Child Labour, *Summary results of Child Labour Survey in Pakistan (1996)* (Islamabad: Federal Bureau of Statistics, Ministry of Labour, Manpower and Overseas Pakistanis, International Labour Organization, and International Programme on the Elimination of Child Labour, October 9, 1996); Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 13, did mention loans extended to stitchers by middlemen, but these were generally not of such a nature so as to meet the criteria for qualifying as debt bondage.

³⁷⁴ Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 2.

work for children of any age [...]’³⁷⁵ In the absence of parental supervision, children under 12 were not permitted to work, whereas light work for children aged 12 to 14 was permitted (again, in line with the Minimum Age Convention). The Employment of Children Act defined light work as follows: children under 14 should work no more than 3 hours without a break, a maximum of 7 working hours per day, and no work between 7 in the evening and 8 in the morning.³⁷⁶

In short, a considerable part of the work being carried out by children in the stitching of soccer balls was exempted from the prohibitions concerning child labor and therefore perfectly legal under relevant local and international law. *At the same time*, a substantial part of the work carried out by children was in violation of both the internationally recognized standards as well as national legislation.

Once again, the issue of enforcement then arises. According to Elliott Schrage, a human rights lawyer and the key advisor to industry in the process below:

*‘It was clear, however, that the Government of Pakistan had made little effort to monitor compliance with the law by soccer ball manufacturers or their contractors.’*³⁷⁷

Moreover, although the two new laws were introduced in the early 1990s, they were of little effect in practice. According to the U.S. State Department, the Employment of Children Act of 1991 *‘did little to promote much-needed enforcement mechanisms and remains essentially unimplemented.’*³⁷⁸ In many respects, the lack of enforcement of labor legislation related to many of the same aspects that were discussed in the previous chapter on Bangladesh, such as limited capacity and resources of a relatively poor state, corruption, etc. Political will and the political climate for labor rights activists and the media obviously also played in: workers rights in general were (and are) ‘significantly restricted by the

³⁷⁵ Schrage, *Promoting International Worker Rights*, p. 30.

³⁷⁶ Schrage, *Promoting International Worker Rights*, p. 29.

³⁷⁷ Schrage, *Promoting International Worker Rights*, p. 29.

³⁷⁸ U.S. Department of State, *Pakistan Economic Policy and Trade Practices (1993 Country Report)* (Washington, D.C.: U.S. Department of State, February 1994).

Government of Pakistan and by Pakistani employers,³⁷⁹ including through changes in the organization and social relations of production, cf. above. Finally, compared to Bangladesh it is also clear that Pakistan had for a long time placed a relatively higher priority on national security and defense spending vs. spending on health care and education, due particularly to the tensions with India over Kashmir (further below).

Child labor, legal and illegal, was used in the production of soccer balls, and changes in the organization of soccer ball production were partially the industry's response to labor organizing, the demands and legal rights of workers. It seems reasonable to claim that the involvement of children in the stitching of soccer balls was a well-known phenomenon in Sialkot and that most ball manufacturers therefore were not unaware of this practice.³⁸⁰

As far as the ball marketers were concerned, Nike and Reebok had both adopted codes of conduct at the beginning of the process, but they were not yet engaged in soccer balls as controversy arose. None of the others appear to have had codes in place at the time, labor practices instead being governed – implicitly or explicitly – through the manufacturer's contractual or informal obligation to abide with applicable laws. Hence, the following responses from Mitre and Adidas to mid-1995 allegations of child slavery:

- *'Mitre, who supply balls for the FA Cup Final, insisted that they take every step to ensure their footballs are made legally. Marketing director Duncan Bembridge said his company had contracts with manufacturers in Pakistan which banned the use of child labour. He said: "If there is evidence that our balls are made with child labour we will act on it – but I have yet to see that evidence. Making soccer balls is still a manual operation, and producing them in Pakistan is very cost-effective."'*
- *'Adidas also vowed to launch their own inquiry. Spokesman Peter Csanadi said: "These reports are a surprise to us and we need to*

³⁷⁹ Schrage, *Promoting International Worker Rights*, p. 29, note 72.

³⁸⁰ As the HRCP noted, the involvement of children in the stitching of soccer balls was, especially in the villages, quite visible, and in an April 1995 exposé, one of the larger manufacturers acknowledged that 'contractors were known to employ child stitchers.' (Schrage, *Promoting International Worker Rights*, p. 22). Justifications for the use of child labor as well as changes in labor practices will be discussed further below. The purpose here is to provide a brief characteristic of these as the controversy began.

*find out exactly what's going on. It could be that counterfeit Adidas balls are being produced.” [...] “There is a law against these practices and we keep to the law. We hope others are doing the same.”*³⁸¹

Contrary to what the ball marketers might have expected, however, the law did not at all apply to every working child, cf. above.

Apart from the above, the ball marketers generally were not active on the issue of child labor or on other labor rights for that matter. The Danish ball marketer, Select Sport, appears to have been an exception, claiming that it was engaged in “development work” and actually in the process of preparing a concrete initiative to further deal with child labor and related problems before the HRCP study and the 1995 media reports appeared.³⁸² Such a claim is difficult to substantiate, of course, but industry representatives have indicated that Select was an early mover and managed to establish a rather unique program (further under modelling).³⁸³

6.4 Characteristics of the problem

When the first media reports started coming out on child labor in the production of soccer balls, varying claims about the problem were forwarded. Child labor was common in Pakistan. There were, however, no systematic studies of the use of child labor in the production of soccer balls at the time:

*‘[...] no extensive research has ever been carried out at the official level to give a correct estimate of the number of children involved, nature of work they are involved in, their socio-economic background, or the different forms of exploitation suffered by them.’*³⁸⁴

³⁸¹ Quotes from Double, ‘Cup stars’; see also survey in U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume IV)*.

³⁸² Vendelbo, ‘Interview med Eigil Nielsen’.

³⁸³ Interview with top level industry spokesperson.

³⁸⁴ Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 2.

This was quite similar to the situation in Bangladesh discussed in the previous chapter. For reasons discussed further below, however, during the process some parts of the soccer ball industry developed a rather strong interest in credible documentation on the problem. Thus, while the usual denials were there, there was no “stat war” in this case, and a few widely acknowledged reports were actually published during the process by the Human Rights Commission of Pakistan (1995), by Raasta Development Consultants (July 1996), and by the ILO-IPEC (December 1996).

According to a national survey, the total number of economically active children between the age of 5 and 14 in Pakistan in 1996 was 3.3 million, of a total population of 40 million.³⁸⁵ Two thirds of these working children were occupied in subsistence and commercial agriculture, in forestry, hunting and fishing industries. Child labor was also common in the informal sector and in the brick kiln, carpet, leather and surgical instruments industries. Approximately 70 percent of the working children in Pakistan performed work as unpaid family helpers. An estimated 60 percent of the child labor in the country occurred in the Punjab Province, where Sialkot is located.

More specifically, the ILO-IPEC study found that approximately ‘7,000 children between the ages of five and 14 years work full-time in football stitching [...] Many thousands more work part-time in both industries [football and surgical instruments] outside school hours.’³⁸⁶ In numerical terms, this was obviously only a tiny fraction of the 3.3 million working children. On the other hand, the HRCP survey estimated that between 20 and 25 per cent of the stitching work in the industry was performed by children, and the ILO-IPEC concluded that children made up 17 per cent of the football stitching workforce.³⁸⁷

Because of the way in which the production of soccer balls in the Sialkot area was predominantly organized, child labor was only in exceptional

³⁸⁵ Federal Bureau of Statistics, Ministry of Labour, Manpower and Overseas Pakistanis, International Labour Organization, and International Programme on the Elimination of Child Labour, *Summary results*, pp. 5-7. Although the survey was 95 per cent confident of the estimate, the aforementioned reservations concerning child labor statistics still apply.

³⁸⁶ ILO, ‘The Sialkot Story’, pp. 14-15.

³⁸⁷ Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 11; ILO, ‘The Sialkot Story’, p. 15.

cases found to exist in factories.³⁸⁸ This entails a number of fundamental differences compared to the Bangladeshi garment industry situation. First of all, the employment of children was not necessarily prohibited and illegal (cf. more detailed discussion in relation to the framework of governance). Second, some of the characteristics given in the previous chapter of child labor in the factory – the normally higher visibility of factory work and particularly for exports, as well as the tendency to view this as more hazardous and exploitative – are features that enable a characterization of factory work by contrasting this to other employment situations and working conditions, such as in the home or in a small workshop. However, non-factory work may be more hazardous and exploitative, and some media reports focusing on child labor in the production of soccer balls, including the one by Silvers cited earlier, certainly implied that the child labor in this case was highly exploitative, abusive and hazardous. Although debt bondage was a widespread and common phenomenon in certain industries in Pakistan, and the specific instances reported on by Silvers and others were never refuted, neither the ILO-IPEC nor the HRCF found evidence that bonded labor was a problem in the soccer ball industry.³⁸⁹ As far as visibility was concerned - well, the sport, the ball marketers, and the products in this case were quite simply so extremely visible on a global scale, that it made little difference whether child labor occurred in factories or elsewhere.

More specifically, the HRCF found – and the ILO-IPEC study generally confirmed these findings – the following to be characteristic of child labor in the soccer ball industry:

- children were stitching balls of all qualities
- both boys and girls were involved in the stitching, although girls in lesser numbers
- very few of the respondents had learned the skill of stitching from parents or family members; most had started paid work after a few weeks of training
- children as young as 6 or 7 were found to be stitching in the villages; adults interviewed said they had started working at the same age

³⁸⁸ The Human Rights Commission of Pakistan in its survey, for example, did not find any children at work in the factories visited (p. 10).

³⁸⁹ Schrage, *Promoting International Worker Rights*, p. 20; Human Rights Watch, *Contemporary Forms of Slavery*; ILO, 'The Sialkot Story', 15.

- children found stitching in the city area workshops were mostly 12 years or older
- an average working day of 8 to 10 hours
- in the workshops, there were no formal breaks, but a short lunch break was given; the working environment was ‘dreary’ with very little light
- in the homes, children had more flexibility and freedom, although that meant their working days might also go on “for longer stretches” and the children were ‘often reprimanded by the adults for getting up from work’
- no incidences of physical abuse were observed, although this could not be ruled out
- no evidence of bonded labor was found, but the team noted that ‘contractors do hold a position of patronage over the stitchers’ and that there seemed to be ‘an element of arbitrariness on the part of the contractor in fixing the rates’
- no evidence of wage differentials between adult wages and that paid to children.³⁹⁰

Both the HRCP and the ILO-IPEC survey found children to be working full-time and long hours, but the child stitchers did not face any major health or safety hazards. On the other hand, some critical observations were made concerning the working conditions and environment (cf. above), and the HRCP did not find these to be the least consistent with the local industry’s claim that stitching was ‘performed in an informal and casual environment where the children worked in the evening while watching television’. Rather, the HRCP concluded that:

‘We were not convinced that these children did not feel any burden of labour. It is certainly not work casually performed “while watching television” as stated by the representatives of the Chamber of Commerce. We did not see television set in any of the homes we visited.’³⁹¹

The prevalence of child labor cannot be understood in isolation from the fact that approximately one third of the population in Pakistan lived in absolute poverty.³⁹² Household poverty was also an important force in the

³⁹⁰ Human Rights Commission of Pakistan, *Child labour in Pakistan*, pp. 10-12.

³⁹¹ Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 7 and 15.

³⁹² Schrage, *Promoting International Worker Rights*, p. 20.

soccer ball industry, but the survey evidence was mixed and other forces must be taken into account as well:

‘Many parents stated that the economic survival of the family did not depend on the earnings of children. However, this was not the case everywhere, and in as many cases poverty was given as the major factor which brought a child to work.’³⁹³

Thus, in addition to household poverty, the social acceptance of child labor and the comparatively lower health and safety hazards involved in stitching soccer balls, the ILO-IPEC survey also found the poor state and perceived usefulness of the education system to be among the justifications for child labor.³⁹⁴ The lack of public sector resources and the high ratio of children to adults in Pakistan were obviously part of this, but as some critics have pointed out, public sector revenues and spending in the end come down to deliberate political choices and priorities determined by the prevailing power relations:

- *‘The budget allocated to education does not exceed 2.25 percent of GNP because of the major portion that is reserved for defense purposes. This is mainly due to long-standing unsettled border disputes with India. According to Haq and Haq (1998), Pakistan and India together spend over US\$12 billion a year on defense. If these levels were cut by 5 percent a year over the next five years, it could release as much as US\$22 billion in a peace dividend - over four times what is required for global universal primary education for the next five years [...]’³⁹⁵*

- *‘In an historic move, the government also levied taxes on the agriculture incomes of big landowners for the first time. [...] Although agriculture accounts for 26 percent of Pakistan’s GDP, taxation of agricultural income historically has been blocked by the large landowners who dominate the national assembly.’³⁹⁶*

³⁹³ Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 16.

³⁹⁴ ILO, ‘The Sialkot Story’,

³⁹⁵ Shaista E. Khilji, ‘Culture and management in Pakistan’, in Malcolm Warner (ed.), *Culture and Management in Asia* (London: RoutledgeCurzon, 2003), p. 139.

³⁹⁶ U.S. Department of State, *Pakistan Economic Policy*.

As far as the manufacturers' and contractors' demand for child labor was concerned, the HRCP did not find evidence of a wage differential between adults and children, and the ILO-IPEC study was actually rather positive on this point, noting that 'For between eight and nine hours of work every day, the child football stitchers earn roughly half the adult minimum wage of Rs. 1,650 *per month for unskilled work*, and the instrument polishers an average of nearly Rs. 1,300. These proportions compare favourably to other sectors of child labour in Pakistan.'³⁹⁷ On the other hand, the HRCP concluded that 'It was noted that *in most families having child workers, there was an adult who could work instead and, perhaps, at better wages.*'³⁹⁸

6.5 A chronology of events

Although the involvement of children in the production of soccer balls was not the world's best kept secret – it had been reported on in the New York Times as early as 1990³⁹⁹ – it was not until 1994 that the first early signs of an emerging politicization of corporate responsibility and child labor in the production of soccer balls appeared. At the international child labor hearings held by the U.S. Department of Labor that year - on April 12, to be specific - Pakistan was mentioned almost as frequently as Bangladesh. There was only one broad reference to the sporting goods industry in Sialkot, but after the hearings the Labor Department received a letter from Kailash Satyarthi concerning child labor in Pakistan in which he pointed, among other things, to the use of child labor in the soccer ball production in Sialkot. This came to be included in the Labor Department's report of that year.⁴⁰⁰ This did not make big headlines at the time, but it coincided

³⁹⁷ ILO, 'The Sialkot Story', p. 15; emphasis in original.

³⁹⁸ HRCP, *Child labour in Pakistan*, p. 16; emphasis added.

³⁹⁹ Barbara Crosette, 'Soccer Balls Sustain Pakistan Town' in *The New York Times*, October 8, 1990. The article was not a politicizing piece on corporate responsibility, child labor and so on, but rather worked as a portrayal of the soccer ball industry in Sialkot, Pakistan.

⁴⁰⁰ Omar Noman, 'Child Labour and Compulsory Primary Education in Pakistan', written testimony in U.S. Department of Labor, Bureau of International Labor Affairs, *Public Hearings on International Child Labor*, 12 April, 1994; U.S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children*

with the FIFA 1994 World Cup being played in the United States and with a considerable and growing attention to the issue of child labor in Pakistan, especially in relation to hand-knotted carpets. Iqbal Masih, the local teen activist and former bonded child laborer, was already becoming a global icon for the cause. In fact, he received Reebok's Human Rights Youth in Action Award in December that year.⁴⁰¹

In early 1995, the first significant media report appeared on the issue: a CBS exposé, which aired on April 6 in the U.S. As Tom Cove (Vice President, Government Affairs, of the U.S. Sporting Goods Manufacturers Association, SGMA) recalled,

*'[...] a CBS news magazine came to Super Show to do a show on soccer balls. Major ball manufacturers proudly showed off their wares. Only later did those same manufacturers realize that they were being set up as "bad guys" in the geo-politics of labor rights. The segment that ran on national television later that spring excoriated the soccer industry for its alleged exploitation of child labor. It focused on the Sialkot region of Pakistan, where more than two-thirds of the world's soccer balls are produced. This marked the beginning of an aggressive campaign against the industry to change the way it monitors production practices worldwide.'*⁴⁰²

With respect to the soccer ball industry, the segment included one of the largest local manufacturers, Sublime Sports (a supplier to both Adidas and Reebok), acknowledging that 'contractors were known to employ child stitchers' – with Adidas promising to look into it, and Reebok saying that it would cease doing business with Sublime awaiting an investigation.⁴⁰³ Moreover, the segment also focused on another local industry and one of its international buyers: surgical instruments and UNICEF.⁴⁰⁴ Furthermore,

(*Volume I*), p. 131; for details on letter, see U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume IV)*, p. 99.

⁴⁰¹ Silvers, 'Child Labor in Pakistan'.

⁴⁰² Tom Cove, 'The last word on soccer balls & child labor' in *Sporting Goods Business*, Vol. 31, No. 3, February 4, 1998.

⁴⁰³ Schrage, *Promoting International Worker Rights*, p. 22.

⁴⁰⁴ Jackson, 'Children Make'. UNICEF issued its "vow" the following month, cf. the previous chapter.

the exposé was broadcast on the very same day that Pakistani PM Benazir Bhutto arrived for a nine-day visit to the U.S.⁴⁰⁵ *Finally*, the segment also focused on Iqbal Masih – 10 days later he was murdered in Pakistan, causing a lot of anger, controversy and negative media attention across the world.⁴⁰⁶

The use of children in the production of soccer balls began to attract more attention in the U.S. and elsewhere. In England, a number of newspaper articles contrasted the big business of soccer – and the enslaved children making the balls.⁴⁰⁷ A few months later, in June 1995, a delegation of the Norwegian Confederation of Trade Unions, accompanied by a team from the Norwegian Broadcasting Corporation's Television Division, visited Sialkot. Having obtained 'unflattering' and 'unbreakable' evidence on film that children were being 'brutally exploited' in the production of soccer balls, the group was attacked by armed men and had their camera (and footage) stolen.⁴⁰⁸ A Norwegian exposé did, however, subsequently run on Danish, Swedish and Norwegian national television.⁴⁰⁹

In Pakistan, Sublime's reaction appears to have been the exception to the rule, as the industry's reaction otherwise consisted of denials of child labor in the production. Furthermore, local children's rights activists and media with an interest in child labor were being repressed, and every effort was

⁴⁰⁵ Jackson, 'Children Make'; Maggie Jackson, 'Children Toil for Giants of Sport' in *Herald Sun*, April 7, 1995.

⁴⁰⁶ E.g. *The New York Times*, 'Child Labor Critic Is Slain in Pakistan', April 19, 1995.

⁴⁰⁷ Caroline Lees and Simon Hinde, 'Scandal of football's child slavery' in *Sunday Times*, May 14, 1995; see also Double, 'Cup Stars'.

⁴⁰⁸ Else Berit Elkeland (Deputy Head of International Department, Landsorganisasjonen i Norge [The Norwegian Confederation of Trade Unions]), letter to the President of the AFL-CIO, February 10, 1996. See also Silvers, 'Child Labor in Pakistan'.

⁴⁰⁹ The Danish ball company, Select Sport, responded quickly with a press release and - on the grounds that the connections between its products and child labor in the documentary had not been substantiated - the Danish and the Swedish broadcasters ran retractions. After a long legal battle, the Norwegian broadcaster also had to run a retraction. Cf. Vendelbo, 'Interview med Eigil Nielsen'; Select Sport A/S, *Om børnearbejde og Select-fodbolde i Pakistan*, press release, July 7, 1995.

made to question the validity of those reports that did appear.⁴¹⁰ The first written study of child labor in the production of soccer balls was, however, published shortly after these events by the respected Human Rights Commission of Pakistan. This, it might be recalled, was right around the time when the MOU was finalized in Bangladesh.

The international buyers of balls from Pakistan were beginning to acknowledge that the industry had a problem. Companies began to react individually in various ways to the problem, and collective action began to emerge at two levels. In July, a Task Force on Global Manufacturing Practices, with members of Adidas America, Reebok, and Umbro USA, was formed under the Soccer Industry Council of America (SICA), a committee of the U.S. Sporting Goods Manufacturers Association (SGMA). At the global level, at an August meeting in the World Federation of the Sporting Goods Industry (WFSGI), the Federation's newly elected President, Stephen Rubin (also Chairman of the Pentland Group plc., which had just acquired Mitre), announced that fair trade and ethical sourcing would be cornerstone initiatives of his chairmanship, and the WFSGI moved to establish a Committee on Ethics and Fair Trade (CEFT), 'a core group of concerned members charged with developing specific programs to educate WFSGI members, to reach out to potential experts and to nurture the creation of specific projects.'⁴¹¹ The WFSGI committee subsequently organized a conference on the issue of child labor, which was held at the WFSGI's headquarters in Verbier, Switzerland, on November 3 of that year.

The Verbier Conference, as it is called, brought together a range of significant organizations to discuss the issue of child labor in the industry. Apart from industry representatives, participants included representatives of the International Save the Children Alliance, Save the Children, Anti-Slavery International, Terre des Hommes, the Fairtrade Foundation, the International Olympic Committee, UNESCO, UNICEF, and Gabriele

⁴¹⁰ Silvers, 'Child Labor in Pakistan'; John W. Anderson, 'Pakistani Journalists Face Official Pressures as 6 Papers Are Banned' in *The Washington Post*, July 4, 1995; Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 2.

⁴¹¹ World Federation of the Sporting Goods Industry, *The Child Labor Issue – Some History* (at www.wfsgi.org, accessed on March 1, 2002).

Stoikov from ILO-IPEC.⁴¹² The conference did not result in any concrete initiatives or collaborative efforts.⁴¹³ It did, however, bring together for the first time those organizations that would eventually become partners to the Atlanta Agreement.

At the same time, by early November SICA had ‘retained the services of a noted human rights professional and professor of human rights and business ethics at Columbia University’ (Elliott Schrage), having requested ‘from experts a proposal to benchmark existing child labor monitoring and certification programs, survey soccer ball industry stakeholders, conduct an educational needs assessment of child stitchers, and recommend a program to prevent the use of child labor in soccer ball manufacturing.’ It had also commissioned a report from Pakistani-based Raasta Development Consultants, which was published in June, 1996.⁴¹⁴

The latter half of 1995 was rather “quiet” in terms of negative media exposure of child labor in the soccer ball industry. There was, however, a virtually exploding debate on sweatshops in the U.S. from the beginning of August, and a few months later the executions of Ken Saro-Wiva and others in Nigeria triggered some very strong reactions across the globe against the Nigerian regime and its business partner, Royal Dutch Shell. Furthermore, some of the major players in the soccer ball industry were targeted for their poor labor practices records in relation to some of their

⁴¹² World Federation of the Sporting Goods Industry (eds.), *The Way Forward. Proceedings of the Conference on Human Rights held in Verbier, November 3 1995* (Verbier: WFSGI, 1996).

⁴¹³ Interview with Lesley Roberts; interview with André Gorgemans; World Federation of the Sporting Goods Industry, *The Child Labor Issue*; Lesley Roberts, ‘Beyond codes: lessons from the Pentland experience’ in Jenkins, Pearson and Seyfang (eds.), *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan Publications Ltd., 2002).

⁴¹⁴ Tom Cove, written testimony in U.S. Department of Labor, Bureau of International Labor Affairs, *Public Hearings on International Child Labor, June 28, 1996*. Official Record, Proceedings (Washington, D. C.: U.S. Department of Labor, Bureau of International Labor Affairs, 1996); Soccer Industry Council of America (SICA), undated, ‘Task Force on Global Manufacturing Practices: Description of Activities and Context of Work’ in *Soccerline - News from the Soccer Industry Council of America* (undated); Schrage, *Promoting International Worker Rights*, p. 25.

other products.⁴¹⁵ Also, it should be pointed out that sport, and soccer in particular, was becoming a prominent object of contention in high-politics in England: ‘Sport is fast becoming the battleground for what threatens to be the bloodiest general election of modern political times [...]’⁴¹⁶

From the beginning of 1996, there was a significant surge in both union and NGO activities as well as continuous media reporting on child labor in relation to the soccer ball industry. As the WFSGI put it in its description of 1996, ‘*the soccer industry in particular was singled out in a series of television broadcasts and magazine articles for allegedly tolerating child labor [...]*’⁴¹⁷ In February, the article by Jonathan Silvers – cited at the beginning of this chapter – ran in the *Atlantic Monthly*, and in early March the U.S. Trade Representative announced the recommendation to partially suspend Pakistan’s benefits under the GSP program, sporting goods being one of the three sectors to loose out,⁴¹⁸ and an additional media report followed in April, while the responsible Minister in Pakistan downplayed the problem of child labor there.⁴¹⁹ At the same time, soccer in the U.S. stepped into a new era with the April 6 debut of Major League Soccer, the first new U.S. pro league in ten years.⁴²⁰

Union activity was picking up at different levels. At the global level, the ITGLWF had commissioned London-based Parachute Pictures to film working conditions in a number of countries, including specifically the Sialkot region for the stitching of soccer balls, for showing at the ITGLWF

⁴¹⁵ E.g., Rebecca Fowler, ‘The man on the left has a contract with Nike worth pounds 2m. The workers who make his shoes get pounds 40 a month’ in *The Independent* (London), December 4, 1995.

⁴¹⁶ E.g., Jeff Powell, ‘A political football: Major and Blair must keep sport off the hustings’ in *Daily Mail* (London), December 11, 1995.

⁴¹⁷ World Federation of the Sporting Goods Industry, *The Child Labor Issue*.

⁴¹⁸ Silvers, ‘Child Labor in Pakistan’; United States Trade Representative, Executive Office of the President, *Kantor recommends partial GSP suspension of Pakistan*, press release, March 7, 1996.

⁴¹⁹ Mark Schapiro, ‘Children of a Lesser God’ in *Harper’s Bazaar*, April 1996; Raza and Haque, ‘Child labour’.

⁴²⁰ Sporting Goods Manufacturers Association, *1996 State of the Industry Report*, p. 18.

7th World Congress in Melbourne from April 15 to 19.⁴²¹ The pictures of children stitching soccer balls in Pakistan were not only shown at the Congress, but also broadcast in a number of European countries, and the video was also used at the International Labour Conference in June. FIFA was approached already in April on the issue, and on May 29 the ITGLWF together with the International Confederation of Free Trade Unions (ICFTU), the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET, now UNI Commerce), and the Trade Union Congress of the UK (TUC) launched a campaign on child labor and labor rights in the production of soccer balls in Sialkot.⁴²²

This coincided with – indeed, was explicitly and strategically related to – the European Football Championships, which were getting underway in England, beginning on June 8. As with every other major tournament, Euro 96 drew massive attention to the game, and a marketing mini-guerra played out: ‘During last year’s European championships, for instance, Nike bought up all the billboards around stadiums where matches were held, effectively undermining the event’s official sponsor, Umbro.’⁴²³ The trade union campaign was discussed at a FIFA Committee meeting on May 30, and a few days later the organization publicly announced its willingness to play a role. On the very same day, June 3, the ILO announced that the upcoming International Labour Conference would focus on child labor, homeworkers and the unemployed. The International Organization of Employers at its General Council meeting adopted a Resolution on Child Labor and issued a Policy Statement on the Social Clause.⁴²⁴ During Euro

⁴²¹ Neil Kearney, *Activity Report (1996-1999) by Neil Kearney, General Secretary. For the 8th World Congress, Sweden, 26-30 June 2000* (ITGLWF: Brussels, 2000), p. 12 and p. 249.

⁴²² *Agence France Presse* (AFP), ‘Euro 96 called to ban child labour balls’, May 29, 1996; Peter Hetherington, ‘Police hunt rioting fans caught on street video’ in *The Guardian* (London), May 30, 1996; Robert Taylor, ‘Balls for Euro 96 ‘produced by child labour’ in *Financial Times* (London), May 30, 1996; *The Irish Times*, ‘Child labour used to make footballs’, May 30, 1996.

⁴²³ Himmelstein, ‘The swoosh heard’.

⁴²⁴ FIFA, *FIFA to help combat child labour in Pakistan*, press release, June 3, 1996 (at www.fifa.com, accessed on May 22, 2000); International Labour Office, *Delegates to International Labour Conference to focus on child labour, homeworkers and the unemployed* (Geneva: International Labour Office, press release, June 3, 1996, ILO/96/16); International Organisation of Employers, *Resolution on Child Labour*, Adopted by the IOE General Council, Geneva, June 3, 1996; International Organisation

96 and the ILC, the trade union campaign got some attention, and a meeting between FIFA and international trade union secretariats was held in London on June 17.⁴²⁵ Shortly after the meeting, an announcement came out that the ILO would be involved in a 'first-ever survey on the use of child labour' in the sporting goods and surgical instruments industries in Sialkot – to counter what an anonymous Pakistani official called the 'exaggerated' claims and propaganda forming 'part of a conspiracy' by 'vested interests' associated with its 'rival neighbour, India, and unspecified Western organizations.'⁴²⁶

In addition to this trade union campaign, the Norwegian Confederation of Trade Unions had approached the AFL-CIO President in February on the issue of child labor in the production of soccer balls. By late March this letter had made its way to the ILRF via AAFLI, and the ILRF was slowly starting up work on the FoulBall campaign (below).⁴²⁷ At that time several articles appeared in the U.S. media, and the public debate on sweatshops and corporate responsibility in the U.S. virtually exploded - again.⁴²⁸ Furthermore, the aforementioned report from Raasta Development Consultants was completed. The findings in the Raasta report were in the main consistent with those of the earlier report from the Human Rights Commission of Pakistan, cf. above.

of Employers, *Policy Statement on the Social Clause*, Adopted by the IOE General Council, Geneva, June 3, 1996.

⁴²⁵ *Agence France Presse* (AFP), 'Pakistani children making Euro cup balls', June 12, 1996; *Deutsche Presse-Agentur*, 'Unions: Pakistani children produce 36 million footballs a year', June 12, 1996.

⁴²⁶ Shah Alam, 'Pakistan conducts survey on child labor in sports industry', *Agence France Presse* (AFP), June 23, 1996.

⁴²⁷ Elkeland, letter to the President of the AFL-CIO, February 10, 1996; Kenneth P. Hutchison, telefax to Pharis Harvey, ILRF, March 20, 1996. It is also worth noting that the murder of Iqbal Masih and resulting 'youth activism' were still generating considerable attention and publicity in the US. See for example Charles Truehart, 'Canadian, 13, Wages War on Child Labor; Article About Slain Pakistani Boy Prompted Campaign That Has Won Prime Minister to Cause' in *The Washington Post*, February 23, 1996.

⁴²⁸ Sydney H. Schanberg, 'Six Cents an Hour' in *Life Magazine*, Vol. 19, No. 7, June 1996; Andy Bernstein, 'Vendors and Soccer Council call child labor out of bounds' in *Sporting Goods Business*, Vol. 29, No. 6, June 1996. See also Nancy Gibbs and John F. Dickerson, 'Cause Celeb' in *TIME*, Vol. 147, Issue 25, June 17, 1996 on celebrity endorsers and corporate responsibility.

On June 28, the ILRF's FoulBall campaign was officially kicked off at a publicity stunt on the lawn outside the U.S. Department of Labor, just before the International Child Labor Hearings and with the presence and support of U.S. Secretary of Labor, Robert B. Reich, and other prominent figures, including representatives of Nike and Reebok.⁴²⁹ Reich also sent letters to FIFA as well as John Riddle, President of the SGMA (and Chair of the WFSGI's CEFT), expressing his concern about the 'use of illegal child labor in the stitching of soccer balls' and offering the assistance of the Labor Department.⁴³⁰ The hearings that day included very frequent mentions of the issue of child labor in the production of soccer balls in Pakistan, including in the testimonies and written statements by Reich and several members of Congress, representatives of the ILRF/FoulBall, the National Consumers League, the SGMA, Nike, Reebok, and the ILO.

As the interaction between FIFA and the trade unions moved along – with a draft code of labor practice being in place in early July – and as the FoulBall campaign was attracting considerable attention to the issue across the Atlantic, child labor – including in the soccer ball industry – was a growing concern of Pakistani politicians and public officials.⁴³¹

Furthermore, individual companies were moving along with their separate initiatives, and SICA had publicly announced its commitments at the Department of Labor hearings.⁴³² Following the Raasta report, SICA issued a call for proposals for a pilot program related to child labor in the industry in Sialkot, and – a few days after the formation of the Apparel Industry Partnership, with the participation of Nike and Reebok – there was yet

⁴²⁹ International Labor Rights Fund, *Coalition Launches FOULBALL Campaign: Child Labor Practices in Soccer Called "A Shame to the Game"*, press release, June 1996; U.S. Department of Labor, Office of Public Affairs, *Secretary Reich to Launch Two Efforts Against International Child Labor Abuse*, media advisory, June 27, 1996; Donica Croot, 'Coalition's Goal Is to End Use of Child Labor to Make Soccer Balls' in *Los Angeles Times*, June 29, 1996.

⁴³⁰ Robert Reich (U.S. Secretary of Labor), letter to John Riddle, President, SGMA, June 28, 1996.

⁴³¹ Farhan Bokhari, 'Pakistan to crack down on child labour' in *Financial Times* (London), July 18, 1996.

⁴³² Tom Cove (SGMA), written testimony; *PR Newswire*, 'U.S. Soccer Industry Announces Plans To Lead International Effort To Revise Soccer Ball Manufacturing Practices, End Child Labor', June 28, 1996.

another industry get-together at the ISPO Trade Show in Munich, Germany, August 6 to 9, 1996:

*'[...] over 60 representatives of soccer ball suppliers and global brands met to discuss the initiative and determine how the industry should proceed. In a wide ranging meeting lasting several hours, representatives from Europe, North America, Asia, from industrialized countries and developing nations candidly exchanged views on the industry's responsibilities to eliminate child labor and the desirability of imposing standards on companies that their governments were unwilling or unable to apply. All companies agreed that child labor was neither appropriate nor necessary for the manufacture or assembly of soccer balls. All agreed that the allegations of child labor were damaging to the industry.'*⁴³³

A follow-up to the Verbier Conference was furthermore scheduled to take place at the Pentland Conference Center in London in late November of 1996.

In late August however, it became public that FIFA and the trade unions had reached an agreement, and in early September FIFA and the unions presented the so-called FIFA Code of Labour Practice. Trade unions, NGOs and the U.S. Department of Labor soon praised the Code as a significant step ahead, but it also drew public criticism from various industry players.⁴³⁴ The FIFA Code was subsequently presented at the Pentland Conference, but it was never accepted by the industry. FIFA,

⁴³³ Quote from World Federation of the Sporting Goods Industry, *The Child Labor Issue*; Soccer Industry Council of America, *Request for Proposals: Education of Child Workers; Educational Awareness for Families; Sialkot District, Pakistan*, telefax, August 7, 1996.

⁴³⁴ FIFA, *Labour codes for footballs*, press release, September 3, 1996 (at www.fifa.com, accessed on May 22, 2000); Graham Bowley, 'Fifa plans child labour code for football makers' in *Financial Times* (London), August 28, 1996; Shada Islam, 'Trade-Labor: Unions link up with FIFA to boot out child labor', *Inter Press Service*, September 5, 1996; Dwight W. Justice, 'The international trade union movement and the new codes of conduct' in Rhys Jenkins, Ruth Pearson and Gill Seyfang (eds.), *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (London: Earthscan Publications Ltd., 2002); Graham Bowley, 'Child labour code agreed' in *Financial Times* (London), September 5, 1996; Amir Mir, 'Pakistan-Labor: Threat of FIFA Ban Jolts Football Industry', *Inter Press Service*, October 11, 1996; International Labor Rights Fund, *Child Labor in the Soccer Ball Industry: A Report on the Continued Use of Child Labor in the Soccer Ball Industry in Pakistan* (Washington, D.C.: International Labor Rights Fund, 1999).

furthermore, subsequently denied that the Code was ever fully accepted by them – in spite of the fact that FIFA’s own press release from September 3, 1996, as well as the media coverage surrounding the presentation of the Code certainly give that impression.

Shortly before the Pentland Conference, the U.S. Department of Labor published its 1996 report on international child labor, which included a partial focus on soccer balls. Save the Children published a policy paper on child labor, and the ILO and UNICEF announced that they had agreed to a ‘joint fight against child labour.’⁴³⁵ Moreover, just before the Conference, the WFSGI and SICA had gone on a mission to Pakistan ‘to build support among manufacturers around the outline of a program to address child labor.’⁴³⁶ And, finally, Reebok issued a press release on November 19 saying that the company was going to label its soccer balls with “Made without Child Labor”: ‘It is believed this represents the first time a guarantee of this kind has been placed on a widely distributed consumer product.’⁴³⁷

On November 21 and 22, 1996, the WFSGI hosted the conference at the Pentland Conference Center in London – formally, the ‘Continuing the Way Forward’, but commonly referred to as the Pentland Conference – with a wide range of participants beside industry representatives: representatives of the International Olympic Committee, the ILO, UNICEF, Anti-Slavery International, the Fair Trade Foundation, Oxfam, the SCF (UK), the Foul Ball campaign, the governments of Pakistan, the UK, and FIFA. Unlike the Verbier Conference a year earlier, a decision was made at the Pentland Conference to proceed with an initiative to end child labor in the soccer ball production in Sialkot. Furthermore, although

⁴³⁵ U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume III): The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?* (Washington, D. C.: U. S. Department of Labor, Bureau of International Labor Affairs, 1996); Marcus and Harper, *Small hands*; International Labour Office, *UNICEF and ILO in joint fight against child labour* (Geneva: International Labour Office, press release, October 8, 1996, ILO/96/30).

⁴³⁶ Schrage, *Promoting International Worker Rights*, p. 36; World Federation of the Sporting Goods Industry, *The Child Labor Issue*.

⁴³⁷ Reebok International Ltd., *Reebok International to Label Soccer Balls With “Made Without Child Labor” Guarantee* (Stoughton, MA: Reebok International Ltd., press release, November 19, 1996); *The New York Times*, ‘Reebok Announces Move on Child Labor’, November 20, 1996.

the FIFA Code was presented at the Conference, a decision was made to authorize the development of another code under the auspices of the WFSGI.⁴³⁸

During the ensuing couple of months, the Atlanta Agreement was drafted. Shortly after the Conference, there was a short skirmish related to what kind of monitoring would be acceptable - Pentland's/WFSGI's Stephen Rubin having publicly stated that the industry's intentions were to go for some system of self-monitoring.⁴³⁹ Furthermore, Nike announced that its supplier was going to eliminate all outsourcing of stitching, and Phil Knight was thus able to express his pride in the company's taking a 'leadership position' in the industry - a few weeks before Nike, in early December, signed the record-setting USD +200 million deal to sponsor Brazil's national team for the next 10 years (cf. above).⁴⁴⁰ In addition, the ILO survey focusing on - among other things - the soccer ball industry in Sialkot was completed.⁴⁴¹ Finally, it might be pointed out that the somewhat broader context of the drafting process saw the re-election of U.S. President, Bill Clinton, as well as a discussion of trade and labor standards at the WTO Ministerial meeting in Singapore.⁴⁴²

⁴³⁸ World Federation of the Sporting Goods Industry, *The Child Labor Issue; Associated Press* (Worldstream), 'Sporting Goods Industry Promises a Code of Ethics', November 22, 1996.

⁴³⁹ Patrick Harverson, 'Sports groups to set child labour rules' in *Financial Times*, November 21, 1996.

⁴⁴⁰ *PR Newswire*, 'NIKE, SAGA Sports Open First Pakistan Stitching Center', November 25, 1996; Sami Zubeiri, 'Pakistan's first child-free hand stitched soccer ball centre opens', *Agence France Presse* (AFP), November 26, 1996.

⁴⁴¹ Shah Alam, 'ILO to make new attempt to end child labour in Pakistan', *Agence France Presse* (AFP), January 13, 1997; Tahir Ikram, 'Work is no ball for children' in *The Guardian* (London), January 13, 1997.

⁴⁴² There were a few additional media reports mentioning child labor in the soccer ball industry, e.g., Latafat A. Siddiqui, 'Pakistan supports idea of new monetary fund' in *Moneyclips*, November 30, 1996; Denis MacShane, 'These small slaves need liberation' in *The Independent* (London), December 9, 1996; Joe Rogaly, 'Protecting the canary: Children's 'rights' do not enter the equation' in *Financial Times* (London), December 14, 1996; William J. Holstein et.al., 'Santa's sweatshop' in *U.S. News & World Report*, December 16, 1996.

The Atlanta Agreement was signed and presented at the industry's Super Show in Atlanta, Georgia, on the 14th of February, 1997.⁴⁴³

6.6 Struggles to define the problem

Looking more closely at how the struggles to define the problem played out, the first key trigger event, the CBS exposé, which was broadcast in early April of 1995 in the U.S., may serve as a point of departure. Schrage provides a good summary of how the exposé presented the problem in the soccer ball industry:

*'The youngest stitcher was a six year-old boy. The report cited estimates that up to 25,000 children worked as stitchers in Sialkot for about two dollars per day, less than the Pakistani minimum wage. According to the report, children were paid less than adults and the child stitchers did not attend school.'*⁴⁴⁴

To begin with, it might be noted that the existence of the problem was rather insignificant in this case. There were occasional blank denials, of course, in particular issued by Pakistani manufacturers and officials in the early stages of the process, when this was – still – a tenable approach:

*'While reports on child labour in the past were usually ignored by the government, the recent reports did evoke some reaction. The reports themselves, however, became controversial. In this process, the credibility of everyone involved has come under a shadow of doubt.'*⁴⁴⁵

⁴⁴³ World Federation of the Sporting Goods Industry, *Sporting Goods Industry Partners with Children's and Human Rights Groups to End Child Labor in Pakistan's Soccer Ball Industry*, press release, February 14, 1997; Sporting Goods Manufacturers Association, *Soccer Manufacturers Pledge*; International Labour Office, *ILO unites; U.S. Newswire*, 'Labor Dept. to Fund Elimination of Child Labor in Soccer Ball Industry', February 13, 1997; Steven Greenhouse, 'Sporting Goods Concerns Agree to Combat Sale of Soccer Balls Made by Children' in *The New York Times*, February 14, 1997; Farhan Haq, 'Pakistan-Labor: U.S. sports firms try to fight child labor', *Inter Press Service*, February 17, 1997.

⁴⁴⁴ Schrage, *Promoting International Worker Rights*, p. 22.

⁴⁴⁵ Human Rights Commission of Pakistan, *Child labour in Pakistan*, p. 2.

The CBS exposé, however, showed one of the leading manufacturers acknowledging the use of child labor, and the international ball marketers that were singled out generally resorted to alternative tactics to resolve themselves of moral culpability, claiming that i) this was not what they saw/were shown when visiting their manufacturers, ii) they were not aware of the extent to which production relied on subcontracting, iii) corporate responsibility and child labor was a relatively “new issue,” or iv) they had trusted or contractually obliged their manufacturers to “behave” (and were not aware of the fact that national child labor laws in Pakistan did not prohibit all children under 14 from working). It could also be, of course, that some ball marketers were perfectly aware of the conditions under which their balls were being produced and accepted this. Whether they did so for purely selfish economic reasons, for the good of the poor families, or for accepting that that was simply the way things worked - these were subsequently arguments that were difficult to sustain explicitly, especially when the industry was faced with accusations of using child slavery. Furthermore, the HRCP survey, shortly thereafter, documented the existence of a problem, and traveling the road of blank denials was not a fruitful one: there were flat denials coming out of Pakistan later in the process, but given the HRCP study and the continuing stream of media reports, these seemed rather ludicrous and bore little impact on the ways in which the problem was defined in this case.

With respect to the extent of the problem, the CBS estimate of 25,000 child stitchers appears to have been somewhat of an exaggeration. This observation, however, is based on the benefit of hindsight, and it should not blur the fact that during most of the process, all actors were basically in the dark as far as the extent of the problem was concerned: any claim was as good as the previous, at least until the ILO estimate (7,000 children stitching full-time) in late 1996. Arguably, this constituted more of a problem for the targets of critique – primarily the international ball marketers - than for those doing the criticizing, and key industry players therefore had a certain interest in the provision of systematic and reliable “evidence” (but the industry had other and more serious problems, which meant that “evidence” was important, cf. below). In spite of this lack of evidence, however, the extent of the problem was not a central object of contention in this case. Primarily because the industry from very early on acknowledged the existence of a problem in Sialkot and began moving on this, i.e. the SICA discussions in Chicago and the Verbier Conference. This basically changed the situation and shifted the struggles toward other aspects of problem-definition (below).

Part of the story is, of course, also that there were no reports of children being pushed out into the streets, and the industry's moves did not take the form of a "stat war" similar to that in the Bangladesh case. While re-defining the problem by blaming the foreign critics for harming the children was perhaps a viable option in that case, the conditions in the soccer ball case were fundamentally different: the international ball marketers in this case had a collective problem – when labor practices in Sialkot were politicized - of rather unusual proportions because such a high share of the global production of soccer balls took place in Sialkot.

The chronology of events above further showed that there was a steady stream of significant and generally critical media reports – and that two major international campaigns were launched specifically on the soccer ball industry in Sialkot. More importantly, both the media reports and the campaigns consistently targeted the international ball marketers and/or FIFA, *and* this agenda formation and politicization of the use of child labor to a very high degree took place in public spheres outside of the producing country. Thus, not only did the international ball marketers have a collective problem of unusual proportions – the process of politicization was also highly transnationalized, and the international ball marketers were actually and actively and repeatedly called to answer in this process. Compared to the Bangladesh case, then, the central industry players were different, and the conditions for making claims and counterclaims in the struggles to define the problem were different as well (and increasingly so).

Looking at the struggles to define the nature and scope of the problem in this case, the problem as defined in the CBS exposé was circumscribed in a number of ways. First of all, the problem was child labor, and it was not defined in terms of labor rights more broadly. Second, the problem was geographically and sub-sector specific – the soccer ball industry in the Sialkot area – as opposed to the global sporting goods industry, for example. The exposé did, of course, profile Iqbal Masih and it also focused on child labor in the surgical instruments sector, but it did not focus on soccer ball production elsewhere, nor did it focus on Nike shoe production, for example. These specific features of the CBS exposé were generally characteristic of the ways in which the problem was defined until the trade union campaign in mid-1996 (this will be analyzed further below). The international ball marketers - publicly, at least – did not seek to contest the problematic nature of the involvement of children in the production of soccer balls. None of the ball marketers argued that child labor was an

acceptable practice, a phenomenon that was acceptable because of the local conditions, poverty, etc. Nor did any of them try to downplay the problematic nature of the alleged practices by referring to worse forms of child labor in Pakistan or elsewhere. Instead, child labor was accepted as problematic, and the corporate representatives expressed their surprise and concern, and promised to look into it.

Furthermore, the boundaries of the nature of the problem - child labor, soccer balls, Sialkot - in the CBS exposé were also what characterized the central concern and emphasis in terms of actual activities by industry players. While the Task Force established under SICA in the U.S. did carry the title 'on Global Manufacturing Practices,' the nature of the problem and the activities taken were very focused: 'When allegations of child labor in soccer ball assembly came to the attention of the U.S. soccer industry, SICA moved quickly and decisively to assess the situation and address any problems in a responsive and responsible manner' (tellingly, Schrage refers to this as the Child Labor Project Task Force).⁴⁴⁶ Under the global federation, WFSGI, the Committee on Ethics and Fair Trade (CEFT) was established, and this subsequently organized the Verbier Conference 'on Human Rights.' Here, working conditions more broadly were discussed, but the problem of child labor in Sialkot was nevertheless the dominant and central issue, as illustrated by the following quotes:

- *'In particular, we need to prevent our day-to-day commercial activities from being a pressure-point for newspapers wishing to increase sales by writing sensationalist articles. [...] Whilst we are all concerned with forced labour, slavery, bondage, work-linked debts and so on, we know that our most important and, indeed, most urgent initiative must be to look at the problem of child labour.'*⁴⁴⁷
- *'[The organizations] present at the Conference organised on 3-4 November in Verbier, Switzerland, agreed on the urgent need for the abolition of extreme forms of hazardous and exploitative child labour and the rehabilitation of the children concerned. Concerning the many other forms of child labour, the United Nations*

⁴⁴⁶ Tom Cove, written testimony; Soccer Industry Council of America (SICA), 'Task Force'; Schrage, *Promoting International Worker Rights*, p. 25.

⁴⁴⁷ Stephen Rubin (President of the WFSGI and Chairman of Pentland Group plc.), 'Introduction' in World Federation of the Sporting Goods Industry eds., *The Way Forward*, pp. 1-2.

*organisations and the NGOs welcomed the WFSGI's initiative to further explore the issue as it affects the industry and to develop practical measures in the best interest of the children affected.*⁴⁴⁸

Recalling the implications of the dominance of the negative consequences for the children in the previous chapter, it is interesting to note that in the present case this did not serve to basically redefine the problem nor did it work against a broadening of the agenda. Quite the contrary, as the quote above illustrates, the potentially negative consequences for the child stitchers was rather a somewhat given and integral element of how the problem was understood from early on – with explicit references to the “lessons from Bangladesh” at the Verbier Conference. The main question was what to do about it (further under Modelling).

Finally, in relation to negative consequences, a virtual non-issue during the entire process was the potential impacts on female workers resulting from changes in the organization of production. When child labor and the responsibility of the international ball marketers became increasingly politicized, most companies chose to centralize production in order to prevent and control for the use of child labor (an obvious advantage, especially if one is issuing guarantees and placing labels on one's product). For practical and cultural-religious reasons, however, this excluded not only the children but also a large number of female workers from employment in the soccer ball production.

Moving on to consider the gravity of the problem, the CBS exposé – on the one hand – did paint a rather grim picture, primarily through an emphasis on the very young age of the children, the very low wages and lack of education. Furthermore, the exposé also included a profile of Iqbal Masih's story, and it included child labor in other occupations. Many media reports as well as the HRCP and ILO surveys made similar combinations, but to very different effects. In the ILO case, as referenced in the World of Work, the clear effect was to downplay the gravity of the problem in the soccer ball industry. In the CBS exposé and many other media reports, the effect was rather the opposite: even though the CBS and some other reports made no direct allegations of bonded labor and physical abuse in the soccer ball industry, the more dramatic story composition and narrative and the combination with Masih may very well have led many viewers to draw

⁴⁴⁸ World Federation of the Sporting Goods Industry, press release, November 7, 1995, in World Federation of the Sporting Goods Industry (eds.), *The Way Forward*, p. 99.

their own conclusions about the lives of child stitchers. Taken literally, though, the CBS exposé did not make such allegations, and in that respect it presented the problem in less grave terms than many of the ensuing key media reports and the campaign claims. It did not take long, however, before such claims were made explicit:

‘The children, often engaged in a modern form of slave labour, spend long hours in workshops around Sialkot, a Punjabi town near the border with India. By a historical quirk, Sialkot is the source of most of the world’s hand-stitched footballs, its produce snapped up by household names such as Adidas, Reebok and Mitre. Many of the children are unable to attend school because their families need the 10p an hour they earn. The balls, which cost up to Pounds 50, feature in football games in which the stars are paid as much as Pounds 10,000 a week.’⁴⁴⁹

During the first half of 1996, the critical media reports and the two campaigns clearly and generally differed from the CBS exposé above: the problem was one of enslaved children working under brutal conditions in the soccer ball industry, the gravity of the problem frequently contrasted with the big business and glamour of the sport (as in the quote above). In addition to the article by Silvers (cited at the beginning of this chapter), another prominent – indeed, still referred to by most industry representatives as *the* article – example was a June article by Sydney Schanberg in Life Magazine:

‘As our jeep approaches the roadside shed in Mahotra, a village in northern Pakistan, I can see a dozen children and men stitching hexagonal leather pieces into Nike soccer balls. Twelve-year-old Tariq squats in front, having come out of the dark interior for air. At his feet are several white balls with the distinctive Nike swoosh that will soon be finding their way to stores and playing fields in the United States. [...] Afzal Butt, the 19-year-old foreman whose brother owns this village factory, quickly warms to the smell of business. “I can get you as many as 100 stitchers if you need them,” he says. “Of course, you’ll have to pay off their peshgi to claim them.”’⁴⁵⁰

⁴⁴⁹ Lees and Hinde, ‘Scandal of football’s child slavery’; see also Double, ‘Cup Stars earn thousands as slave kids get 5p an hour making footballs’.

⁴⁵⁰ Schanberg, ‘Six Cents an Hour’.

Claims of bonded child laborers being involved in the production of soccer balls in Sialkot were also forwarded as part of the two campaigns:

*“It is a shame on soccer that its central item is the product of an industry where almost every factory has a punishment room for kids who are hung upside down, starved, caned or lashed when they make a mistake or upset their masters,” said Neil Kearney, the General Secretary of the [ITGLWF].*⁴⁵¹

Yes, there are similarities to the previous Silvers quote, and, it might be noted, on April 28, an article by the same Silvers ran in *The Independent* – including a section, which was virtually identical to that introductory quote.⁴⁵² Similar claims were forwarded in the statements and campaign materials of the FoulBall campaigners, which were reiterated in a number of media reports, including on CNN, for example:

*‘Thirty-eight members of Congress, led by Rep. Joseph Kennedy, D-Massachusetts, joined the protest Thursday. They wrote to the International Olympic Committee saying that soccer balls to be used at Olympic Games in Atlanta were produced by bonded workers as young as 6.’*⁴⁵³

Obviously, this was a difficult situation for the industry (and, it might be added, at a point in time where the competitive dynamics within the industry were being fundamentally reshuffled, cf. above). The industry was faced with some very explicit and direct allegations of a very grave problem, and it was virtually impossible to prove that bonded child labor was not and had never occurred in the production of soccer balls. What the industry could do to counter these serious charges, however, was to present “the truth” about the problem of child labor in the soccer ball production as a whole, even if doing so necessitated publicly acknowledging a number of less pleasant - but arguably not as grave, by comparison - aspects of the production practices. Furthermore, in order to be convincing, the counter-

⁴⁵¹ *Agence France Presse*, ‘Euro 96’; Hetherington, ‘Police hunt’; Taylor, ‘Balls for Euro 96’; *The Irish Times*, ‘Child labour’.

⁴⁵² Jonathan Silvers, ‘When they were young’ in *The Independent* (London), April 28, 1996.

⁴⁵³ ILRF, campaign material and June 1996 press release, *Coalition Launches FoulBall Campaign*. The quote is from CNN, ‘Coalition protests child labor in Pakistan’, July 15, 1996, on *U.S. News Story Page* (at www.cnn.com, accessed on January 14, 2004).

claims would have to be based on sources of information that would be seen as more credible than those reporting of bonded labor. One such source was the more elaborate study by the Human Rights Commission of Pakistan, which had been published shortly after the CBS exposé. The HRCP report painted a far from rosy picture of the working conditions of the children, but more importantly the HRCP also reported that there was no evidence of neither bonded labor or of physical abuse of and violence against the children.⁴⁵⁴ The findings of the HRCP were generally considered to be quite reliable, and the HRCP study was different from the previous and subsequent media reports, of course, in that it was based on a relatively systematic survey of the areas and industries, on which the HRCP had chosen to focus.

The HRCP study, therefore, was suitable for legitimating arguments in the process of claims-making and countering claims, and it was used for precisely such purposes in the discussions of the gravity of the problem. Thus, at the U.S. Department of Labor hearings, for example, Tom Cove of the SGMA was actually the one who provided the most detailed account of the problem of child labor in the production of soccer balls, relying extensively on the studies by the Human Rights Commission of Pakistan and the one by Raasta Development Consultants, thus directly and indirectly discrediting the media reports alleging bonded child labor:

*'[...] there is no credible evidence to support allegations that physical punishment of child stitchers is a regular or systemic feature of the stitching industry. Neither HRCP nor Raasta reported any evidence, or even reports of physical abuse by children who stitch or by their families on behalf of their children. Of course, and I want to emphasize this, this does not mean that abuse does not take place or never takes place. But we believe these findings place sensationalized press reports into a more truthful context. There is no credible evidence to support allegations of bonded, forced or slave labor in the stitching of soccer balls. Both HRCP and Raasta determined that stitchers occasionally receive cash advances for work not yet performed, but that this practice does not, and I repeat, does not constitute bonded labour [...]'*⁴⁵⁵

This is not to suggest that the industry had no other reasons for being interested in the characteristics of the child labor problem. The point is,

⁴⁵⁴ Human Rights Commission of Pakistan, *Child labour in Pakistan*, pp. 12-13.

⁴⁵⁵ Tom Cove (SGMA), testimony.

rather, that this seeming peculiarity in the discursive struggles to define the problem – that industry representatives were the ones trying to provide the public with the most detailed account of the child labor problem – was essentially a gravity minimization strategy driven by the numerous, relatively serious charges.

In addition to this shift related to the gravity of the problem, another shift occurred with the launch of the trade unions campaign in 1996. Although child labor was a focal point, the trade unions did not exclude other core labor issues:

‘The [ITGLWF] called on football’s governing bodies to adopt a code of conduct to ensure that balls are manufactured with a stamp of approval from UEFA or FIFA were produced by factories which do not use child labour and observe basic workers’ rights.’⁴⁵⁶

At the meeting between FIFA and the trade unions in London in mid-June, 1996, the involvement of children in the production of soccer balls in Sialkot was discussed in conjunction with other fundamental labor rights and in relation to a “FIFA Code of Labour Practice” – an agreement on which was presented to the public in early September, cf. above. In other words, the problem was broadened considerably to comprise core labor standards in addition to the focal point, child labor. This was reflected in the way some of the media reports in the latter half of 1996 defined and presented the problem.⁴⁵⁷ For reasons discussed further in relation to modelling, however, the FIFA Code was not accepted by the industry.

Finally, as the chronology above illustrated, the process in this case involved several cases of physical intimidation and violent repression leveled against those taking critical interest in child labor, whether local or foreign, and whether trade unionists, labor rights and human rights activists. Indeed, in the broader context, Iqbal Masih was murdered, and Ehsan U. Khan was forced into exile.⁴⁵⁸ While these repressive campaigns did not succeed in putting a stop to the initial exposés, the HRCP study nor

⁴⁵⁶ *The Irish Times*, ‘Child labour’.

⁴⁵⁷ Cf. e.g. Bowley, ‘Fifa plans’; Harverson, ‘Sports groups to set child labour rules’.

⁴⁵⁸ Anderson, ‘Pakistani Journalists’; Silvers, ‘Child Labor in Pakistan’; Schanberg, ‘Six Cents an Hour’; U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume IV)*.

the subsequent reports, the links that actually existed between foreign activists and journalists and locals were better kept secret or backgrounded.⁴⁵⁹

6.7 Targeting

Throughout the process the Pakistani manufacturers were “given” a lot of attention, and in the majority of press reports one or more ball manufacturers were specifically singled out and mentioned. In that sense, the Pakistani manufacturers were targeted throughout the process. However, this generally served as a means for the media and the campaigners to get at the real targets - the ball marketers and FIFA.

Looking at the media reports, there was a general tendency to focus on one or a few ball marketers, typically the market leader(s) and, in the U.S., the two North American sporting goods industry leaders and giants, Nike and Reebok.⁴⁶⁰ Secondary ball marketers, in turn, were sometimes mentioned, but generally in a listing of companies pointing to the collective nature of the industry’s problem, and they were not targeted at length. This implied that most of the less “branded” companies following the first type of strategy described earlier – little or no emphasis on high-profile advertising and sponsorships – were hardly mentioned in media at all during the process. They, and to some extent also the secondary ball marketers, were therefore able to follow a strategy of ‘staying below the radar screen’ during the entire controversy.⁴⁶¹ Thus, the 1995 CBS exposé, as mentioned, confronted representatives of Reebok and Adidas with the statements of their ball supplier, Sublime. In Denmark, the Norwegian documentary was directed against the Danish ball marketer, Select Sport.

As noted earlier, the Danish ball marketer, Select Sport, appears to have been an exception, claiming that it was engaged in “development work”

⁴⁵⁹ Interview with Collingsworth; interview with Tim Noonan, Director, Campaigns and Communications, ICFTU, March 25, 2004; cf. also letter from Satyarthi to the US Department of Labor mentioned at the beginning of section 6.5 *A chronology of events*.

⁴⁶⁰ Schrage, *Promoting International Worker Rights*, p. 22; Silvers, ‘Child Labor in Pakistan’; Schanberg, ‘Six Cents an Hour’, for example, focused on Nike in particular, but referred also to Reebok, Adidas, Mitre, Umbro, Brine, Cobra, and FIFA.

⁴⁶¹ Interview with President of one such ball marketing company, New York City, 25 March 2003.

and actually in the process of preparing a concrete initiative to further deal with child labor and related problems before the HRCP study and the 1995 media reports appeared, whereas other ball marketers claim to have been surprised by existence of child labor in the production, the explanations being that i) this was not what they saw/were shown when visiting their manufacturers, ii) they were not aware of the extent to which production relied on subcontracting, iii) corporate responsibility and child labor was a relatively “new issue,” or iv) they had trusted or contractually obliged their manufacturers to “behave” (and were not aware of the fact that national child labor laws in Pakistan did not prohibit all children under 14 from working). It might also be, of course, that some ball marketers were perfectly aware of the conditions under which their balls were being produced and accepted this. Whether they did so for purely selfish economic reasons, for the good of the poor families, or for accepting that that was simply the way things worked – these were subsequently arguments that were difficult to sustain explicitly, especially when the industry was faced with accusations of using child slavery.

It is hardly surprising to find that this way of structuring the stories, in a basic victim-perpetrator dichotomy, was important during this process. The Dateline segment on child labor in the Bangladeshi garment industry similarly focused on Wal-Mart as the perpetrator. The difference lies in the fact that during the process leading to the Atlanta Agreement, the stories – targeting the international buyers – kept on coming in the Western media, whereas in the Bangladesh case they did not. One of the reasons for this was arguably the quite early targeting of the BGMEA by AAFLI and others in the Bangladesh case, whereas in the soccer ball case both 1996 campaigns focused on FIFA and ball marketers. While the campaigns played a role in shaping the media stories, however, more importantly the broader context of this process was very different from Bangladesh process: in late 1995, several high-profile cases contributed to creating a lot of debate on corporate responsibility in many countries, and in the U.S. sweatshops ranked considerably higher on the agenda of the media, politicians, activists, etc. from August of 1995 (cf. next chapter).

Furthermore, the ball marketers – in contrast to Wal-Mart – very early in process responded in ways suggesting that they were susceptible to pressure and going to take action on the problem (the SICA Chicago meeting, the establishment of CEFT), and this has to be seen also within the context of the entry of Nike and Reebok as ball marketers. Both were obvious targets for the media and activists - both were very well known,

one already a prime target of activists and the other profiling itself on human rights and so on. Furthermore, soccer was important to both companies, and particularly Nike spent a lot of marketing money during the process on this area. What is more, the intensified competition among companies following the second type of strategy described above - those that were being targeted in the media - combined with this new presence of companies with a “human rights record” in the industry implied that the media reports and campaign activities appeared in a period of significant uncertainty - about the future of the business as well as the potential threat of the marketing war (above) also starting to focus on child labor.⁴⁶² Nike and particularly Reebok did take a more aggressive stance on child labor in their marketing activities than did most others (further below), thus adding to the uncertainty (and susceptibility to pressure) of other ball marketers.

Both of the campaigns launched in 1996 proclaimed FIFA as the primary target.⁴⁶³ The FoulBall campaign also directly targeted the ball marketers as well as the SGMA/SICA and the WFSGI. Prominent U.S. politicians, including Labor Secretary Reich, supported the campaign publicly and wrote letters to both FIFA and the SGMA.⁴⁶⁴ The FoulBall campaigners were also very active in trying to engage - and enrage - at the lower political levels, i.e. schools, children playing soccer and “soccer moms.”

While FIFA was subject to rather little media attention prior to the campaign activities of the international trade unions and the FoulBall coalition, once the trade unions campaign had been launched and the preparations for the FoulBall campaign were well underway, FIFA was often included in addition to one or a few ball marketers. But why target FIFA at all? Why not target the ball marketers directly, or the WFSGI for that matter? First of all, because FIFA’s licensing program was seen as a potential to obtain an economic sanctioning mechanism against the ball marketers/manufacturers in an otherwise quite “voluntary” world, and FIFA itself was susceptible to pressure for image and very material reasons (discussed further in relation to economic coercion and modelling).

⁴⁶² Andy Bernstein, ‘Mixing human rights and marketing, Reebok sparks debate in soccer world’ in *Sporting Goods Business*, Vol. 30, No. 18, December 15, 1997.

⁴⁶³ The international trade unions also approached UEFA, but UEFA deferred back to FIFA; interview with Tim Noonan.

⁴⁶⁴ Reich, letter to Riddle, June 28, 1996.

Finally, it should be noted that the Pakistani government and authorities were generally not directly targeted, although the lack of enforcement was obvious and sometimes explicitly underlined. The CBS exposé in April of 1995, of course, was broadcast on the day Bhutto arrived to the U.S., and in that sense indirectly targeted the Pakistani government. The growing focus on the soccer ball and other industries, of course, indirectly put an increasing pressure on politicians and various public servants. In mid-1996, this became quite apparent:

‘Pakistan has ordered local authorities to raid factories employing children [...] Prime Minister Benazir Bhutto has also asked officials [...] One Pakistani official sais: “Never before have we had so many people demanding certificates [...]” [...] Labour Minister Ghulam Akbar Lasi has asked the commerce ministry to launch, within a month, a special mark scheme for carpets and footballs [...] Mr. Mian Habibullah, chairman of Pakistan’s export promotion bureau, said recently: “Having labour laws is not enough. We have to enforce these laws to show the world that we are not encouraging child labour in our country.”’⁴⁶⁵

6.8 Economic coercion

In relation to child labor in the Bangladeshi garment industry, economic coercion in the form of trade-related measures contributed significantly to shaping the interactions and various aspects of that process. It was also noted that at some point this ceased to influence the process, and in the first half of 1995 was replaced by another form of economic coercion, the boycott. During the Atlanta Agreement process, the Child Labor Deterrence Act was re-introduced, without being passed though. There are no indications, however, that this played any role in the process. None of those interviewed mentioned the bill in relation to this process, and when asked directly about it, all of them (the Department of Labor official, NGO and trade union representatives, and representatives of companies and industry associations) stated that it had *not* played a role. This is consistent with the findings in the previous chapter: the dynamics associated with the bill in this period, as the threat of the bill being passed, decreased, and thus so did the leverage it had previously provided for some actors.

⁴⁶⁵ Bokhari, ‘Pakistan to crack down’.

Furthermore, the review initiated in 1993 of Pakistan's benefits under the U.S. GSP program led the U.S. Trade Representative to recommend a partial suspension of the benefits – including sporting goods – at crucial point in time during the process (early March of 1996).⁴⁶⁶ This was part of the broader controversies over trade and labor rights, where the Government of Pakistan was struggling for better conditions for some of its industries, such as garments, while complaining about the protectionism in disguise by some Western powers.⁴⁶⁷ Although these trade and labor rights controversies and the potentially negative impacts on exports must be seen as part of the broader context in which the Pakistani industry's reactions were formed, there are no indications that this played a marked, specifiable role as in Bangladesh, and there are no signs that it was directly used in any way. State-backed trade-related measures were, in other words, quite insignificant in this case.⁴⁶⁸

As the chronology of events showed, the industry's use of child labor was subject to considerable negative publicity, of escalating intensity during 1996 where two campaigns were furthermore launched (the ILRF's FoulBall campaign and that of the international trade unions; further below). The direct economic costs in terms of lost sales and costs associated with handling the aftermath of negative publicity are, of course, difficult to ascertain with any degree of precision. There are a number of indications that the very direct and immediate material costs were negligible for the majority of dominant node companies. To begin with, some claim that there was no effect on sales in the period, and that they were altogether able to 'stay below the radar screen'.⁴⁶⁹ Others point to the costs associated with the handling of the aftermath of negative publicity

⁴⁶⁶ United States Trade Representative, Executive Office of the President, *Kantor recommends*.

⁴⁶⁷ WTO Secretariat, 'Trade Policy Review Body: Pakistan'.

⁴⁶⁸ The allegations of forced labor in the soccer ball industry could eventually have provided another leverage, had the process dragged on and the allegations been found to be more generally characteristic of working conditions in the Sialkot soccer ball industry: the importation into the U.S. of goods made by forced or indentured labor was prohibited under the U.S. Tariff Act of 1930. This was not the case, however.

⁴⁶⁹ Interview with President of ball marketing company, New York City, 25 March 2003.

(customers, reporters, legal fees) – costs that, in light of annual corporate turnovers, were not dramatic in any way.⁴⁷⁰

Yet, even if the very direct and immediate effects on sales and associated crisis management costs were rather negligible, the pressures generated were not insignificant. First of all, it may be recalled that Nike and Reebok were both entering the ball marketing arena, the ambitions set high and the resources supporting those strategic ambitions being of such proportions that they were transforming the business, cf. above. In other words, the material stakes for these two companies were significant – in the medium term, in the broader picture of soccer, and in the even broader picture of their corporate brand images. Moreover, both companies had a track record as far as corporate responsibility and labor rights were concerned. While Reebok was, cf. the Chronology above, taking an early lead within the industry on these matters, Nike was one of the most prominent targets of labor rights criticism in general and in particular through 1996 (cf. also the following chapter). Both companies were publicly lending support to the ILRF's FoulBall campaign.

Second, the entry of Reebok and Nike certainly put pressure on many of the existing ball marketers. It may be recalled that the period was characterized by one CEO as a nightmare, and the uncertainties surrounding future business and associated with the growing signs of marketing warfare, both in terms of practices and spending, were not negligible. While in direct and immediately material terms, the negative publicity on labor practices was perhaps negligible for most ball marketers, at the same time it added a layer to the uncertainties associated with the entry of Reebok and Nike. If few companies could match the marketing spending of these two, certainly they could not out-spend and out-communicate them on child labor and labor rights either – and certainly not try to do both at the same time.⁴⁷¹

⁴⁷⁰ E.g., Vendelbo, 'Interview med Eigil Nielsen'.

⁴⁷¹ As the U.S. Department of Labor relayed one company's response to the 1996 survey: 'Brine noted that they do not have a separate mechanism for informing consumers that a soccer ball is not made by children, as their brand name alone should stand for not using child labor. Brine raised the concern that creating a special "not made with child labor" designation will lead to exploitation of the situation, and that smaller manufacturers that are financially unable to mount a large no child labor public relations campaign are bound to suffer even if they do have a no child labor commitment.' U. S. Department of Labor, Bureau of International Labor Affairs, *By The Sweat and Toil of Children (Volume IV)*, p. 122.

Taken together, the situation was one in which some dominant node ball marketing companies had a strong interest in collective action. As the Chronology showed, and as will be analyzed in more detail in the following section, the pressures *had* resulted in discussions and initiatives being taken within the industry, and there *was* a certain momentum for collective industry action in mid-1996. *Yet*, the pressure was unevenly distributed across dominant node companies within the industry, and it was not sufficient in and of itself. It took something more, and this came with the international trade unions and their campaign successfully shifting the pressure onto FIFA – or, more precisely, the outcome of their talks with FIFA:

‘The number of industry leaders who recognized the need for an industry-wide collective response reached a critical mass in September 1996 with the announcement of a FIFA Code of Labour Practice.’⁴⁷²

And, for a variety of reasons, FIFA was susceptible to pressure. FIFA was obviously concerned with the image of the sport, the sporting events (and itself, the sporting organization). More importantly, major sporting events such as the World Cup were not only a central part of what sporting organizations such as FIFA do, they had become a major source of income, cf. above. Thus, in direct terms it may be that soccer balls per se make up a rather insignificant portion of FIFA’s licensing business in economic terms, and that the number of balls carrying an official FIFA label made up an equally small share of global ball sales. In the broader picture, however, the licenses and proceeding sales associated with the World Cup – FIFA’s platform – were not negligible, the estimated worldwide retail sales of licensed products related to the 1998 World Cup amounting to USD 1.2 billion.⁴⁷³ In other words, negative publicity and campaigning on labor practices in the production of soccer balls would have effects beyond the balls alone. The platform for the more significant licensing arrangements, the sporting events, would potentially be hurt.

Moreover, campaigners were actually threatening to directly target those companies sponsoring the events:

⁴⁷² Schrage, *Promoting International Worker Rights*, p. 34.

⁴⁷³ FIFA, *FIFA World Cup Licensing Programme* and *2002 FIFA World Cup Licensing Programme*.

*'FIFA's million dollar corporate sponsors such as Coca-Cola, McDonalds and FujiFilm will be objects of this [FoulBall] coalition's concern.'*⁴⁷⁴

In sum, the shift in target selection that occurred in 1996, and the susceptibility of FIFA to the pressures, was highly significant in this process.

6.9 Modelling the solution

Looking at the chain of events, the steady stream of critical exposés and campaign efforts may be said to have set in motion three different, but possibly interrelated processes of modelling solutions to the problem: 1) companies reacted individually; 2) the trade unions negotiated with FIFA; and 3) companies reacted collectively as an industry. In the end it was the latter that resulted in the Atlanta Agreement – the particularities of which the present study is concerned with – but it is obviously necessary to consider the potential impacts of the first two on the third one.

To begin with, however, what might be said at the outset to have constituted the givens of a potential collective industry effort to resolve the problem?

First, if a collective industry action were to emerge, it was given that it would be concerned with the problem of child labor. More specifically, it appears to have been given that a potential effort would seek to eliminate and prevent all children from stitching – i.e., even legal forms of child labor would not be an option, and a combined work-study program for the older child stitchers - such as the one considered in Bangladesh - would not be an option either. As Schrage – the industry advisor during the process – put it:

'Irrespective of the degree of legal risk or inconsistency with corporate policy, the sporting goods industry could not afford to be associated with any form of child labor, prohibited or not. [...] The brands realized that the apparent legality of child work in soccer ball assembly under local law would not shield soccer ball importers from their critics. The juxtaposition of American and European children playing soccer while Pakistani children worked to make their soccer balls was guaranteed to generate

⁴⁷⁴ International Labor Rights Fund, *Coalition Launches FoulBall Campaign*.

*media attention. Consumers had begun to question the origin of the soccer balls they purchased.*⁴⁷⁵

Second, one of the lessons of Bangladesh was that the problem would have to be dealt with in an orderly, responsible manner – although the industry was under increasing pressure to resolve the problem, and to do so quickly, the industry could not be seen as immediately throwing children out onto the streets and into worse situations:

*‘To ban child labour with immediate effect would cause untold hardship to families and children themselves. In fact, research has shown that when, as an example, 30,000 children were removed from the garment industry in Bangladesh, none of them ended up in school!’*⁴⁷⁶

It would have to be a closely controlled and managed phasing out of child labor.

Third, it was a given that a collective industry effort would also take into consideration some of the other lessons from Bangladesh. That is, the causes and consequences of child labor would have to be addressed – the provision of educational alternatives, rehabilitation, and compensation for lost income, etc. This, however, did not include the potentially negative consequences for the adult women workers, which was rather a given non-issue until the operationalization stage.

Fourth, the use of child labor would have to be prevented and controlled for in the Sialkot soccer ball industry as a whole – and in an effective and credible way.

Fifth, it was arguably also a given that for a collective industry effort to come into existence at all, it would have to be an effort which was narrow in scope – it would focus on child labor, but not include collective action and program elements addressing other fundamental workers rights; it would focus on soccer balls, but not on sporting goods production as a whole; and it would focus on Sialkot, but not on soccer ball production elsewhere. As Doug Cahn – VP of Reebok’s Human Rights Programs – put it:

⁴⁷⁵ Schrage, *Promoting International Worker Rights*, p. 25.

⁴⁷⁶ Rubin, ‘Introduction’, p. 3.

‘As hard as this has been to do, it has been easy compared to other kinds of workplace problems because it is a single issue, in a single city and a single country. [...] It is hard for us to generalize, because this is a small part of our business. We saw an opportunity to drive the rest of the industry. As a result, we were more willing to take the profits and roll them back into redress for children. It would be different if it were part of our core business in thirty different countries. In a way, I am admitting that this one is easy for us, as hard as it has been. If this were footwear, we would have to approach it differently.’⁴⁷⁷

There were, however, a number of “obstacles” to such a collective reaction. To begin with, as was discussed earlier, many ball marketers were not singled out nor even mentioned during the entire process and were able to ‘stay below the radar screen’ throughout. Many of them were not even members of collective industry bodies at the national level, such as the SGMA. From this perspective, then, there was a rather limited, if any, interest in a collective industry reaction – and some, even today and even though they too signed on to “The Pledge”, look at the Atlanta Agreement with considerable distaste, as the big brands’ (and most notably, Reebok’s) chance of showing off in big politics. The central point is that in order for a collective industry effort to materialize, then, there would have to be some degree of agreement among the bigger companies. There were, however, a number of fundamental disagreements and conflicting views. More specifically, although the lessons from Bangladesh (above) were explicitly part of the understandings of the problem, there were competing views as to the implications of these.

First of all, although a “responsible” solution was understood to prevent the use of child labor while at the same time addressing the underlying causes and the potentially negative consequences, there were fundamental disagreements as to who should be responsible for addressing these – the companies/industry or government? And some companies feared that even engaging with these issues rhetorically as an industry might result in their being held responsible for these and a whole range of other “problems.” As Cahn subsequently described the discussions at the SICA meeting in Chicago (1995) when the decision was made to take the first collective steps:

⁴⁷⁷ Doug Cahn, cited from Harvard Law School Human Rights Program, *Business and Human Rights: An Interdisciplinary Discussion Held at Harvard Law School in December 1997* (Cambridge: Harvard Law School Human Rights Program, 1999).

‘We had to jump several hurdles to get all the buyers on board. There was a conversation on a steamy July afternoon at a trade show in Chicago. A Reebok colleague and I proposed to the Soccer Industry Council of America – a U.S.-based trade association – that it adopt a resolution calling for the Council to study the issue and make recommendations. As innocuous as the proposal might have seemed, the Council hotly debated taking on this new role and opening up what, for them, might be a Pandora’s box. The vote was 7 to 3 in favour and that was a hard-fought step.’⁴⁷⁸

Furthermore, the implications and practical issues of operationalization related to other of the above givens were – to say the least – unclear. Although a given element of a collective effort would be a general elimination of - and control for – the use of child labor in the soccer ball industry in Sialkot, there were disagreements as to the – material, ideational, and institutional - implications of this in terms of the organization of production and the organization of monitoring. And, although it was a given that the elimination of child labor would have to be managed and phased out, the timing and management of this were unclear.

Thus, although there were a number of basic givens and advantages associated with collective as opposed to individual reaction, these obstacles were not overcome until rather late in the process. Critics have, of course, pointed to the announcement of the FIFA Code as a trigger of industry anger and re-action, while others prefer to portray the industry as taking an early lead – by referring to SICA and WFSGI reactions in 1995. There is some basis for the latter claim, in the sense that overcoming the above disagreements, as to the distribution of responsibilities seen by some as falling within the purview of governments, would take time. Furthermore, SICA had commissioned – among other things – a factual assessment of the conditions on the ground, a relevant basis for reacting responsibly. On the other hand, it is very clear that until the FIFA Code was agreed upon, companies had reacted either on their own or, when reacting collectively, actions had amounted to little more than rhetorical expressions of commitments, e.g. (in mid-1996):

‘One, the U.S. soccer industry is committed to revising manufacturing practices by its business partners in Pakistan to eliminate the subcontracting of stitching which, as you know, is the avenue by which

⁴⁷⁸ Doug Cahn, cited from Harvard Law School Human Rights Program, *Business and Human Rights*.

*children improperly enter the industry work force. Two, the U.S. soccer industry is committed to working with the government of Pakistan and internationally respected nongovernmental organizations in Pakistan to promote educational opportunities for children and to ensure that children no longer involved in stitching soccer balls do not simply move to other, more hazardous forms of employment. And, three, the U.S. soccer industry is committed to exploring the development of a monitoring program to ensure that so long as subcontracting continues, facilities are inspected for the presence of any children working.*⁴⁷⁹

While some companies had been pushing for more concrete collective action on child labor, it seems reasonable to conclude that the FIFA Code was instrumental in removing the reluctance toward this in other corporate quarters – it tipped the balance and was therefore significant to both the creation and the nature of collective industry actions as well as to the timing and pace of development. This observation finds support not only in the chronology of events above and in the arguments of some of the critics that were part of the controversy and participated in the Pentland Conference. Consider also the statement by Elliott Schrage above concerning the FIFA Code and the reaching of critical mass in September of 1996 (again, Schrage was the industry advisor during the process). In extension, individual company initiatives – e.g., the changes in the organization of production of Nike and Reebok’s balls, Reebok’s announcement of a child labor free label – do not appear to have been significant in pushing toward collective action.

As far as the nature and pace of development was concerned, to derail the FIFA Code the industry would have to come up with something concrete that went beyond the child labor issue, and it needed to do so quickly. Otherwise, the legitimacy of the child labor initiative – the Atlanta Agreement – could more easily be contested. Thus, the announcement in November 1996 that the industry, under the WFSGI, would develop a new model code of its own – a voluntary, watered-down and less comprehensive one which would not include economic sanctioning mechanisms.

Furthermore, the industry would have to come up with something concrete to deal effectively with the child labor issue, and it needed to do so quickly. Arguably, to counter criticisms for derailing the FIFA Code, the

⁴⁷⁹ Tom Cove, testimony.

industry would have to take on some of the responsibility for addressing the underlying causes of child labor and the potentially negative consequences of its elimination. This became clear at the Pentland Conference:

*‘NGO critics questioned the limited scope of a program aimed solely at the production of soccer balls by child labor, but no other worker rights. NGOs also argued that the worst thing the industry could do would be to simply remove child stitchers without providing additional support [...]’*⁴⁸⁰

It would be difficult to legitimate a superficial prohibition/elimination project in which the industry pushed these responsibilities away, onto other parties. In that sense, the FIFA Code affected the nature of the Atlanta Agreement by tipping the balance within the industry on these matters. Thus,

*‘The Partners sought to avoid the situation that had occurred in Bangladesh in 1993, when two thirds of the estimated 60 thousand children working in clothing factories in Bangladesh had been fired [...] The Partners agreed that a social protection program should be implemented simultaneously with the prevention and monitoring program offering viable alternatives to the estimated 2,750 Sialkot child-stitchers under fourteen. [...] The Social Protection Program would target the children removed from work by offering rehabilitation, traditional education, and in-kind assistance. The Social Protection Program would also seek to provide families of child stitchers with alternative means to replace lost income, through micro-credit loans or by employing adult family members, and attempt to change individual, family and community attitudes about the desirability of child labor.’*⁴⁸¹

The monitoring and prevention element of the Atlanta Agreement entailed a basic shift in the organization of production. The highly dispersed and decentralized nature of the subcontracting system, of course, would have made monitoring both practically difficult and quite costly. More importantly, however, it made it impossible for the ball marketers and manufacturers to obtain any measure of control over, and certainty of, the prevention of child labor – and therefore no credibility whatsoever in claiming the problem had been dealt with, in refuting new allegations, etc.

⁴⁸⁰ Schrage, *Promoting International Worker Rights*, p. 37.

⁴⁸¹ Schrage, *Promoting International Worker Rights*, p. 40.

This control and credibility problem had already led Nike and Reebok to announce varying degrees of centralizations in the production of their balls. All companies basically faced this same problem, but few – if any – shared the particular reasons Reebok had for dealing with it in the more absolute way - by bringing all stitching in-house (as opposed to the establishment of stitching centers). Thus, ‘The Partners concluded that to know who was actually stitching the soccer balls and to remove stitchers under the age of fourteen stitching could not be allowed to take place at home.’⁴⁸² Did this mean that the ball marketers were to become involved in the Sialkot industry as joint venture partners, sharing in the required capital investments? No. The burden was pushed onto the Pakistani industry:

*‘All costs associated with the Prevention and Monitoring Program, including constructing new stitching facilities and establishing internal monitoring departments would be borne by the participating manufacturers. The manufacturers would also contribute to a fund that would finance the independent monitoring.’*⁴⁸³

In addition to this change in the organization of production, the monitoring and prevention element required the introduction of record-keeping techniques – the formal registration of all stitching contractors, locations, and workers (including documentation of age).

As in the Bangladesh case, the monitoring element involved conflicting interests as to who would be involved in steering and implementing it. As early as September, 1995, SICA had requested a proposal to benchmark existing child labor monitoring and certification schemes, cf. above. Such a benchmarking would have included the Bangladesh MoU and IPEC – and the latter did participate in the Pentland Conference and had been represented by its Director, Gabriele Stoikov, at the Verbier Conference. IPEC furthermore had an interest in being part of developing demonstration projects and new model programs.⁴⁸⁴ After a short skirmish, following the announcement by one industry leader that the industry was considering some form of self-monitoring, the industry announced that it

⁴⁸² Schrage, *Promoting International Worker Rights*, p. 39.

⁴⁸³ Schrage, *Promoting International Worker Rights*, p. 42.

⁴⁸⁴ Gabriele Stoikov, ‘Child Labour: The Challenge for the Business Community’ in World Federation of the Sporting Goods Industry (eds.), *The Way Forward*.

was engaged in discussions with UNICEF, the ILO and Save the Children as possible partners:

‘The Partners agreed that they needed an independent, outside monitor. SICA issued an RFP (request for proposals) for organizations able to monitor child labor in Sialkot on the ground, and reviewed a range of possible monitors, including international security, quality testing, and accounting firms. While the industry favored a private entity, the partners ultimately turned to the ILO to perform the monitoring. Industry representatives were initially concerned by the ILO’s institutional links with organized labor. The Pakistani manufacturers, however, were uncomfortable with some of the government ties to the private monitoring firms.’⁴⁸⁵

Although the U.S. Department of Labor does not appear to have played as important a role in the choice of the ILO here as in Bangladesh, the choice of the ILO did open up for a considerable funding contribution of USD 500,000.⁴⁸⁶

As far as UNICEF’s role and status as a formal partner to the Agreement was concerned, UNICEF had also participated in the “multi-stakeholder dialogue” at the two industry Conferences, at Verbier represented by a Deputy Director from Geneva.⁴⁸⁷ The industry had already acknowledged its needs for non-industry partner(s) in relation to the social component, and UNICEF could fulfill some of these needs – expertise, credibility, funding, etc. Though UNICEF was involved in the negotiations of the Atlanta Agreement after the Pentland Conference, the views of UNICEF in Pakistan were not favorable towards the initiative, as there were seen to be more pressing problems and priorities. According to involved industry sources, even the day before the Agreement was presented in Atlanta it was still unclear whether UNICEF Pakistan would be a formal partner, and it reportedly took a telephone call from New York headquarters to make this happen!⁴⁸⁸

⁴⁸⁵ Schrage, *Promoting International Worker Rights*, p. 39.

⁴⁸⁶ Schrage, *Promoting International Worker Rights*, p. 42.

⁴⁸⁷ Bilge O. Bassani, ‘The UNICEF Perspective on Child Labour’ in World Federation of the Sporting Goods Industry (eds.), *The Way Forward*.

⁴⁸⁸ This was corroborated in a couple of interviews (unnamed here), and further supported by the fact that in a February 7, 1997 draft agreement, which had been

As far as the third of the formal partners – the Sialkot Chamber of Commerce and Industry, SCCI – is concerned, one might ask why the WFSGI was not a formal partner instead (or, as well)? After all, it was neither the SCCI nor the ball manufacturers that drove the process toward the Atlanta Agreement. Industry sources point to the importance of local grounding with respect to enlisting and ensuring local commitment of the production industry, with respect to the overall credibility of the Agreement, and with respect to legal formalities and operational aspects of “placing” the project. In addition, Schrage points to the fact that the negative publicity constituted a threat not only to the international buyers but also to the viability of Sialkot as a soccer ball manufacturing site as such.⁴⁸⁹ This, however, does not explain why it was decided that the WFSGI was not to be a formal partner – and such a decision must have been made consciously, considering its active engagement in the process.

Finally, it is worth noting that – again – the producing country government did not become a partner to the “solution.” Again, a matter of resources and priorities and a political unwillingness to interfere with a relatively important export industry meant that it was certainly not going to take the lead: ‘While the government would likely be a cooperative partner to any industry-led initiative, it was unreasonable to expect it to be a catalyst for change.’⁴⁹⁰ Unreasonable or not, such expectations were not held anyway by the dominant industry forces. Quite the contrary, it would seem: ‘There is also the notable absence of the government of Pakistan. It wasn’t deemed to be a constructive partner in this, and perhaps would have made it much more difficult to achieve an agreement.’⁴⁹¹

‘approved’ by the U.S. Department of Labor, UNICEF was still referred to in brackets (i.e., []) in the pre-amble, in the signatory field, and the specific responsibilities of UNICEF were still unspecified (‘[TO COME]’); *Partner’s Agreement to Eliminate Child Labour in the Soccer Ball Industry in Pakistan*, Draft of February 7, 1997 (approved by Department of Labor).

⁴⁸⁹ Schrage, *Promoting International Worker Rights*, p. 25, 37.

⁴⁹⁰ Schrage, *Promoting International Worker Rights*, p. 38.

⁴⁹¹ Reebok’s Doug Cahn, cited from Harvard Law School Human Rights Program, *Business and Human Rights*.

6.10 Concluding remarks

This chapter has explored the background of the Atlanta Agreement, the purpose being to contribute to explaining why it came into existence in the first place, and why it took on that particular form.

To begin with, as the previous chapter demonstrated, there had already been a growing politicization of corporate responsibility, child labor and labor rights, both broadly speaking and specifically in relation to Pakistan as the process began. Moreover, child labor in Pakistan – and particularly the very grave forms of bonded child labor that were widespread – was attracting considerable attention across the world, and the murder of Iqbal Masih caused strong reactions across the world. The fact that the murder happened just a few days after the initial CBS exposé and that Iqbal had received the Reebok Human Rights Award just a few months earlier was further conducive to the production of what was largely a negative attention on the industry. And the use of child labor *was* widespread within the Pakistani ball industry where it constituted a significant part of the farmed out ball-stitching process. While bonded child labor does not appear to have been general feature, such allegations were prominent *and* systematic and detailed studies of the use of child labor in the industry were either difficult to access (the HRCP 1995 study) or non-existent until rather late in the process (the mid-1996 Raasta report). Moreover, while the work of the children was mostly illegal under relevant international law, national legislation actually allowed for certain forms of child labor – albeit, once again, even those forms that were illegal continued to persist in the absence of even the scantest enforcement efforts by local authorities.

Adding to this, the analysis found that the use of child labor constituted a serious and shared problem for the Pakistani ball manufacturing complex (accounting for an exceptional share of global production) and for the international ball marketers, and both groups were vulnerable to a politicization of child labor. Equally important, though, was the recent entry of sporting goods giants, Nike and Reebok. First, it was dramatically transforming the competitive dynamics within the industry at the time, adding considerably to the uncertainties and pressures faced by soccer ball companies. Second, both Nike and Reebok were global leaders within the sporting goods industry, both were U.S.-based, and both had an established ‘human rights record’, all of which influenced the subsequent politicization of corporate responsibility and child labor in the industry.

Central to the explanation of the Atlanta Agreement is the shift that occurred in 1996. The issue had been placed on the international agenda in 1995 when a couple of high-profile media reports in the U.S. and Europe exposed the industry's use of child labor in the production of soccer balls. These triggered a series of additional media reports in the U.S. and in a number of European countries as well as a variety of reactions from the industry, both on an individual company basis and collectively. The latter included, most importantly, the establishment of a task force and the commissioning of a study under the U.S.-based SGMA's soccer subcommittee, SICA, and the hosting of the Verbier conference under the WFSGI. While these reactions obviously played a role later on in the process, in 1995 there were no signs of any concrete and significant collective effort to solve the problem on the ground. This, in a sense, changed the preconditions for the subsequent developments: the industry's engagement and the lack of a concrete and collective industry effort to begin dealing with the problem on the ground constituted an enhanced space and basis for further politicization. From the beginning of 1996 a barrage of negative media reports and the launch of two campaigns placed the industry and FIFA under renewed and increased pressure. Still, the pressure was highly unevenly distributed across the industry, and there was no broad agreement within the industry to embark on a collective effort to solve the problem: while commitments from the U.S.-based SICA resembled the subsequent Agreement, collective industry reactions did not include concrete actions on the ground. FIFA, however, caved in to the pressure and engaged in negotiations with the international trade unions of a comprehensive code of labor practice: the campaigns threatened the image of FIFA and other football associations, the events they organized, and the 'good name' of the sport in itself – the image coming with considerable and exploding commercial interest attached to television and licensing money.

The shift, then, built on changed preconditions and consisted of a successful shift in the definition of the problem – as the trade unions were able to broaden the agenda to include other fundamental worker rights in addition to child labor – and a shift in the choice of target – as the trade unions focused on FIFA instead of ball marketers and manufacturers. The real significance of the shift, however, resides not in the FIFA Code as such, but in the effects that the commencement and completion of these multiparty modelling efforts had: it triggered the industry's countermodelling efforts that resulted in the Atlanta Agreement.

Most importantly, the FIFA Code constituted an undesirable model for the industry and for some of the key and previously reluctant industry players in particular. This changed situation created the critical mass within the industry which was the necessary basis for the industry to move forward collectively. In addition, the FIFA Code did not entail a focused and ‘responsible’ approach to the problem of child labor, understood as elements to address both the causes and the consequences of the problem, and so the industry arguably still needed some form of collective initiative to deal ‘responsibly’ with the problem of child labor. Finally, the trade unions had not only been able to broaden the agenda but also to complete negotiations based on this, and the counter-modelling by the industry therefore needed to include the development of a solution broader than child labor alone (the post-Atlanta Agreement WFSGI code).

In addition to this, part of the explanation of the Atlanta Agreement and why the shift in 1996 was so central resides in the highly uneven nature of the targeting and economic coercion in the process, i.e. in the distribution of blame and responsibility as well as economic pressures. The ball marketers were the main targets in the media exposés throughout the process – but in a highly uneven fashion, where the local soccer ball market leaders and the global sporting goods giants, Nike and Reebok, attracted most attention, and where many other companies were able to stay ‘below’ the radar screen. And it was the two U.S.-based newcomers to the soccer ball business, Nike and Reebok, that appeared to be the most vulnerable. While the negative publicity threatened their reputation and broader market position, it did not threaten their actual market position within soccer balls. They had, however - Nike in particular – invested heavily in the area, and it constituted an important future business area. Moreover, the nature of the reaction to the FIFA Code meant that in the final stage of the process the industry was in a sense targeting itself, i.e., the countermodelling efforts involved what might be characterized as an implicit auto-targeting without which taking ownership of the solution to the problem would have been difficult. Moreover, this auto-targeting and countermodelling also implied that, to the extent that economic coercion was significant in the final stage, it was largely between the companies within the industry and closely related to support and funding for the Agreement. Finally, it goes with the above picture, of course, that trade sanctions were insignificant in this process. Had this type of economic coercion been available, it would have constituted a potentially quite significant threat to ball manufacturers and marketers alike, given Pakistan’s share of global production.

With respect to explaining the particular form of the Atlanta Agreement, the struggles to define the problem were significant in a number of respects, some of which relate directly to the events analyzed in the previous chapter. First of all, the causes of child labor and the potentially negative consequences of eliminating the problem clearly were important parts of how the problem was perceived and defined by the industry and its critics from the very beginning, including with explicit references to the ‘lessons from Bangladesh’. In the end, the Atlanta Agreement replicated the Bangladesh MOU, with certain adjustments. Second, while the problem was rather narrowly defined in terms of child labor in the early stage of the process, and while child labor continued to constitute a focal point throughout the process, when the shift occurred in 1996 neither FIFA nor the industry sought to counter this by resorting to a ‘negative consequences for the children’ approach. Third, as in the Bangladesh case, the struggles to define the problem were relatively insignificant in the final stage of the process following the completion of the FIFA Code: the countermodelling efforts did not seek to redefine the problem – they redefined the solution to suit different interests. Fourth, it should be noted that while there were a few attempts to raise gender aspects – i.e., the potential implications for the adult female workers from a change in the organization of production – this was not taken into consideration until after the Atlanta Agreement had been presented. Finally, the gravity of the problem was a central conflict point in this case, in no small measure intertwined with the attribution of blame and responsibility, shaping the industry’s reactions in this respect: most media reports and the two campaigns presented allegations that bonded child labor, or child slavery, was being used in the production of soccer balls. Child labor did constitute a significant part of the stitching process, which in turn was geographically dispersed and therefore difficult to effectively oversee, and bonded child labor was quite common in Pakistan. When the Raasta report – commissioned by SICA in 1995 – was completed in mid-1996, the industry responded to these claims by engaging in a minimization strategy that relied on serious and systematic studies and involved the provision of the most detailed characteristics of the general nature of problem.

Finally, the analysis found that the form of the Agreement was shaped on some counts that may seem curious or perhaps less noteworthy in the specific and concrete, but which – in light of the previous chapter – stand out. First of all, the two IGO partners to the MOU were also partners to the Atlanta Agreement. In this case, however, the ILO appears to have been

keen on partnering up, whereas UNICEF – the local officers of which played an important role in the Bangladesh negotiations – only signed up to the Atlanta Agreement in the very last minute. Second, the U.S. Department of Labor was once again heavily involved in the final stages of the Agreement, suggesting that funding practicalities and the DOL and ILO-IPEC relation found to be significant in the previous chapter was, in that particular historical space, relevant beyond the Bangladeshi garment industry. Third, and related, the share of public funding was quite significant. This is not to suggest that funding from companies and industry associations involved in soccer was irrelevant, but it is interesting to note that initiatives that are debated and praised under the rubric of private and voluntary are based to such an extent on government funds. But then again, the U.S. Labor Department cannot directly engage in the enforcement of international child labor and labor rights standards in other countries, can it?

7. Sweatshops “at home” and abroad: the White House Apparel Industry Partnership

7.1 Introduction

‘Sweatshops have indeed returned to the United States. A phenomenon of the apparel industry considered long past is back, not as a minor aberration, but as a prominent way of doing business.’⁴⁹²

Following a period in the mid-20th century during which sweatshop conditions in the U.S. apparel industry had been almost eliminated, the return of the sweatshops began to be noted again in the late 1970s. From the late 1980s onwards, sweatshops and corporate responsibility were increasingly part of the public debate within the United States, to the extent that one observer has dubbed 1995-1996 ‘The Year of the Sweatshop.’⁴⁹³

This chapter seeks to explain the particular form and coming into existence of the November 1998 AIP/FLA Preliminary Agreement between some of the members of the so-called White House Apparel Industry Partnership (AIP), an anti-sweatshop task force consisting of a small number of private actors, which was announced by U.S. President Clinton in August 1996.

⁴⁹² Edna Bonacich and Richard P. Appelbaum, *Behind the Label: Inequality in the Los Angeles Apparel Industry* (Berkeley: University of California Press, 2000), p. 2.

⁴⁹³ Andrew Ross, ‘After the Year of the Sweatshop: Postscript’ in Andrew Ross (ed.), *No Sweat: Fashion, Free Trade and the Rights of Garment Workers* (New York: Verso, 1997).

7.2 Industry characteristics

The apparel commodity chain was described and analyzed in chapter 5, but certain aspects were only briefly mentioned or “postponed” in that analysis, in particular the changing territoriality of apparel production within the U.S. and a more elaborate treatment of the main characteristics of, and structural pressures related to, the U.S. apparel companies.

To begin with, the import penetration rate in the U.S. apparel market had been steadily increasing since the 1960s. In spite of consistently sustained annual increases in domestic U.S. apparel production (measured in USD terms), this was reflected in declining overall employment in apparel within the U.S.⁴⁹⁴ The drop in the total number of apparel employees within the U.S., however, blurs some significant shifts in apparel production and employment within the U.S.

First of all, there was a shift in the organizational structure of production. In spite of the drop in total employment, the number of companies in the garment industry grew from a U.S. total of 13,259 in 1977 to 15,007 in 1995, and there was a significant trend in the major metropolitan areas and a number of states towards a markedly lower number of employees per company.⁴⁹⁵

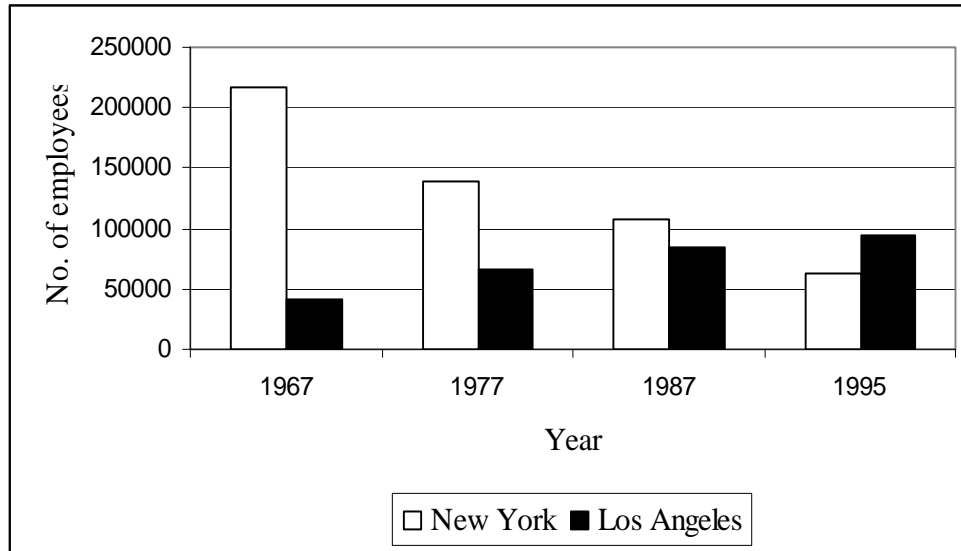
Second, the territoriality of U.S. apparel production changed: in some areas employment figures dropped considerably, in some there was stagnation, and in others still employment grew or even boomed.

⁴⁹⁴ Cf. Robert J. Ross, ‘The New Sweatshops in the United States: How New, How Real, How Many, and Why?’ in Gary Gereffi, David Spener & Jennifer Bair (eds.), *Free Trade and Uneven Development: The North American Apparel Industry After NAFTA* (Philadelphia: Temple University Press, 2002).

⁴⁹⁵ Robine van Doren, ‘TexMex: Linkages in a Binational Garment District? The Garment Industries in El Paso and Ciudad Juárez’ in Gary Gereffi, David Spener & Jennifer Bair (eds.), *Free Trade and Uneven Development: The North American Apparel Industry After NAFTA* (Philadelphia: Temple University Press, 2002), p. 165; see also Ian M. Taplin, ‘Recent Manufacturing Changes in the U.S. Apparel Industry: The Case of North Carolina’ in Edna Bonacich et.al. (eds.), *Global Production: The Apparel Industry in the Pacific Rim* (Philadelphia: Temple University Press, 1994).

The table below illustrates the fall and rise of New York and Los Angeles, respectively.

Table 7.1 Garment industry employment in the New York and Los Angeles areas⁴⁹⁶



The above is illustrative of the broader regional changes in the U.S. garment industry – the decline of the North East and the boom in California – in a period where the total number of garment industry employees in the U.S. dropped from 1,142,047 in 1967 to 652,129 in 1995.⁴⁹⁷ In the Southern states, the number of apparel jobs declined or stagnated in a number of states from the 1970s onwards, while growing moderately in others.⁴⁹⁸

The retailers

In the late 1980s and early 1990s, a number of profound structural shifts were making their mark on the retail end and the rest of the apparel chain.

⁴⁹⁶ Based on van Doren, ‘TexMex’, p. 165.

⁴⁹⁷ Van Doren, ‘TexMex’, p. 165; Bonacich and Appelbaum, *Behind the Label*, p. 16

⁴⁹⁸ Evelyn Blumenberg and Paul Ong, ‘Labor Squeeze and Ethnic/Racial Recomposition in the U.S. Apparel Industry’ in Edna Bonacich et.al. (eds.), *Global Production: The Apparel Industry in the Pacific Rim* (Philadelphia: Temple University Press, 1994), pp. 309-325.

Some of these had been long under way, whereas others were more recent. In broad terms, however, they all contributed to what was one of the most important structural characteristics in the apparel chain: the growing power of retailers vis-à-vis the apparel companies, producers and the workers at the bottom of the hierarchy. The following table lists the 10 largest U.S. retailers in 1991.

Table 7.2 Top 15 U.S. retailers⁴⁹⁹

1991 Sales Rank (1987)	Company	1991 Sales, USD bn. (1987)	1991 Gross profit, percent (1987 gross)
1 (3)	Wal-Mart Stores	43.9 (16.0)	20.8 (23.1)
2 (2)	Kmart Corp.	34.6 (25.6)	25.0 (27.6)
3 (1)	Sears Merchandise Group	28.3 (25.9)	29.5 (32.6)
4 (4)	J.C. Penney	16.2 (15.3)	33.1 (33.8)
5 (6)	Dayton Hudson Corp.	16.1 (10.7)	27.1 (24.3)
6 (7)	May Dept. Stores Co.	10.6 (10.6)	30.9 (27.2)
7 (8)	Woolworth Corp.	9.9 (7.1)	32.6 (NA)
8 (10)	Melville Corp.	9.9 (5.9)	37.6 (38.6)
9 (5)	Federated Dept. Stores	6.9 (11.1)	NA (26.3)
10 (NL)	Macy's	6.8 (-)	NA (-)

The structural composition, pressures and constraints characteristic of U.S. retail in the early 1990s should be seen in light of a longer, two-stage transformation that had been under way since the 1960s:

*'In the 1980s, the department store in turn came under siege. [...] The breakup of the American mass market into distinct, if overlapping, retail constituencies has created a competitive squeeze on the traditional department stores and mass merchandisers, who are caught between a wide variety of specialty stores, on the one hand, and large-volume discount chains, on the other. The former, who tailor themselves to the upscale shopper, offer customers an engaging ambience, strong fashion statements, and good service; the latter, who aim for the lower income buyer, emphasize low prices, convenience, and no-frills merchandising.'*⁵⁰⁰

⁴⁹⁹ Based on Appelbaum and Gereffi, 'Power and Profits', p. 51.

⁵⁰⁰ Gary Gereffi, 'The Organization', p. 105.

As indicated in the quote, the retail revolution involved some considerable shifts in the competitive opportunities and pressures for the different retail categories:

- The discount retail business was booming, and the companies in this category were growing ever larger and capturing increasing shares of the total U.S. retail market, and by the early 1990s Wal-Mart, Kmart and Target had captured over 70 percent of the discount store business in the U.S.⁵⁰¹
- There had been an increasing competitive squeeze on department stores and mass merchandisers.⁵⁰²
- In addition to the growth in discount retail, the competitive squeeze on department stores and mass merchandisers came from the growth of a wide variety of specialty stores.

These structural trends continued to make their mark throughout the 1990s. There was a sustained growth and concentration in the discount and specialty retail categories, and with the structural pressures furthermore pushing for some concentration among department stores as well (e.g., Federated and Macy's), this worked to the effect that a very small number of companies were controlling an increasing share of apparel retail sales in the U.S.:

*'By 1995, the five largest US retailers - Wal-Mart, Sears, Kmart, Dayton Hudson, and JC Penney - accounted for 68% of all apparel sales in publicly held retail outlets. The next top 24 retailers, all billion-dollar corporations, represented an additional 30% of these sales [...]'*⁵⁰³

In other words, 29 corporations controlled 98 per cent of apparel retail sales in the U.S.

⁵⁰¹ Gereffi, 'The Organization', p. 105.

⁵⁰² Two of the listed mass merchandisers, for example, Woolworth and Montgomery Ward, closed down their retail operations. As for the department stores, Macy's, for example, ran into severe trouble, filed for bankruptcy protection in 1992, and was subsequently (1994) acquired by Federated; cf. Bonacich and Appelbaum, *Behind the Label*, p. 86.

⁵⁰³ Gary Gereffi, 'International trade and industrial upgrading', p. 44.

Generally speaking, since the 1970s U.S. retailers had increasingly been bypassing the apparel companies, either through buying houses or by engaging in direct sourcing or their own production.⁵⁰⁴ A number of apparel marketers/manufacturers, in turn, moved into retail (particularly specialty retail), in part a response to the growing power of retailers and the competitive pressures; as Bonacich and Appelbaum note, ‘The convergence of retailer and manufacturer in a single firm is a logical outcome of competitive pressures in the industry, because it effectively eliminates one major layer of profit taking.’⁵⁰⁵ In addition to the growing concentration and power of retailers (above), the shift in the different retail categories in the 1980s and early 1990s was furthermore central in exacerbating the downward squeeze on apparel prices (experienced by apparel companies, producers and workers) and the growing significance of such sourcing practices – through the competitive squeeze on department stores and mass merchandisers a similar low-cost logic also became increasingly important in driving the sourcing practices of companies in these categories.⁵⁰⁶

The apparel marketers and manufacturers

Adding to the above the tendency toward larger and more concentrated textile firms in U.S., and the presence of quota systems limiting foreign sourcing of *inputs* for apparel production, we find that the apparel marketing and manufacturing nodes were being squeezed from both “ends” of the chain. This double squeeze contributed significantly to shaping the changing realities of apparel marketers and manufacturers. Compared to the retail end, the marketing/manufacturing complex was highly fragmented, and in the early 1990s, there were ‘only’ five billion-dollar companies in the industry, as the table below illustrates. While smaller in

⁵⁰⁴ For an illustration and discussion of the production frontiers for global sourcing by US retailers and the apparel industry, see e.g., Gereffi, ‘The Organization’, pp. 110-113; Lucie Cheng and Gary Gereffi, ‘U.S. Retailers and Asian Garment Production’ in Edna Bonacich et.al. (eds.), *Global Production: The Apparel Industry in the Pacific Rim* (Philadelphia: Temple University Press, 1994), p. 65.

⁵⁰⁵ Bonacich and Appelbaum, *Behind the Label*, p. 28.

⁵⁰⁶ See Gereffi, ‘The Organization’, pp. 110-111; Bonacich and Appelbaum, *Behind the Label*, p. 23.

comparison to the retailers above, the top five nevertheless ‘accounted for 23 percent of the U.S. apparel industry’s total wholesale volume [...]’,⁵⁰⁷

Table 7.3 Top 10 U.S. apparel companies, 1991⁵⁰⁸

Sales Rank	Company	1991 Sales, USD bn.	1991 Gross profit, percent
1	Levi Strauss	4.90	Not available
2	Sara Lee	4.10	Not available
3	VF Corp.	2.95	30.9
4	Liz Claiborne	2.01	39.8
5	Fruit of the Loom	1.63	30.8
6	Leslie Fay	0.84	29.8
7	Crystal Brands	0.83	29.8
8	Kellwood Co.	0.81	17.3
9	Phillips-Van Heusen Co.	0.81	35.2
10	Russell Corp.	0.80	31.2

Two fundamental structural tendencies characterized the industry in the late 1980s and early 1990s, and these became increasingly pronounced during the 1990s: One, there was a steady move to offshore production. Two, there was a growing emphasis on product development, marketing and retail combined with an increasing disengagement from actual production, i.e. the latter was increasingly contracted out.⁵⁰⁹

Some of the apparel majors were, from the beginning, branded marketers or “manufacturers without factories” sourcing exclusively or heavily outside the U.S.⁵¹⁰ In addition to Nike and Reebok, Liz Claiborne (another task force member) had been one of the pioneers in this.⁵¹¹ In the mid-1990s, however, the other companies listed above were still directly engaged in apparel production, albeit most of them had been moving

⁵⁰⁷ Appelbaum and Gereffi, ‘Power and Profits’, p. 47.

⁵⁰⁸ The table is based on Appelbaum and Gereffi, ‘Power and Profits’, p. 47

⁵⁰⁹ Gereffi, ‘International trade and industrial upgrading’, p. 48; Appelbaum and Gereffi, ‘Power and Profits’, p. 55; Edna Bonacich and David V. Waller, ‘Mapping a Global Industry: Apparel Production in the Pacific Rim Triangle’ in Edna Bonacich et.al. (eds.), *Global Production: The Apparel Industry in the Pacific Rim* (Philadelphia: Temple University Press, 1994); Bonacich and Appelbaum, *Behind the Label*, p. 29.

⁵¹⁰ Gereffi, ‘International trade and industrial upgrading’, p. 46.

⁵¹¹ See Bonacich and Waller, ‘Mapping a Global Industry’, p. 90.

steadily to offshore production, involving rounds of plant closings in the U.S.⁵¹² In other words, although by the end of the 1990s most of them still had their own production facilities in the U.S. and abroad, during the 1990s many of the leading apparel manufacturers increasingly came to resemble branded marketers, sourcing their product from other companies, and increasingly ones located outside of the U.S. Furthermore, there was not only a trend toward the convergence of branded marketers and manufacturers around the format pioneered by the former, but also a trend toward the convergence of retailer and apparel marketer/manufacturer, the latter moving primarily into specialty retail.

Not all companies followed similar paths, however. First, for many smaller and medium-sized apparel manufacturers with less established brand names (or none at all), shifting to production of private labels and licensed products provided a viable growth (or survival) strategy, and some private label production remained in the U.S.⁵¹³ Second, the move to off-shore production was particularly marked in the case of many of the lead companies above, because – although they all marketed products that did have some fashion content – they all ran high-volume and relatively standardized productions.⁵¹⁴ In contrast, lower volume and/or high-fashion apparel productions were faced with radically different market conditions,

⁵¹² Even counterfeiters in the US were moving into offshore production: ‘The crooks can legally import no-name T-shirts or jeans. They then manufacture fake labels or smuggle them through customs.’ Stephanie Simon, ‘Brash world of bogus goods thrives in L.A.’ in *Los Angeles Times* (Home Edition, July 5, 1995. See also Frederick H. Abernathy et.al., *A Stitch in Time: Lean Retailing and the Transformation of Manufacturing – Lessons from the Apparel and Textile Industries* (Oxford: Oxford University Press, 1998), p. 181; Jennifer Bair and Gary Gereffi, ‘NAFTA and the Apparel Commodity Chain: Corporate Strategies, Interfirm Networks, and Industrial Upgrading’, in Gary Gereffi, David Spener and Jennifer Bair (eds.), *Free Trade and Uneven Development: The North American Apparel Industry After NAFTA* (Philadelphia: Temple University Press, 2002), p. 42; David Spener, ‘The Unraveling Seam: NAFTA and the Decline of the Apparel Industry in El Paso, Texas’, in Gary Gereffi, David Spener and Jennifer Bair (eds.), *Free Trade and Uneven Development: The North American Apparel Industry After NAFTA* (Philadelphia: Temple University Press, 2002); Schoenberger, *Levi’s Children*, p. 68.

⁵¹³ Bonacich and Appelbaum, *Behind the Label*, p. 30.

⁵¹⁴ Ian M. Taplin, ‘Strategic Reorientations of U.S. Apparel Firms’ in Gary Gereffi and Miguel Korzeniewicz (eds.), *Commodity Chains and Global Capitalism* (Westport, Connecticut: Greenwood Press, 1994), p. 219.

time and transportation constraints and pressures, setting entirely different logics for the location and organization of production activities:

‘At one time a significant proportion of manufacturing in Los Angeles was done in-house, the manufacturers employing their own workers to make clothing in their own factories. Today few do, in part because of a decline in the more stable men’s sector and the dominance of the fashion-sensitive women’s sector in Los Angeles. In New York City, where women’s wear is less dominant, more manufacturers do produce in-house, and the term manufacturer is reserved for them; the term jobber is used for apparel firms that rely entirely on independent contractors to sew their garments. In Los Angeles the use of independent contractors for apparel fabrication is, however, so common that such fine terminological distinctions are not made, leaving the term manufacturer to describe all firms that design clothing destined to be sold wholesale to retailers, even if all the work is contracted out.’⁵¹⁵

7.3 Characteristics of the framework of governance⁵¹⁶

The U.S. has been characterized as the ‘most obvious outlier’ in terms of core labor standards, having ratified only the ILO’s Abolition of Forced Labour Convention of 1957 (Convention No. 105) by the early 1990s.⁵¹⁷ The domestic regulatory framework in the U.S. is multi-layered, given the federal structure. The key federal instrument is the Fair Labor Standards Act (FLSA) of 1938, which established a number of basic labor standards. In the period following World War II a number of regulatory additions on workers’ rights came into existence in the U.S., most importantly a number of significant setbacks related to core labor standards, as also observed by

⁵¹⁵ Bonacich and Appelbaum, *Behind the Label*, p. 28.

⁵¹⁶ Not disregarding the inherently global reach of the U.S. apparel industry and the implications of the AIP, the present analysis must necessarily be constricted, and the following will focus on the U.S.

⁵¹⁷ Kimberley Ann Elliott, ‘International Labor Standards and Trade: What Should Be Done?’ in Jeffrey R. Schott (ed.), *Launching New Trade Talks* (Washington, D.C.: Institute for International Economics, 1998), p.171. The US ratified Convention 182 on December 2, 1999 (International Labour Organisation, *List of Ratifications of International Labour Conventions: United States* (at www.ilo.org, accessed on June 16, 2004)).

the OECD, commenting on striker replacement and anti-union discrimination in the U.S.⁵¹⁸

The FLSA still contained provisions establishing a minimum wage, specifications concerning hours worked, compensation and conditions for overtime work, provisions concerning child labor in nonfarm jobs (including a prohibition of the employment of youths aged 15 and younger in manufacturing), requirements related to employer record keeping, as well as requirements concerning “industrial homework” in specific industries (including women’s apparel and other, but not all, branches of apparel production). Furthermore, the FLSA contained a so-called “hot goods” provision, which granted federal authorities the power to prevent the sale and shipment of goods across state borders, had these goods been made in violation of the law. However, ‘Rarely used, the “hot-goods” power has not proved a powerful deterrent.’⁵¹⁹

Furthermore, given the extensive use of subcontracting within the apparel industry, it is important to note that the “manufacturers” – and the retailers for that matter – were never legally liable for the labor rights violations of their contractors. For a few decades, however, as the sweatshops were pushed to the margins of the apparel industry, this was dealt with in terms of self-regulation:

⁵¹⁸ OECD, *International Trade and Core Labour Standards* (Paris: OECD, 2000), pp. 107 and 115. The three most significant ones were, firstly, the Taft-Hartley Act (1947) that was pushed through Congress by a powerful anti-union bloc that was able to override President Truman’s symbolic veto. A ‘catastrophic legislative defeat for labor,’ Taft-Hartley in effect swept away a number of workers’ rights, including provisions for banning strikes and making it legal for employers to refuse negotiating collective bargaining agreements with workers’ representatives. Secondly, in 1962, President Kennedy signed a decree granting federal employees the right to collective bargaining - but not the right to strike. Thirdly, in 1981, PATCO (a small, conservative union) launched a strike, which was forcefully countered by the Reagan Administration that declared the strike illegal (which it was under Taft-Hartley), replaced the striking workers with air force personnel, imprisoned strike leaders, and barred the strikers from future public employment. See Paul Buhle, *Taking Care of Business: Samuel Gompers, George Meany, Lane Kirkland, and the Tragedy of American Labor* (New York: Monthly Review Press, 1999), pp. 126-130; Niels O. H. Jensen and Ole Strömgen, *Arbejderbevægelsen i USA: En arbejderbevægelse uden socialisme* (Copenhagen: Fremad, 1988), pp. 41, 45, and 61.

⁵¹⁹ Ross, ‘The New Sweatshops’, pp. 111-112.

‘During the 1930s, 1940s, and 1950s, the men’s and women’s clothing workers’ unions gradually developed the ability to control the abuses of the contractor system by compelling the manufacturers [...] to accept “joint liability” for union standards in contractor shops.’⁵²⁰

In addition, a large number of undocumented immigrants were working in the apparel industry within the U.S. The workers rights of these immigrants were also protected under federal law, the FLSA’s protections applying to all workers. However, the Immigration Reform and Control Act of 1986 made it illegal for employers to knowingly hire undocumented workers. A Memorandum of Understanding was signed in 1992 between the Department of Labor and the Immigration and Naturalization Service, implying an agreement to cooperate upon discoveries of undocumented workers, although immigration and labor laws and authorities undoubtedly still had ‘somewhat conflicting missions.’⁵²¹

Turning to the enforcement of the regulatory framework in the 1990s, it is widely acknowledged that – given the size of the industry and the sweatshop problem (cf. above and next section) – labor authorities were severely understaffed. As mentioned, while total employment in the U.S. apparel production declined, there was also an overall increase in the number of companies. Combined with staff cuts in the Labor Department’s Wage and Hour Division, this led several analysts to speak of a *de facto deregulation* in relation to the basic rights and conditions set out in the FLSA, although the Act remained in effect:

‘Wage and Hours Division investigators of the Department of Labor face increased numbers of workplaces (“establishments”) with a relatively smaller staff. Each investigator was responsible for fifty-seven hundred workplaces in 1983, eighty-six hundred in 1996, and seventy-five hundred in 1999. [...] From 1957 to 1995, each investigator’s potential responsibility increased from about 46,000 workers to about 153,100 workers.’⁵²²

⁵²⁰ Ross, ‘The New Sweatshops’, pp. 111-112.

⁵²¹ Bonacich and Appelbaum, *Behind the Label*, p. 237. See also Celia W. Dugger, ‘Raid and Release -- A special report: A Tattered Crackdown on Illegal Workers’, *The New York Times*, June 3, 1996.

⁵²² Ross, ‘The New Sweatshops’, p. 111.

This de facto deregulation, in combination with the changes in industry discussed above and the weakened position of organized labor, was subject to criticism, in particular from commentators connecting this de facto deregulation to what they characterized as *de facto Third World labor market conditions* within the U.S. (to which we turn shortly):

*‘Poorly regulated labor markets, particularly weak government enforcement of workplace health and safety and few sanctions on employers for illegal employment practices have resulted, since the 1980s, in a rebirth of sweatshops in regions where immigrant labor is available. In regions such as southern California, Miami and New York/New Jersey many contractors have been able to use a Third World labor force in what amounts to de facto Third World labor market conditions.’*⁵²³

In addition to the more conventional enforcement, involving inspections and legal action against labor law violators, a few new legislative and enforcement initiatives saw the light of day in the late 1980s and early 1990s.⁵²⁴ A June, 1989, federal strategy, spearheaded in Southern California’s garment industry, relied basically on the “re-discovery” of the abovementioned hot goods provision of the FLSA. Briefly put, the threat of having goods confiscated, that had been manufactured in violation of the law, destined for inter-state commerce, amounted to an alternative form of joint liability and was used as leverage by the Department of Labor. It furthermore served as a substitute for the absent joint liability of manufacturers (and in some cases retailers) for labor violations at

⁵²³ Taplin, ‘Strategic Reorientations’, pp. 215-216.

⁵²⁴ An example of the more conventional approach includes a law suit filed by the Department of Labor in mid-1991 against Saipan-based garment companies, suppliers of, among others, Levi Strauss and The GAP. See e.g., Stephen K. Yoder, ‘Saipan Concern Faces U.S. Charges over Worker Pay’ in *Wall Street Journal (Eastern Edition)*, October 2, 1991; *Wall Street Journal*, ‘Garment Producer on Saipan Settles Suit on Worker Pay’, May 2, 1992; Andy Beckett, ‘Fashion / How we fell into the Gap’ in *The Independent (London)*, November 28, 1993; Jeanne Wright, ‘Orange County Focus’ in *Los Angeles Times (Orange County Edition)*, November 26, 1989; Sonni Efron, ‘Sweatshops expanding into Orange County’ in *Los Angeles Times (Home Edition)*, November 26, 1989; Sonni Efron, ‘Hot Goods’ law revived as anti-sweatshop tool’ in *Los Angeles Times (Home Edition)*, November 28, 1989; Sonni Efron, ‘1938 law resurrected in war on sweatshops’ in *Los Angeles Times (Orange County Edition)*, November 28, 1989.

contractors. According to the Department, the applicability of the provision depended on the ‘good faith’ of the buyer.⁵²⁵

The Department of Labor later introduced another element as well: compliance agreements. The compliance agreement program was multi-layered, but in the more serious cases the manufacturer would be asked to sign onto an agreement involving its commitment to monitor and keep records of the contractor’s compliance and to inform the Department of violations. Such information was not always passed on, and the signing of the compliance agreement was considered an act of good faith, wherefore signatories were exempt from lawsuits and sanctions under the hot goods provision. In late 1992, Guess? Inc. became the first company to sign such an agreement.⁵²⁶

In addition to these enforcement “innovations”, new legislation was introduced in California. Most significantly, a bill introducing joint liability was passed in the Californian Assembly Labor Committee, in spite of fierce resistance from industry and the Assembly Conservative Caucus. The bill was later vetoed by California’s Republican Governor.⁵²⁷ Also in California, the Targeted Industries Partnership Program (TIPP) - targeting garment manufacturing and agriculture - was created as a pilot program in November of 1992 (and extended in 1994). Involving the (federal) Wage and Hour Division of the Department of Labor and three Californian agencies, the Division of Labor Standards Enforcement, the Division of Occupational Safety and Health, and the Employment Development Department, TIPP was based ‘on the assumption that violations are in large part the result of ignorance, and that education is a key component of

⁵²⁵ See Bonacich and Appelbaum, *Behind the Label*, p. 228.

⁵²⁶ Bonacich and Appelbaum, *Behind the Label*, p. 229, 233; Stuart Silverstein and Sonni Efron, ‘Guess? accepts pact to curb labor violations’ in *Los Angeles Times (Home Edition)*, August 5, 1992; Stuart Silverstein, ‘Guess? pact to curb sweatshop abuses praised’ in *Los Angeles Times (Home Edition)*, August 6, 1992.

⁵²⁷ Sonni Efron, ‘Hayden taking a bead on sweatshops’ in *Los Angeles Times (Home Edition)*, February 28, 1990; Sonni Efron, ‘Sweatshop bill puts heat on manufacturers’ in *Los Angeles Times (Orange County Edition)*, February 28, 1990; Ralph Frammolino, ‘2 sweatshop bills clear first hurdle’ in *Los Angeles Times (Orange County Edition)*, April 5, 1990; *Los Angeles Times (Home Edition)*, ‘2 bills regulating sweatshops clear 1st legislative hurdle’, April 5, 1990; David Reyes, ‘Labor officials raid 14 garment makers’ in *Los Angeles Times (Orange County Edition)*, February 21, 1992.

any solution.’ In addition to a number of educational efforts, TIPP also involved raids or sweeps of manufacturing sites.⁵²⁸

Finally, the state of affairs with regards to the industry’s ventures into self-regulation has already been dealt with to some extent. By 1992 only a limited number of companies mentioned in this chapter had adopted codes of conducts: Levi Strauss, Nike, Reebok, and Phillips-Van Heusen.⁵²⁹ In addition, in late 1992 Guess? Inc. was the first company to sign a compliance agreement with the Labor Department. Wal-Mart followed suit in 1993 after the Bangladesh exposé, and many other companies in the apparel industry also adopted codes over the next couple of years.

7.4 Characteristics of the problem

To begin with, one of the characteristics of the sweatshop issue by definition rested in its relative breadth: compared to the (narrow) emphasis on child labor in the previous chapters, the sweatshop issue was much broader, both in terms of the labor rights included and in terms of the scope of its implications in the industry. Moreover, some of the most egregious conditions were exposed ‘at home’ – especially in the Los Angeles area and New York City – and official surveys throughout the 1990s documented the existence of a sizeable and widespread problem. Indeed, the sweatshops had returned to the U.S., ‘*not as a minor aberration, but as a prominent way of doing business.*’⁵³⁰

But what exactly is a sweatshop? To begin with, an injustice that had been relegated to margins of the U.S. apparel industry, the sweatshop may be characterized as a problem that was widely considered “solved”, only to return, albeit in a somewhat new form:

⁵²⁸ Bonacich and Appelbaum, *Behind the Label*, p. 238.

⁵²⁹ See Jean-Paul Sajhau, *Business ethics in the textile, clothing and footwear (TCF) industries: Codes of Conduct (Sectoral Activities Working Paper, SAP 2.60/WP.110)* (Geneva: International Labour Office, 1997); Avery, *Business and Human Rights*; Kimberley Ann Elliott and Richard B. Freeman, *Can labor standards improve under globalization?* (Washington, D.C.: Institute for International Economics, 2003).

⁵³⁰ Bonacich and Appelbaum, *Behind the Label*, p. 2.

*‘One can argue that in the return of the sweatshop we are witnessing a throwback to the earliest phases of the industrial revolution. But it is clear that what is going on is not only “old” but also very new. The apparel industry has managed to combine the latest ideas and technology for the rapid production and distribution of a highly diverse and continually changing product with the oppressive working conditions of the late nineteenth and early twentieth centuries, now coordinated over a global space.’*⁵³¹

A return to the past, in other words, which fundamentally contrasted any notion of progress and modernity, not to mention any conceivable message that apparel companies might want to convey in their marketing communications. Furthermore, the term conjures up some strong images of superexploitation of especially immigrants, factory fires, dead workers, public outrage and labor organizing and struggles, strikes and violent repression - in no small measure related to the garment industry. As Robert Ross noted, *‘The sweatshop is seared into cultural memory.’*⁵³² In short, a very powerful metaphor with strong cultural and historical roots and connotations.

Yet another key characteristic is evident. Different definitions and conceptions abound (and some of the key conflicts in the process below were played out over some of these differences). One approach may be characterized as *a more restrictive, legalistic one*, where the term is reserved for the working conditions at businesses that regularly violate (state and federal) labor laws, principally the provisions of the FLSA. In the words of Ross:

*‘By removing the word sweatshop from the realm of metaphor and subjective moralism to that of a legal test, the GAO [General Accounting Office of the U.S. Congress] definition leaves many low-paying jobs with “lousy” conditions unsullied by the label. [Furthermore,] By reserving the term sweatshop for those workplaces that do not meet even the low standards of public law, the definition denotes “superexploitation,” that is, something even more extreme than “low pay.”’*⁵³³

⁵³¹ Bonacich and Appelbaum, *Behind the Label*, p. 14.

⁵³² Ross, ‘The New Sweatshops’, p. 108.

⁵³³ Ross, ‘The New Sweatshops’, p. 101; emphasis omitted.

This was a common definition of sweatshops, although far from being accepted across the board (as pointed out by Ross). Indeed, it was widely contested by protagonists of an alternative, broader notion of sweatshops, which includes the issue of a living wage and a critique of the restrictive understanding:

‘An emphasis merely on violations of the law fails to capture the full extent of what has been happening. [...] In offshore production, some manufacturers may follow local laws, but the legal standard is so low that the workers, often including young teenagers, live in poverty, although they are working full time. The same problem arises in the United States. Even if a factory follows the letter of the law in every detail, workers may suffer abuse, job insecurity, and poverty. [...] Thus we wish to broaden the definition of sweatshops to include factories that fail to pay a “living wage,” meaning a wage that enables a family to support itself at a socially defined, decent standard of living.’⁵³⁴

The return of the sweatshop to the U.S. began to be noted in the late 1970s. There was, however, relatively scant reliable data available as the controversies started to take off in the early 1990s. During the process, however, a number of official surveys were conducted. Again, statistics are difficult and should be taken with a grain of salt, and this is no less true for sweatshops in the U.S., constituting a moving target of registered shops and a great number of unregistered ones. Robert Ross has presented a most reliable estimate of the overall size of the problem, basing his calculations on official surveys *and* on the restrictive definition of sweatshops (hence, a conservative estimate). Ross estimated that in the garment industry there were *‘more than four hundred thousand workers laboring in sweatshop conditions in the United States in 1998.’⁵³⁵*

If this figure seems incomprehensibly high, considering the high rates of noncompliance reported in the official surveys the problem may be one of comprehension rather than Ross’ calculation techniques. A 1994 TIPP survey in Southern California, for example, found that only 2 of 69 randomly selected, inspected companies were in compliance, yielding the rates of violations shown in the table below.

⁵³⁴ Bonacich and Appelbaum, *Behind the Label*, pp. 3-4

⁵³⁵ Ross, ‘The New Sweatshops’, p. 105.

Table 7.1 April 1994 TIPP survey: violation rates⁵³⁶

Type of violation	% of companies in violation of the law
Health and safety	92.8
Record-keeping	72.5
Overtime	68.1
Minimum wage	50.7
Cash payments	30.4
Illegal work at home	14.5
Child labor	2.9

Needless to say, perhaps, but given the marginalization and near-abolition of sweatshops in the industry, this marked a very real change indeed, both relatively and absolutely.

In terms of the (domestic, U.S.) geography of sweatshops, two areas figured prominently, reflecting the overall territoriality and territorial dynamics in the industry: New York City and the Los Angeles area. These were also characterized as the two counterfeiting capitals in the U.S., and arguably part of the sweatshop problem resided in this part of the underground economy, an aspect occasionally used by “manufacturers” and industry trade bodies to reject responsibility and deny or question alleged ties to sweatshops.⁵³⁷ As for New York City, the decline in apparel employment and the trend towards smaller companies (in terms of number of employees) was mentioned earlier.

Yet, the studies cited by Ross show an absolute *and* relative increase in the number of sweatshop workers. In a 1997 survey, for example,

‘[...] the Department of Labor found that 63 percent of the [random sample, New York City] firms violated the minimum-wage and overtime provisions of the Fair Labor Standards Act, and 70 percent violated the record-keeping requirements of the law. In Chinatown, 90 percent of the firms violated the monetary provisions of the law.’⁵³⁸

⁵³⁶ The figures are from Stuart Silverstein, ‘Survey of garment industry finds rampant labor abuse’ in *Los Angeles Times (Home Edition)*, April 15, 1994.

⁵³⁷ Simon, ‘Brash world of bogus goods’.

⁵³⁸ Ross, ‘The New Sweatshops’, p. 104.

With an estimated 70,000 to 90,000 sweatshop workers in Southern California, however, New York was no longer the prime site for sweatshops in the U.S.:

*‘Los Angeles can indeed be described as the “sweatshop capital of the United States.”’*⁵³⁹

Not surprisingly, then, the most important domestic sweatshop scandals involved conditions in these two areas (further below).

7.5 A chronology of events

As mentioned, the return of the sweatshops in the U.S. began to be noted in the late 1970s, and in the late 1980s and early 1990s the sweatshop issue drew more attention, and a few legislative and enforcement initiatives emerged. Organized labor represented only a fraction of the apparel workers in the major sweatshop areas, but was voicing its concerns from early on, although the major organizing drive and campaigning efforts came later.⁵⁴⁰

In 1993 the new U.S. Secretary of Labor, Robert Reich, was sworn in, and the Department of Labor continued and arguably stepped up its hot goods/compliance agreement campaign in Southern California, issuing directives to 157 apparel manufacturers that were instructed to ‘stop doing business with contractors violating labor laws.’ Of the 157 companies, 17 reportedly ‘consented in writing to comply with the law,’ whereas the rest agreed informally. Simultaneously, several activist groups were waging campaigns against different companies. All of this coincided with the considerable attention and activities related to the completion of the NAFTA side agreements negotiations and their approval in the U.S. Congress in late 1993.⁵⁴¹

⁵³⁹ Ross, ‘The New Sweatshops’, p. 103-104. See also Bonacich and Appelbaum, *Behind the Label*, chapter 8.

⁵⁴⁰ See e.g., Harry Bernstein, ‘Labor: sweatshops a complex problem’ in *Los Angeles Times (Home Edition)*, July 10, 1990; Stuart Silverstein, ‘L.A. apparel makers hand by a thread’ in *Los Angeles Times*, December 22, 1989.

⁵⁴¹ See e.g. Stuart Silverstein, ‘Fashion firms told to police contractors’ in *Los Angeles Times (Home Edition)*, June 11, 1993; Sarah Henry, ‘Labor and lace: can an upstart women’s group press a new wrinkle into the rag trade wars?’ in *Los Angeles Times*

In mid-April of 1994, however, a survey of the garment industry conducted under TIPP in California was released, which reported of ‘rampant labor abuse’ (cf. table 7.1 above). Of the 69 garment manufacturers and contractors that were inspected, seven were ordered closed and ‘all but two of the firms were breaking either federal or state laws or both.’ Announcing a stepped-up enforcement effort and an expanded use of the hot goods provision, Maria Echaveste, head of the Labor Department’s Wage and Hour Division, stated that ‘*one of the key enforcement strategies will be to pressure the contractors’ customers: big and often well-known garment marketers and manufacturers.*’⁵⁴²

By September, the implications of this became very clear. On September 9 of 1994, the Labor Department formally announced an expanded and more aggressive approach: it would step up its hot goods/compliance agreement efforts and these would be expanded 1) by aiming at major retailers along with manufacturers, and 2) outside of California.⁵⁴³

At the same time, the National Labor Committee (NLC) launched a campaign naming a number of U.S. companies – most notably Liz Claiborne (future AIP member), Wal-Mart, and Fruit of the Loom – for their involvement in the violation of women’s and worker rights, including child labor, in Honduras. At a Senate Hearing on September 21, NLC Director Charles Kernaghan accompanied a young Honduran girl, Lesly Margoth Rodriguez Solorzano, who testified - in front of the network cameras (and subsequently featured on World News Tonight and CNN) - that ‘*she began making Liz Claiborne clothes at the age of 13 under brutal conditions. “I wish that the people in the U.S. knew what pain these sweaters cost us,” the girl said.*’⁵⁴⁴

(*Home Edition*), August 1, 1993; Robert B. Reich, *Locked in the Cabinet* (New York: Vintage Books, 1997); Frederick W. Mayer, *Interpreting NAFTA: The Science and Art of Political Analysis* (Columbia University Press, 1998).

⁵⁴² Cited from Silverstein, ‘Survey of garment industry finds rampant labor abuse’.

⁵⁴³ *Los Angeles Times (Home Edition)*, ‘Labor Dept. set to go after stores selling garments from sweatshops’, September 9, 1994; *Los Angeles Times (Orange County Edition)*, ‘Stores that sell clothes made in sweatshops face crackdown’, Sept. 9, 1994.

⁵⁴⁴ Quote from Paul Jaskunas, ‘The Sweatshop Dilemma’ in *CCM – The American Lawyer’s Corporate Counsel Magazine*, August 1997, p. 29; Witness List, ‘Child Labor and the New Global Marketplace: Reaping Profits at the Expense of Children?’ Hearing Before the U.S. Senate Committee on Labor and Human Resources, Subcommittee on

Shortly thereafter, in the run-up to the national mid-term elections, the Labor Department hosted a Retailer Roundtable in October, directly encouraging U.S. retailers' involvement in improving compliance, and a coalition of labor and community activists and scholars announced the beginning of a 'regionwide, multi-union' organizing drive targeted at the 'hundreds of thousands of immigrant industrial workers' and aiming to 'transform union organizing in Los Angeles.'⁵⁴⁵

During the first half of 1995 the controversy over child labor in the Bangladeshi garment industry was at its highest with the threats of a boycott and the completion of the Memorandum of Understanding. The first media exposés, in the U.S. and Europe, also appeared on child labor in the production of soccer balls, accompanied by numerous articles on bonded child labor and slavery and the outrage over the murder of Iqbal Masih. In late 1994 and early 1995 more companies signed compliance agreements with the Labor Department, and in late June the formation of a self-regulatory group was announced following an agreement between the Department of Labor and a number of L.A. manufacturers.⁵⁴⁶ At the same time, the NLC launched a 2-month tour across the U.S. with two young maquila workers from Honduras and El Salvador, respectively, bringing their stories of the harsh sweatshop conditions under which they sewed GAP clothing.⁵⁴⁷ On the very same day that NLC campaign and the two

Labor, September 21, 1994; National Labor Committee, *Charles Kernaghan* (at www.nlcnet.org/nlc/BIOS/Charlie.shtml, accessed February 20, 2004).

⁵⁴⁵ Berg, Mary Helen. 1994. "Labor leaders aim efforts at immigrants" in *Los Angeles Times (Home Edition)*, October 30, 1994.

⁵⁴⁶ The so-called Compliance Alliance was intended to enhance compliance and monitoring efforts, but it was also to be run by the manufacturers, and since it furthermore put the participating manufacturers in a stronger legal position, placing a greater burden of proof on the Labor Department to prove the absence of 'good faith'. The initiative was severely criticized, including by labor law officials characterizing it as 'like letting a few foxes guard the henhouse.' Quote from John M. Glionna, 'Garment gumshoes' in *Los Angeles Times (Home Edition)*, July 13, 1995. Cf. also Stuart Silverstein and George White, 'Garment maker vows to halt salary abuses' in *Los Angeles Times (Home Edition)*, November 4, 1994; Stuart Silverstein, 'Rampage settles labor case' in *Los Angeles Times (Home Edition)*, February 8, 1995; Stuart Silverstein, 'Self-regulatory group to police clothes makers' work conditions' in *Los Angeles Times (Home Edition)*, June 20, 1995.

⁵⁴⁷ National Labor Committee, *Charles Kernaghan; Sweatshop Watch*, 'Sweating for the GAP in Central America' in *Sweatshop Watch*, Vol. 1, No. 1, Fall, 1995.

girls arrived to San Francisco – on August 2, 1995 – where they joined 300 garment workers in a protest outside The GAP’s headquarters, labor authorities raided a garment workshop in the Los Angeles suburb of El Monte:

’In the pre-dawn hours of August 2, 1995, state and federal law enforcement authorities raided a squalid apartment complex surrounded with razor barbed wired, releasing 72 Thai immigrants from virtual slavery. For up to seven years, the 67 women and 5 men, forbidden to leave the guarded compound, had been forced to sew garments for U.S. brand-name manufacturers and retailers for only \$1.60/hour. They were forced to work from 7:00 a.m. to midnight, six days a week to pay off the smugglers for their cost of passage. Even after they had paid back their captors, the workers were unable to leave and were forced to continue working. The workers were kept in check not only with the barbed wired, but also with threats of rape and retribution against family members still in Thailand.’⁵⁴⁸

That this was a sweatshop was clear for all to see, and the scandal of slavery behind barbed wire implicated a number of household brands: garments with well-known labels were found at the site and so was paperwork indicating that the goods were distributed to a number of equally well-known retailers. The discovery created a public outrage and obviously attracted considerable media attention, both in relation to the discovery itself and to the events that followed: the sweatshop issue and the debate about the responsibility of retailers and manufacturers for the working conditions in the actual manufacturing exploded.⁵⁴⁹

⁵⁴⁸ Sweatshop Watch, ‘Slave Conditions in Southern California Garment Shop’ in *Sweatshop Watch*, Vol. 1, No. 1, Fall, 1995. Some of the sweatshop operators and the El Monte operation as such had been subjects of investigations as early as 1988, but little action was taken, cf. James Sterngold, ‘Agency Missteps Put Illegal Aliens at Mercy of Sweatshops’ in *The New York Times*, September 21, 1995.

⁵⁴⁹ See Louise Farr, ‘LA cops bust sweatshop liberate Thai workers’ in *Women’s Wear Daily*, Vol. 170, No. 23, August 4, 1995; Christopher Scheer, ‘Thailand to L.A., a life of debasement’ in *Los Angeles Times (Home Edition)*, August 14, 1995; Julie Su, ‘El Monte Thai Garment Workers: Slave Sweatshops’ (1997, at www.sweatshopwatch.org, accessed February 20, 2004); Hemphill, ‘The White House Apparel Industry Partnership Agreement’; Paul M. Sherer, ‘Hot Thai Export to U.S.: ‘Slave’ Workers --- Washington Calls for Crackdown But Isn’t Optimistic’ in *Wall Street Journal (Eastern Edition)*, November 2, 1995.

Secretary of Labor Reich subsequently called a meeting with the retailers to be held in early September *and* the Labor Department publicly named 14 manufacturers allegedly contracting from the El Monte sweatshop as well as 18 retailers where the apparel was thought to have been sold. Several major retailers were on the list, including (units of) May Department Stores, Federated Department Stores, Macy's, Sears, Limited Inc. Moreover, the California Labor Commissioner's office issued a number of subpoenas, including to (units of) the Dayton Hudson Corp. and Montgomery Ward.⁵⁵⁰ Corporate representatives as well as executives from the National Retail Federation (NRF) and the International Mass Retail Association (IMRA) responded ferociously to the Department of Labor's actions, and the NRF demanded a meeting with the Department's Wage and Hour Division's Administrator, Maria Echaveste, which took place on August 17.⁵⁵¹ On September 12, Robert Reich met with representatives of the retailers in New York City, demanding their involvement in policing for sweatshops and threatening to continue to publish lists with company names. The industry representatives were, in Reich's words, '*furious [...] They yell, they complain, they threaten.*'⁵⁵² Coinciding with that meeting, UNITE put an ad in *The New York Times* calling on the Department of Labor to establish a high-level unit to 'address sweatshops, propose solutions, and facilitate partnerships between business and NGOs to fight sweatshops.'⁵⁵³

At the September 12 meeting, the NRF came up with a proposal for a solution, a six-point 'Statement of Principles on Supplier Legal

⁵⁵⁰ See e.g., Kenneth B. Noble, 'U.S. Warns Big Retailers About Sweatshop Goods' in *The New York Times*, August 15, 1995; Asra Q. Nomani, F. Rose and B. Ortega, 'Legal beat: Labor Department asks \$5 million for alleged worker enslavement' in *Wall Street Journal (Eastern Edition)*, August 16, 1995.

⁵⁵¹ Joanna Ramey, Kristi Ellis and Louise Farr, 'El Monte probe draws U.S., stores into a possible faceoff' in *Women's Wear Daily*, Vol. 170, No. 31, August 16, 1995; Joanna Ramey, 'NRF, Labor confer on avoiding the sale of sweatshop goods' in *Women's Wear Daily*, Vol. 170, No. 32, August 17, 1995. Shortly after that meeting, Echaveste appeared in New York to announce the formation of The Apparel/Restaurant Guidance and Enforcement Team, a task force to crack down on sweatshops similar to the TIPP initiative in California, cf. Dianne M. Pogoda, 'Labor kicks off New York probe of sweatshops' in *Women's Wear Daily*, Vol. 170, No. 34, August 21, 1995.

⁵⁵² Quote from Reich, *Locked in the Cabinet*, p. 276; see also Bobrowsky, *Creating A Global Public Policy Network*, p. 6 and 14.

⁵⁵³ Bobrowsky, *Creating A Global Public Policy Network*, p. 14, n. 14.

Compliance.’ Signed by 128 retailers, the Statement contained the participating retailers’ agreement to refer specifically to the hour and wage provisions of the Fair Labor Standards Act, as well as their intention to work with labor officials in enforcing the law.⁵⁵⁴ As enforcement efforts and investigations of El Monte links into the Los Angeles area garment industry continued, Reich continued to publicly pressure the retailers through the media. Appearing on radio and television shows with basically the same message that he had conveyed at the New York meeting, he further stated that the NRF Statement did not go far enough and that *‘If it gets to the Christmas season and we publish a list of major retailers who have merchandise on their shelves produced in sweatshops, I would say consumers to some extent will be concerned [...and officials] have no compunction at all to publicize the names of retailers.’* Reich also informed that the Department was considering the publication of a list of companies that were policing against sweatshops and complying with the law:

‘The Day after Thanksgiving, just as the Christmas shopping season begins in earnest, the agency plans to announce names of “good guy” apparel retailers and manufacturers. [...] The intent is to squeeze out the rogue contractors by providing a public relations bonanza for “retailers and manufacturers that have gone the extra mile in seeking to prevent sweatshop abuses,” Labor Secretary Robert B. Reich said.’⁵⁵⁵

The American Apparel Manufacturers Association (AAMA) stated their support for such an initiative, but the retailers, still furious, continued to argue that the responsibility lay with the Labor Department and the manufacturers dealing with the contractors. Reich subsequently hosted a meeting at the AAMA, once again urging the industry players to become involved in policing for sweatshops, and furthermore published a list of those manufacturers that had signed compliance monitoring agreements. Shortly thereafter, Reich spoke at the first meeting of the “new” AFL-CIO

⁵⁵⁴ National Retail Federation, *Retailers and Labor Standards: What the NRF Is Doing* (at www.sweatshops-retail.org, accessed on June 14, 2004). See also Joanna Ramey, ‘Reich: lists of retailers with sweatshop links due’ in *Women’s Wear Daily*, Vol. 170, No. 57, 22 Sept. 1995.

⁵⁵⁵ Quoted from Stuart Silverstein, ‘U.S. plans list of clothes makers, retailers that obey labor laws’, in *Los Angeles Times (Home Edition)*, 3 Nov. 1995. See also Kristi Ellis, ‘Sweatshop sweeps in L.A. look for links to El Monte’, in *Women’s Wear Daily*, Vol. 170, No. 52, 15 Sept. 1995.

and together with its new President, John Sweeney, visited the Manhattan garment district to join protests against sweatshops.⁵⁵⁶

On December 5, 1995, Labor Secretary Reich released the Department of Labor's first 'Fair Labor Fashion Trendsetter List' (Trendsetter List), listing 31 companies, manufacturers and retailers, that had committed themselves to taking responsibility for monitoring for sweatshops. The List was subsequently revised and published a number of times during the process, and along with the Department of Labor's approach more broadly (and the underlying cuts in the DOL budget) was soon criticized by industry representatives (and the NRF in particular) as well as unions and labor rights NGOs: Liz Claiborne, The GAP, Guess? and other companies on the List were already quite unpopular in the latter, non-corporate quarters, and the critique gathered further momentum as clothing for some of the companies on the List was repeatedly found to be made in sweatshops. 'Don't be fooled by the DOL's new Trendsetter List,' Sweatshop Watch urged prior to the publication of the December 1996 List, '*consumers should realize that prominent manufacturers on last year's list used sweatshops at the time of and even after they were touted as trendsetters.*'⁵⁵⁷

In late 1995, however, the sweatshop campaign came to a temporary standstill, at least as far as the federal government was concerned: the House Republicans had for some time been threatening to shut down the federal government, and eventually most of the federal government *was* closed down. By early January of 1996, Labor Secretary Reich and President Clinton pointed to the consequences of the balanced budget impasse for the sweatshop eradication efforts, painting a rather serious picture of the

⁵⁵⁶ Ramey, 'Reich: lists of retailers'; Bobrowsky, *Creating A Global Public Policy Network*, p. 6; Reich, *Locked in the Cabinet*, pp. 285-288. For some time, Reich and the Clinton Administration had been quietly pushing for a change in the AFL-CIO leadership, offering among other things an Ambassadorship to its President, Lane Kirkland, cf. Reich, *Locked in the Cabinet*, pp. 66-70 and 108-109.

⁵⁵⁷ Sweatshop Watch, 'The Hazards of Holiday Shopping', in *Sweatshop Watch*, Vol. 2, No. 2, Dec. 1996. See also Silverstein, 'U.S. plans list'; Stuart Silverstein and George White, 'Good Guy' labor list gets a bad rap', *Los Angeles Times (Home Edition)*, December 6, 1995.

effects: “Ninety-five percent of all workplace safety activities have been shut down, and all sweatshop enforcement has stopped [...]”⁵⁵⁸

The organizations behind the informal Coalition to Eliminate Sweatshop Conditions had formed Sweatshop Watch following the El Monte raid. The organization was involved in aiding the El Monte workers, and in November the organization and around 100 Thai and Latino garment workers launched a Retailer Accountability Campaign. The organization sent letters to a number of retailers, two of whom agreed to meet with the workers and the organization. At the meetings in December, the companies rejected the demands and refused any further negotiations. The Retailer Accountability Campaign nonetheless ran on, alongside a number of other Sweatshop Watch activities. These focused not only on retailers but also on manufacturers such as Liz Claiborne and The GAP and several others, which were explicitly named in articles charging them with sweatshop abuses. The Sweatshop Watch Newsletter also, from the beginning in late 1995, reprinted excerpts from UNITE’s magazine, UNITE!, and reported widely on that union’s efforts as well as the campaigns of the National Labor Committee (NLC). UNITE was (and is) an organizational member of Sweatshop Watch, and was furthermore central in establishing the NLC, which it continued to fund in part.⁵⁵⁹

By late 1995, the campaign on sweatshops and The GAP launched by the NLC in mid-1995 produced some results. On December 15, The GAP agreed with the NLC to establish independent monitoring of its contractors in El Salvador, the first time that a U.S. apparel company had agreed to independent monitoring.⁵⁶⁰ Aforementioned Liz Claiborne, Inc. was also subject to further pressure in December, when the Canadian Broadcasting Corporation’s newsmagazine, *the fifth estate*, presented its exposé focusing

⁵⁵⁸ Reich, *Locked in the Cabinet*, p. 263-264, 291; quote from Joanna Ramey, ‘Federal shutdown stalls anti-sweatshop drive’ in *Women’s Wear Daily*, Vol. 171, No. 3, January 4, 1996.

⁵⁵⁹ See e.g. Sweatshop Watch, ‘Sweatshop Watch Launches Retailer Accountability Campaign’, in *Sweatshop Watch*, Vol. 1, No. 2, Winter, 1996; Sweatshop Watch, ‘Overseas Sweatshops: Made in the USA’ in *Sweatshop Watch*, Vol. 2, No. 1, Fall, 1996; Sweatshop Watch, ‘Mickey & Pocahontas Labels: Made in Sweatshops’ and ‘Cynthia Steffe Goes Union’ in *Sweatshop Watch*, Vol. 2, No. 2, December, 1996.

⁵⁶⁰ Krupat, ‘From War Zone to Free Trade Zone’; National Labor Committee, *Charles Kernaghan*; MSNBC, *Sweatshop Journal: Now & Then Timeline* (at www.msnbc.com, accessed on January 29, 2004).

on the company (the exposé was broadcast in January 1996). In addition to reiterating the allegations from the 1994 U.S. Senate hearing, the segment provided more bad press suggesting that the company's code and fact finding mission were not really that effective:

*'The reporters came away with footage of adolescent girls and young women streaming into barbed-wire compounds patrolled by armed guards. They recorded the grim anecdotes of teenage workers forced to toil at sewing machines late into the night. And they heard tales of girls being routinely tested for pregnancy and fired if their results were positive.'*⁵⁶¹

At the same time, Californian labor authorities raided an El Monte-related shop in early 1996 and reported evidence that this was contracting for The Limited - a prominent List-member - leading Maria Echaveste of the Labor Department's Wage and Hour Division to state that *'I think the state went a little too fast to the press with this [...] We can't yet draw conclusions whether monitoring by The Limited is working or not [...] Based on The Limited's prior track record, we expect they will work cooperatively with us and make sure these violations don't occur again.'*⁵⁶²

During the first half of 1996, the court cases related to El Monte progressed steadily, with back pays being secured and heavy prison and damages sentences being passed, with additional claims for back wages and further law suits against El Monte related manufactures following.⁵⁶³ Furthermore, in early 1996 the Clinton Administration presented its budget

⁵⁶¹ In early 1996, Liz Claiborne General Counsel, Roberta Karp, went on yet another fact-finding trip to Honduras and El Salvador, asking a representative of the International Labor Rights Fund (ILRF) to go with her. See Jaskunas, 'The Sweatshop Dilemma', p. 29.

⁵⁶² *Women's Wear Daily*, 'California, U.S. Labor officials in tiff over raid on alleged limited contractor', Vol. 171, No. 22, February 1, 1996.

⁵⁶³ Kristi Ellis, 'El Monte slavery case ends with guilty pleas' in *Women's Wear Daily*, Vol. 171, No. 29, February 12, 1996; Kristi Ellis, '\$1.1M back pay given to workers in El Monte shop' in *Women's Wear Daily*, Vol. 171, No. 48, March 11, 1996; Kristi Ellis, 'Suit against El Monte makers, retailer OK'd by district Court' in *Women's Wear Daily*, Vol. 171, No. 62, March 29, 1996; *Women's Wear Daily*, '39 more claim back wages for labor in El Monte', Vol. 171, No. 67, April 5, 1996; Kristi Ellis, 'Two in El Monte case sentenced to six years' in *Women's Wear Daily*, Vol. 171, No. 85, May 1, 1996; *Women's Wear Daily*, 'El Monte operators get heavy terms', Vol. 171, No. 91, May 9, 1996; *Women's Wear Daily*, 'Final sentence imposed in El Monte case', Vol. 171, No. 101, May 23, 1996.

proposal, including a request for USD 118.7 million for the Department of Labor's sweatshop efforts, an increase of 19 percent over FY 1996 (which nevertheless failed to materialize).⁵⁶⁴

At the same time, Labor Secretary Reich was beginning to talk about corporate responsibility, e.g. on February 14:

'[Ted] Koppel: Are you proposing some form of socialism here, Mr. Secretary? Reich: I'm talking about corporate responsibility. Millions of Americans are trapped in the old economy. If the public sector can't help them because it has to balance the budget, then the private sector is going to have to do more. Corporate responsibility extends beyond maximizing shareholder returns. There's also a responsibility to employees and to communities.'

This sparked some strong reactions, including within the Administration. As Reich recounts the reactions of Treasury Secretary Rubin to Reich's calls for corporate responsibility:

*'"The phrase is too inflammatory [...] Look, I spent most of my life on Wall Street. I've dealt with executives of big businesses for several decades. I can tell you, you're just asking for trouble."'*⁵⁶⁵

On April 29, 1996, Charles Kernaghan, executive director of the National Labor Committee, dropped another bomb, which resulted in an explosion in media coverage and political activities around child labor and sweatshops, setting the issue 'finally on the national agenda as never before' (as the NLC itself put it).⁵⁶⁶ Bringing the 15-year old Honduran girl, Wendy Diaz, with him to testify before the U.S. Congress – the Democratic Policy Committee on Child Labor, to be specific – Kernaghan delivered some serious accusations of child labor exploitation and sweatshop abuses against Wal-Mart and Kathie Lee Gifford, a television celebrity and talk-show host (ABC's *Live with Regis and Kathie Lee*),

⁵⁶⁴ *Women's Wear Daily*, 'Clinton's budget: Pro-CBI, anti-sweatshop', Vol. 171, No. 55, March 20, 1996.

⁵⁶⁵ Reich, *Locked in the Cabinet*, pp. 303-312.

⁵⁶⁶ Krupat, 'From War Zone to Free Trade Zone'; National Labor Committee, *Charles Kernaghan*.

designer and owner of an apparel line sold under her name at Wal-Mart.⁵⁶⁷ While Wal-Mart was one of the ‘usual suspects,’ the often noted irony was that Kathie Lee was a self-proclaimed children’s issue protagonist, the clothes sold at Wal-Mart under her name carrying the message: ‘A portion of proceeds from the sale of this garment will be donated to various Children’s Charities.’⁵⁶⁸ Kathie Lee responded – crying “live” on her own nationally televised show (something which is still vividly recalled by those whom I have interviewed) – defiantly at first, denying any knowledge of such sweatshop conditions in the production of goods bearing her name.⁵⁶⁹ The contrasts between a television celebrity cashing in \$9 million per year for designing clothes and the 31 cents per hour earned by the Honduran garment workers, working under armed guards and sometimes straight through the night, were staggering. Gifford allegedly threatened to sue Charles Kernaghan, stating that ‘Millions of dollars have gone to help children, and I truly resent this man impugning my integrity.’⁵⁷⁰

Just a few days later, the Department of Labor added further fuel to the sweatshop fire, when it released the first-ever national report on garment worker abuse, showing that non-compliance with federal minimum wage or overtime laws were nearly at 50 per cent.⁵⁷¹ The Department of Labor shortly thereafter launched an investigation into a New York City-based manufacturer of Kathie Lee clothing which had not paid its workers for weeks. At that point, Kathie Lee had announced that she would see to the establishment of a monitoring program, but the second Kathie Lee scandal

⁵⁶⁷ Kathie Lee and Wal-Mart had been directly approached twice in March; cf. Krupat, ‘From War Zone to Free Trade Zone’, p. 59.

⁵⁶⁸ Hemphill, ‘The White House Apparel Industry Partnership Agreement’, p. 121.

⁵⁶⁹ She also pointed to her charitable donations, of course: in 1995 she reportedly donated 1 of the \$9 million in profits on her clothing line to the Association to Benefit Children (an organization providing shelters for crack-addicted children and children with AIDS). See Gibbs and Dickerson, ‘Cause Celeb’; Hemphill, ‘The White House Apparel Industry Partnership Agreement’, p. 121.

⁵⁷⁰ NLC, *Charles Kernaghan*. Gifford statement on May 1, cited from PBS Online NewsHour, *Naming Names*, July, 16, 1996, (Transcript) (at www.pbs.org, accessed February 23, 2004).

⁵⁷¹ U.S. Department of Labor, *Labor Secretary Releases Nationwide Garment Report Revealing Sweatshops Persist in U.S. Apparel Industry* (Washington, D.C.: U.S. Department of Labor, Press Release, May 3, 1996).

in less than a month merely contributed to the media frenzy and pressures from a variety of actors, on Kathie Lee and the industry as a whole.⁵⁷² On May 24, Kathie Lee's husband, Frank Gifford, made a visit to the garment district, handing out envelopes with cash to the workers and USD 9,000 to the garment union.⁵⁷³

On Capitol Hill a battle was raging over a proposal to raise the minimum wage, and on May 28 the potentials in the Kathie Lee sweatshop scandals were apparently discussed at the highest levels of the Department of Labor. As Reich tells the story:

*"You should call her," Maria [Echaveste of the Wage and Hour Division] suggests. "To commiserate? Why? I've never even heard of her," I say, provoking another round of laughs. "To make a deal," says Maria. "You offer her a way of saving face. She joins our No Sweat crusade and becomes a spokesman for corporate responsibility. In return, you praise her leadership and courage. It's a win-win."*⁵⁷⁴

Having had dinner with the Gifford's and their PR expert on May 30, the following day Reich and Kathie Lee announced that she had committed herself to the Department's war on sweatshops, and the two furthermore announced that they would host a 'Fashion Industry Forum' soon *'to expand the crusade against sweatshops.'*⁵⁷⁵ A great publicity stunt for the Giffords and Reich alike: *'Tonight's evening news is brimming with it. Editors and producers across America are running with it. The event will fill tomorrow's papers.'*⁵⁷⁶

⁵⁷² UNITE, *UNITE President Issues Statement on Kathie Lee Gifford Controversy Following Daily News Exposé*, Press release, May 23, 1996 (at www.uniteunion.org, accessed on January 29, 2004).

⁵⁷³ MSNBC, 'Sweatshop Journal: Now & Then Timeline' at www.msnbc.com, accessed on January 29, 2004.

⁵⁷⁴ Reich, *Locked in the Cabinet*, p. 324; emphasis in original.

⁵⁷⁵ U.S. Department of Labor, *Labor Secretary Robert B. Reich, Kathie Lee Gifford Announce Fashion Industry Forum To Raise Public Awareness Of Sweatshops* (Washington, D.C.: U.S. Department of Labor, Press Release, May 31, 1996); Reich, *Locked in the Cabinet*, pp. 324-326; Hemphill, 'The White House Apparel Industry Partnership Agreement', p. 121.

⁵⁷⁶ Quote from Reich, *Locked in the Cabinet*, p. 326; see also Steven Greenhouse, 'Live With Kathie Lee And Apparel Workers' in *The New York Times*, May 31, 1996.

Kathie Lee subsequently met with the President of UNITE, Jay Mazur, and shortly thereafter with a group of people – Wendy Diaz, Charles Kernaghan of the NLC, representatives of the Committee for the Defense of Human Rights in Honduras as well as the People of Faith Coalition, and Jay Mazur of UNITE – at the residence of Archbishop Cardinal O’Connor in Manhattan, where Kathie Lee accepted the need for independent monitoring.⁵⁷⁷

In mid-June the Kathie Lee scandals were accompanied by more bad press on other celebrities or celebrity endorsers, including Nike’s Michael Jordan. Kathie Lee, in turn, had publicly committed to recruiting ‘other famous endorsers [...] to help pressure manufacturers to police labor practices more closely.’⁵⁷⁸ As detailed in the previous chapter, on June 28 the FoulBall campaign was launched prior to the child labor hearings at the Department of Labor. The hearings hit right in the eye of the sweatshops debate. On the same day, the Department of Labor announced that the Fashion Industry Forum would take place on July 16. In the meantime, New York’s Governor, George Pataki, signed bipartisan legislation, which basically extended the hot goods provisions used by federal authorities to the state level. On July 15 both Kathie Lee Gifford and Secretary Reich testified at yet another hearing on child labor and sweatshops,⁵⁷⁹ and on the

⁵⁷⁷ UNITE, *Statement from Jay Mazur, President of UNITE Regarding Kathie Lee Gifford*, press release, June 4, 1996 (at www.uniteunion.org, accessed on January 29, 2004); UNITE, *Statement Following a Meeting at the Residence of Archbishop Cardinal O’Connor*, press release, June 6, 1996 (at www.uniteunion.org, accessed on January 29, 2004).

⁵⁷⁸ Quote from Gibbs and Dickerson, ‘Cause Celeb’ (italics omitted); CNN News/Peg Tyre, *Sweatshop Labor Practices Come Under Scrutiny*, New York, June 21, 1996, Transcript # 1375-1 (accessed at Lexis Nexis database of the Lexis Nexis Group, Reed Elsevier (UK) Ltd).

⁵⁷⁹ U.S. Department of Labor, *Labor Department’s Fashion Industry Forum Set For July 16* (Washington, D.C.: U.S. Department of Labor, press Release, June 28, 1996); U.S. Department of Labor, *Labor Secretary Reich Congratulates New York Governor, Legislature for Bipartisan Effort To Protect Garment Workers* (Washington, D.C.: U.S. Department of Labor, press release, July 2, 1996); U.S. Department of Labor, *Reich Praises Bonewco Fashions for Paying More than \$40,000 in Back Wages and Penalties Owed by Sweatshop that Produced Kathie Lee Line* (Washington, D.C.: U.S. Department of Labor, press release, July 11, 1996); Robert B. Reich, *Testimony of Robert B. Reich, before the Subcommittee on International Operations and Human Rights, Committee on International Relations, U.S. House of Representatives, 7/15/96*, at www.dol.gov, accessed on February 17, 2004; Kathie Lee Gifford, *Testimony of Kathie Lee Gifford, before the Subcommittee on International Operations and Human*

following day the Department of Labor finally hosted the Fashion Industry Forum. In addition to garment workers, (international and U.S.) trade union and NGO representatives, a number of fashion designers and representatives of major trade associations (NRF, IMRA, AAMA), the event attracted more than 300 industry representatives. Indeed an impressive and unprecedented gathering around the issue of sweatshops in the industry, which – in addition to the debates at the Forum – spurred the public debate and the media even further.⁵⁸⁰

Just over two weeks later, on August 2 – nicely timed to coincide with the one-year anniversary of the El Monte scandal – President Clinton announced the formation of an anti-sweatshop task force at a ceremony in the Rose Garden - the Apparel Industry Partnership (AIP). As mentioned, the AIP members were given a two-pronged mandate, with two successive six-month deadlines for reporting back.

At the beginning, the AIP industry members were Nike, Inc., Liz Claiborne, Inc., Warnaco Group, Phillips-Van Heusen, L.L. Bean, Tweeds, Inc., Patagonia, Nicole Miller, Karen Kane Co., Lucky Brands Dungarees and Kathie Lee Gifford. In addition, the AIP comprised the following members: UNITE, the Retail, Wholesale, and Department Store Union (RWDSU) of the AFL-CIO, the National Consumers League, the Lawyers Committee for Human Rights, and the Interfaith Center on Corporate Responsibility. Reebok, the (business group) Business for Social Responsibility (BSR), the International Labor Rights Fund (ILRF), and the

Rights, Committee on International Relations, U.S. House of Representatives, 7/15/96 (at gos.sbc.edu, accessed on January 29, 2004).

⁵⁸⁰ U.S. Department of Labor, *Labor Secretary Robert B. Reich, Kathie Lee Gifford Announce Fashion Industry Forum To Raise Public Awareness Of Sweatshops* (Washington, D.C.: U.S. Department of Labor, press release, May 31, 1996); U.S. Department of Labor, *“No Sweat” Will Be In Fashion at Labor Department’s Fashion Industry Forum on July 16; Every Aspect of Apparel Industry to be Represented or Participate* (Washington, D.C.: U.S. Department of Labor, press release, July 12, 1996); PBS Online NewsHour, *Naming Names*, July 16, 1996 (at www.pbs.org, accessed 23 February 2004); National Retail Federation, *NRF Calls for An End to Finger-pointing, A New Spirit of Cooperation to End Labor Violations* (Washington, D.C.: NRF, press release, July 16, 1996); UNITE, *UNITE President Calls for Global Industry-Wide Reform at Fashion Industry Forum; Mazur Urges Partnership of Retailers, Manufacturers, Lawmakers and Consumers to Abolish Sweatshops; New York City Sweatshop Worker Recounts Abusive Conditions, Low Pay*, press release, July 16, 1996 (at www.uniteunion.org, accessed on January 29, 2004).

Robert F. Kennedy Memorial Center for Human Rights (RFK Center) joined the AIP shortly afterwards.⁵⁸¹

During the remainder of 1996 and into 1997 the members of the AIP task force met regularly, with assistance from the Administration. The context in which these first months of negotiation took place was, most importantly, one marked by the fact that the November election was drawing still closer. Throughout the remainder of 1996 there was a spur of activity on the part of labor authorities, and tensions between federal and state labor authorities were becoming visible. This coincided with considerable activity on Capitol Hill, where the Child Labor Free Consumer Information Act of 1996 and the Stop Sweatshops Act of 1996 were introduced in both chambers of Congress.⁵⁸²

On August 8, L.A.-based Guess? ventured into a not very successful public offering of some of its shares on the New York Stock Exchange. The offering – having already been postponed twice, reducing the number of shares from 9.2 million to 7 million and reducing the share price from USD 21-23 to 18 – opened flat. In addition to ‘the overall malaise in the market for new issues,’ the company’s ‘most immediate problem was a lawsuit filed Wednesday [August 7, i.e., the day before the trading

⁵⁸¹ Joanna Ramey, ‘10 makers, retailers sign on for Clinton’s anti-sweatshop panel’ in *Women’s Wear Daily*, Vol. 172, No. 24, August 5, 1996; Joanna Ramey, ‘Shoes put in ‘sweat’ crusade’ in *Footwear News*, Vol. 52, No. 36, August 12, 1996; Bobrowsky, *Creating A Global Public Policy Network*, p. 19, n. 18.

⁵⁸² Andy Bernstein, ‘Roberta Karp’ in *Sporting Goods Business*, Vol. 30, No. 11, July 21, 1997; Stuart Silverstein and Vicki Torres, ‘String of illegal home-sewing sites found, regulators say’ in *Los Angeles Times (Home Edition)*, July 31, 1996; Don Lee, ‘Task force in tatters: State-Federal tensions hinder garment industry crackdown’ in *Los Angeles Times (Home Edition)*, August 4, 1996; U.S. Department of Labor, *Too Many Garment Assembly Firms Break Labor Laws According to New Report Released By Labor Secretary* (Washington, D.C.: U.S. Department of Labor, press release, August 23, 1996); *Washington Post*, ‘No More Sweatshops’, August 24, 1996; MSNBC, ‘Sweatshop Journal’; U.S. Department of Labor, *Labor Department Extends Hot Goods Actions to Protect Employees at New Jersey Textile Firm* (Washington, D.C.: U.S. Department of Labor, press release, September 16, 1996). The Child Labor Free Consumer Information Act, H.R.4125 and S.2094, see Congressional Record, ‘Statements on Introduced Bills and Joint Resolutions (Senate – September 19, 1996)’; Congressional Record, ‘The Introduction of The Child Labor Free Consumer Information Act of 1996 – Hon. George Miller (Extension of Remarks – July 25, 1995)’. The Stop Sweatshops Act, H.R.4166 and S.2127, see Congressional Record, ‘Statements on Introduced Bills and Joint Resolutions (Senate – September 25, 1996)’.

began...] by the Union of Needletrades, Industrial and Textile Employees, or UNITE, accusing Guess of ignoring sweatshop conditions at its suppliers.’⁵⁸³

During the fall, UNITE continued its campaign activities against sweatshops and Guess? in particular, and in early October, the Labor Department furthermore announced that it would ‘conduct a “thorough review” of Guess Inc. after finding that the controversial Los Angeles clothing company was receiving merchandise from an alleged large-scale sweatshop.’⁵⁸⁴ Guess? was one of the companies on the Trendsetter List, and the company denied UNITE’s allegations, stating that ‘We continue to be outraged, after being exonerated by the California Department of Labor, that UNITE continues to make unsubstantiated claims about our labor practices in communication with our customers.’ UNITE, in turn, responded that the only reason Guess had been cleared by the Californian authorities was that ‘state law there does not hold manufacturers legally responsible for contractor’s actions.’⁵⁸⁵ Meanwhile, the broader debate on sweatshops continued, and on October 21 the Department of Labor issued its annual child labor publication - *The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?* - noting an increase in codes of conduct but also considerable gaps in their implementation and enforcement.⁵⁸⁶

⁵⁸³ *Los Angeles Times (Southland Edition)*, ‘Guess stumbles down Wall Street runway’, August 9, 1996.

⁵⁸⁴ Silverstein, Stuart and George White, ‘Labor Department to investigate Guess’ in *Los Angeles Times (Home Edition)*, October 5, 1996.

⁵⁸⁵ Quotes from Joyce Barrett, ‘Sweatshop bill would make vendors, retailers liable for contractor violations’ in *Women’s Wear Daily*, Vol. 172, No. 60, September 26, 1996; Janet Ozzard, ‘New Challenge Push Guess Into Changing Corporate Future’ in *Women’s Wear Daily*, November 7, 1996.

⁵⁸⁶ U.S. Department of Labor, *Labor Department Traces Illegally Made Goods to Sears, Macy’s West, Hub and Guess* (Washington, D.C.: U.S. Department of Labor, press release, October 4, 1996); Steven Greenhouse, ‘Labor and Academia In a Campus Meeting’ in *The New York Times*, October 6, 1996; Joyce Barrett and Joanna Ramey, ‘Conference warned public is weighing in on sweatshop issue’ in *Women’s Wear Daily*, Vol. 172, No. 73, October 15, 1996; U.S. Department of Labor, *Report Shows Increase of Codes Prohibiting Child Workers in Foreign Garment Shops* (Washington, D.C.: U.S. Department of Labor, press release, October 21, 1996); U.S. Department of Labor, *National Religious Leaders Join with Labor Secretary to Eradicate Sweatshops* (Washington, D.C.: U.S. Department of Labor, press release, October 22, 1996); Pharis

Further trouble for Guess ensued in late November with the announcement that the National Labor Relations Board (NLRB) had prepared a case against the company. While the company denied all allegations, the NLRB was considering taking legal action against the company ‘for unfair labor practices that are considered “egregious.”’⁵⁸⁷ At the same time, labor authorities were issuing statements that overall compliance was improving, and in late November, the Department of Labor released its 1996 Trendsetter List. Guess?, however, was placed on ‘probation’⁵⁸⁸ The List drew considerable criticism, cf. above, and through December child labor and sweatshops remained high on the agenda.⁵⁸⁹ UNITE ran a “Christmas season retail campaign” coinciding with ads in the major papers by the National Retail Federation, warning consumers against sweatshops and

J. Harvey, *Statement of Rev. Pharis J. Harvey, United Methodist General Board of Global Ministries, U.S. Department of Labor, October 22, 1996*; Alan Tonelson, ‘Business’ undue influence’ in *Journal of Commerce*, November 4, 1996; U.S. Department of Labor, Bureau of International Labor Affairs, *The Apparel Industry and Codes of Conduct*; Kristi Ellis, ‘L.A.’s labor pains’ in *Women’s Wear Daily*, Vol. 172, No. 87, November 6, 1996

⁵⁸⁷ Stuart Silverstein, ‘NLRB prepares complaint against apparel firm Guess’ in *Los Angeles Times (Home Edition)*, November 22, 1996. In January of 1997, Guess Inc. entered into a settlement with the NLRB to ‘head off’ the complaint. Shortly thereafter, the company announced that it would move a considerable portion of its production to Mexico. See Stuart Silverstein, ‘In the spotlight’ in *Los Angeles Times (Home Edition)*, February 16, 1997; Stuart Silverstein, George White and Mary B. Sheridan, ‘Guess Inc. to move much of L.A. work south of border’ in *Los Angeles Times (Home Edition)*, January 15, 1997.

⁵⁸⁸ U.S. Department of Labor, *Reich Releases Labor Department’s 1996 Trendsetter List* (Washington, D.C.: U.S. Department of Labor press release, November 27, 1996), italics in original; Stuart Silverstein, ‘Guess is left off ‘Good Guy’ list pending Labor inquiry’ in *Los Angeles Times (Home Edition)*, November 28, 1996; U.S. Department of Labor, *Sweatshop Task Force Indicates Industry Monitoring Stems Worker Abuses, Labor Law Violations* (Washington, D.C.: U.S. Department of Labor, press release, November 4, 1996).

⁵⁸⁹ Steven Greenhouse, ‘Child-Labor Issues Ignites a Multifaceted Youthful Crusade’ in *The New York Times*, December 25, 1996; Robin Broad and John Cavanagh, ‘Checking It Once, Checking It Twice: Making Sure Child Labor Is Off Your Christmas List’ in *The Washington Post*, December 8, 1996; *The New York Times*, ‘U.N. Sharply Increases Estimate Of Youngsters at Work Full Time’, November 12, 1996; *The New York Times*, ‘Trade Forum to Take Note Of Issue Of Labor Standards’, December 13, 1996.

listing the major retailers that had promised not to deal with such establishments.⁵⁹⁰

At this point, Robert Reich left his position as Secretary of Labor, and the six-month deadline of the AIP was fast approaching. Two AIP members, UNITE and the National Consumers League (NCL) launched a “Stop Sweatshops” campaign, supported by Sweatshop Watch and other groups. Reports started coming out of serious disagreements among the AIP members. A draft agreement was in place by early 1997, but there were conflict points. The group ‘has agreed on child-labor and anti-harassment practices but remains badly split over wages and hours,’ reported Steven Greenhouse in *The New York Times*.⁵⁹¹ As the AIP negotiations dragged on, the Labor Department released one of its quarterly garment industry enforcement reports, tying Guess Inc. (the “cases” from late 1996) and two other Trendsetter companies (Jerell, Inc. and the David Brooks-Robert Scott companies of Kellwood) to sweatshops – and a highly critical report focusing on Nike’s factories in Vietnam was released on March 20 by Vietnam Labor Watch.⁵⁹²

On April 14, 1997, the members of the Apparel Industry Partnership presented their ‘Apparel Industry Partnership’s Agreement’ to the President at a White House press conference. Containing a ‘Workplace Code of Conduct’ and ‘Principles of Monitoring’, this was the task force outcome on the first of the two mandates that the group had been given by

⁵⁹⁰ Steven Greenhouse, ‘Union Says Big Stores Are Using Sweatshops’ in *The New York Times*, December 7, 1996; Bobrowsky, *Creating A Global Public Policy Network*, p. 27; Roy H. Campbell, ‘Hark, the PC angels sing’ in *Journal of Commerce*, December 12, 1996; Barbara Marsh, ‘Garment industry problems not affecting holiday sales’ in *Los Angeles Times (Home Edition)*, December 24, 1996.

⁵⁹¹ Steven Greenhouse, ‘Voluntary Rules on Apparel Labor Prove Hard to Set’ in *The New York Times*, February 1, 1997; Joanna Ramey, ‘Anti-sweatshop task force debating wage standards’ in *Women’s Wear Daily*, Vol. 173, No. 15, January 23, 1997; George White, ‘Panel to call for wage reforms at shops’ in *Los Angeles Times (Home Edition)*, February 27, 1997. At this point, it might be recalled, the Atlanta Agreement was being finalized and presented in mid-February, backed by two of AIP members, Nike and Reebok, cf. previous chapter.

⁵⁹² Stuart Silverstein and George White, ‘California: Guess linked to problem contractors’ in *Los Angeles Times (Home Edition)*, March 4, 1997; Tim Connor, *Still waiting for NIKE to do it: Nike’s Labor Practices in the three years since CEO Phil Knight’s speech to the National Press Club* (San Francisco: Global Exchange, 2001); cf. also Bobrowsky, *Creating A Global Public Policy Network*, p. 31.

President Clinton in August of 1996. Urging more companies to join the agreement, President Clinton praised the agreement as remarkable, historic and an important first step toward improving ‘the lives of millions of garment workers around the world.’⁵⁹³ The event and the agreement obviously attracted considerable media attention, and the initial response of the business and non-business members of the AIP was, broadly speaking, one of moderate satisfaction: the agreement was characterized as unprecedented, but all parties also emphasized that it only marked the beginning, that more companies needed to join, and that several major issues were still to be resolved.⁵⁹⁴

During the months following April 14, the AIP members continued to meet regularly.⁵⁹⁵ In June, however, Karen Kane Co. had become the second

⁵⁹³ The White House, Office of the Press Secretary, *Remarks by The President at Apparel Industry Partnership Event, April 14, 1997* (at www.pbs.org, accessed on April 7, 2003).

⁵⁹⁴ Steven Greenhouse, ‘Apparel Industry Group Moves to End Sweatshops’ in *The New York Times*, April 9, 1997; PBS Online NewsHour, *Labor’s Pains*, April 14, 1997, transcript (at www.pbs.org, accessed 23 February 2004); Joanna Ramey, ‘Clinton urges industry to enlist in the war against sweatshops’ in *Women’s Wear Daily*, Vol. 173, No. 72, April 15, 1997; *The Economist (US)*, ‘Dress code: stamping out sweatshops’, April 19, 1997; *Sporting Goods Business*, ‘Sports apparel goes to Washington: new sweatshop code enlists vendor support’, Vol. 30, No. 7, May 12, 1997; Lawyers’ Committee for Human Rights, *Response to the agreement reached by the White House Apparel Industry Partnership* (New York: LCHR, Media alert, April 11, 1997); UNITE, *Remarks by Jay Mazur, President of UNITE, (The Union of Needletrades, Industrial, and Textile Employees) on the Sweatshop Apparel Task Force delivered at The White House*, press release, 14 April 1997 (at www.uniteunion.org, accessed on January 29, 2004); Interfaith Center on Corporate Responsibility, *A Step Towards Eliminating Sweatshops: The White House Apparel Industry Report*, statement at www.sweatshopwatch.org, accessed on February 20, 2004; Interfaith Center on Corporate Responsibility, *In Sweatshops, Wages are the Issue*, statement at www.sweatshopwatch.org, accessed on February 20, 2004; Linda Golodner, *Apparel Industry Code of Conduct: A Consumer Perspective on Social Responsibility* (Paper presented to Notre Dame Center for Ethics and Religious Values in Business, October 6, 1997).

⁵⁹⁵ The Independent External Monitoring Subcommittee, for example, organized consultations in Washington, D.C., and in San Francisco to which a number of organizations had been invited to share their ‘ideas, experiences or concerns related to implementation of Independent External Monitoring [...]’ The Subcommittee received a number of responses, including from e.g. Jeff Ballinger, the Director of Press for Change. White House Apparel Industry Partnership, Independent External Monitoring Subcommittee, letter dated July 1, 1997; Jeff Ballinger, Director of Press for Change,

company to quit the AIP, and, according to one of the AIP's corporate members, the task force lost its momentum after having presented the preliminary agreement in April.⁵⁹⁶ As mentioned earlier, UNITE had been quite aggressive in its attacks on Guess? (among others) and in early 1997 had launched the Stop Sweatshop campaign. During 1997, the attacks on Guess? were intensified, supported by Sweatshop Watch, cf. above, and by the growing involvement of students in the anti-sweatshop movement and a 'national back-to-school boycott of Guess.'⁵⁹⁷

In late 1997, the AIP members were approaching their second deadline, but there were some fundamental disagreements within the group. In October the National Labor Committee launched a 6 month campaign - supported by AIP members ICCR, UNITE, and the AFL-CIO - to encourage 'consumers to shop with their conscience during the busy holiday season' - and, arguably, to shame the AIP (and other) companies.⁵⁹⁸ By late

Written response to Apparel Industry Partnership, Independent External Monitoring Subcommittee, July, 1997.

⁵⁹⁶ Joanna Ramey, 'Living-wage proviso stalls anti-sweatshop task force' in *Women's Wear Daily*, Vol. 174, October 29, 1997. See also See Bonacich and Appelbaum, *Behind the Label*, pp. 243-244.

⁵⁹⁷ Quote from Lisa Richardson, 'Makers of Guess jeans exploit women workers, protesters say' in *Los Angeles Times (Orange County Edition)*, August 24, 1997, reporting on one of the demonstrations organized by the students and organized labor. United Students Against Sweatshops was formed a year later, in the summer of 1998 (cf. Bonacich and Appelbaum, *Behind the Label*, p. 304). For further on mid-1997, see e.g., Steven Greenhouse, 'Sweatshop Raids Cast Doubt on an Effort By Garment Makers to Police the Factories' in *The New York Times*, July 18, 1997; PBS Online NewsHour, *UNITEing Against Guess*, July 23, 1997, at www.pbs.org, accessed 23 February 2004; Sweatshop Watch, 'Guess? Who's in Trouble' in *Sweatshop Watch*, Vol. 3, No. 1, April, 1997; Sweatshop Watch, 'Guess? Whose Ads Degrade Women' in *Sweatshop Watch*, Vol. 3, No. 1, April, 1997.

⁵⁹⁸ Kernaghan cited from Rosemary Feitelberg and Arthur Freedman, 'Anti-sweatshop Nike: just do it' in *Women's Wear Daily*, Vol. 174, No. 80, October 23, 1997; NLC, *Charles Kernaghan*; Bobrowsky, *Creating A Global Public Policy Network*, p. 37. See also Ramey, 'Living-wage proviso'; Rekha Balu, 'Hurry! There Are Only 27 More Protesting Days Until Christmas' in *Wall Street Journal (Eastern Edition)*, November 28, 1997; Stuart Silverstein, 'Government berates Guess over ads on labor practices' in *Los Angeles Times (Home Edition)*, December 10, 1997; *Los Angeles Times (Home Edition)*, '33 are arrested at Guess protest in Santa Monica', December 14, 1997; Stuart Silverstein, 'California: News and insight on business in The Golden State: Guess 'sweatshop-free' ads come under new criticism' in *Los Angeles Times (Home Edition)*, December 18, 1997.

November, the situation in the AIP task force was unchanged, and cracks were becoming increasingly visible. At the same time, Alexis Herman, Reich's replacement as Secretary of Labor, announced some new and less aggressive anti-sweatshop initiatives. Yet, just before Christmas, the Secretary of Labor also announced that major retailers had again been linked to sweatshops.⁵⁹⁹

Moving into 1998, a mid-term election year in the U.S., the AFL-CIO presented 'an ambitious legislative agenda' calling for another increase in the minimum wage and significantly higher employer contributions to employee health insurance. In late February, sweatshops and codes of conduct were the topics of a U.S.-EU summit, attended by government officials as well as a number of corporate and labor/NGO representatives.⁶⁰⁰ Notwithstanding the promotion of the AIP agreement and the calls for a coordinated global response at that meeting, the AIP members were still in serious disagreement. During the spring of 1998, the attacks on the AIP from outside NGOs continued, and a split among the labor/NGO members became increasingly apparent. At that time, Reebok initiated an independent monitoring pilot. Nike, in turn, had gone through a very difficult period and on May 12 Nike's Phil Knight presented a new set of labor initiatives.⁶⁰¹

⁵⁹⁹ Steven Greenhouse, 'A Deep Split On Policing of Sweatshops' in *The New York Times*, November 21, 1997; Joyce Barrett, 'Anti-sweatshop panel: some progress' in *Women's Wear Daily*, Vol. 174, No. 103, November 25, 1997; Steven Greenhouse, '4 Top Retailers Are Linked to 2 Factories Said to Be Sweatshops' in *The New York Times*, December 14, 1997. See also Glenn Burkins, 'Labor Department Links Retailers To Sweatshops' in *Wall Street Journal (Eastern Edition)*, December 15, 1997; Bonacich and Appelbaum, *Behind the Label*, pp. 241-2.

⁶⁰⁰ Steven Greenhouse, 'After Derailing Trade Bill, Labor Sets Ambitious Goals' in *The New York Times*, January 30, 1998; European Commission (DGV) and U.S. Department of Labor, *EU-US I Symposium on Codes of Conduct and International Labour Standards, Brussels, 20 February 1998: Joint Report on the Main Issues Emerging from the Symposium* (at www.dol.gov, accessed 19 February 2004); Joanna Ramey, 'U.S.-E.U. sweatshop meeting scheduled for today in Brussels' in *Women's Wear Daily*, Vol. 175, February 20, 1998.

⁶⁰¹ See Steven Greenhouse, 'Duke to Adopt a Code to Prevent Apparel From Being Made in Sweatshops' in *The New York Times*, March 8, 1998; Pharis Harvey (ILRF), telefax to Charles Kernaghan (NLC), March 17, 1998; Sweatshop Watch, 'Workers and Advocates Demand a Living Wage' in *Sweatshop Watch*, Vol. 4, No. 2, Summer, 1998; Sweatshop Watch, 'Students Organize to Stop Sweatshops' in *Sweatshop Watch*, Vol. 4, No. 2, Summer, 1998. See also Connor, *Still waiting for NIKE to do it*. For Phil Knight debating, see PBS Online NewsHour, *Newsmaker: Phil Knight*, May 13, 1998

In June, the conflicts within the AIP (and the labor/NGO split) were taken public:

*‘Deliberations of the task force are confidential, but a copy of the proposals recently set forth by the unions and human rights groups was sent anonymously to The New York Times by a member that, some on both sides suggested, wanted the debate aired in public as a way of pressuring the industry.’*⁶⁰²

More specifically, the June 12 proposal presented some – compared to the agreement that was reached in November of 1998 – strong demands on the central points of conflict: the living wage issue, freedom of association and corporate responsibility in countries and areas where there were problems with this, questions related to monitoring and public access to information, as well as the funding of the future association.⁶⁰³

The leak caused some controversy and was followed by a subsequent split in the AIP: a subgroup (consisting of Nike, Liz Claiborne, Phillips-Van Heusen, Reebok, the National Consumers League (NCL), the Lawyers Committee for Human Rights (LCHR), Business for Social Responsibility (BSR), the International Labor Rights Fund (ILRF), and the Robert F. Kennedy Memorial Center for Human Rights (RFK Center)) formed and continued to meet informally until it presented its agreement in early November. UNITE, the Retail, Wholesale, and Department Store Union (RWDSU) of the AFL-CIO, and the Interfaith Center on Corporate Responsibility no longer participated in the AIP, nor did the rest of the companies that had signed on to the April 14 agreement.⁶⁰⁴

(at www.pbs.org, accessed 23 February 2004); PBS Online NewsHour, Online Forum, *Just Doing It? CEO Phil Knight answers questions on Nike’s new labor initiatives*, May 22, 1998 (at www.pbs.org, accessed 23 February 2004).

⁶⁰² Steven Greenhouse, ‘Anti-Sweatshop Coalition Finds Itself at Odds on Garment Factory Code’ in *The New York Times*, July 3, 1998.

⁶⁰³ See Howard, ‘Why Unions Can’t Support’.

⁶⁰⁴ In addition to Warnaco and Karen Kane, which had dropped out before the agreement, these were L.L. Bean, Tweeds, Patagonia, Nicole Miller, Lucky Brands Dungarees and Kathie Lee Gifford; cf. BSR, ILRF, LCHR, Claiborne, NCL, Nike, PvH, Reebok, RFK Memorial Center, Memorandum to All Members of the AIP, November 2, 1998.

On November 2, 1998, the AIP Subgroup presented its ‘Preliminary Agreement’ – long after the deadline of the second of deadline of President Clinton’s 1996 mandate had passed.⁶⁰⁵ The agreement was supported by the NCL, the LCHR, and the ILRF. Four of the initial AIP company members, which had not participated in the Subgroup – Kathie Lee Gifford, Nicole Miller, Patagonia, and L.L. Bean – quickly signed on to agreement.⁶⁰⁶ The ICCR and the union members of the AIP – UNITE and the AFL-CIO’s RWDSU – rejected the agreement.⁶⁰⁷ The agreement and the new Fair Labor Association (FLA) met with a number of critical responses as well as efforts to build an alternative to it: the non-corporate members that had left the AIP task force were among the harshest critics.⁶⁰⁸

⁶⁰⁵ BSR et.al., Memorandum to All Members of the AIP; Bobrowsky, *Creating A Global Public Policy Network*, p. 46; Howard, ‘Why Unions Can’t Support’, p. 34; Aaron Bernstein, ‘A Floor under Foreign Factories?’ in *Business Week*, November 2, 1998; *TIME*, ‘Slaves of New York’, November 2, 1998.

⁶⁰⁶ Bobrowsky, *Creating A Global Public Policy Network*, p. 41.

⁶⁰⁷ Steven Greenhouse, ‘Plan to Curtail Sweatshops Rejected by Union’ in *The New York Times*, November 5, 1998; Steven Greenhouse, ‘Two More Unions Reject Agreement for Curtailing Sweatshops’ in *The New York Times*, November 6, 1998; AFL-CIO, *Joint Statement on the Apparel Industry Partnership by Lenore Miller, Retail, Wholesale and Department Store Union, Jay Mazur, UNITE, John J. Sweeney, AFL-CIO* (Washington, D.C.: AFL-CIO, press release, November 4, 1998); Interfaith Center on Corporate Responsibility, *Interfaith Center on Corporate Responsibility’s Analysis: White House Apparel Industry Partnership Agreement, Nov. 3, 1998* (New York: ICCR, November 1998); UNITE, *Commentary by UNITE on AIP “Preliminary Agreement” of 11/2/98* (at www.sweatshopwatch.org, accessed on January 29, 2004).

⁶⁰⁸ Julie Light, *Sweatwash: The Apparel Industry’s Efforts to Co-opt Labor Rights*, December 11, 1998 (at www.corpwatch.org, accessed on January 29, 2004); Asian Law Caucus et.al., *Sweatshops and Codes of Conduct – On the 50th Anniversary of the Universal Declaration of Human Rights*, press release, December 1998 (at www.sweatshopwatch.org, accessed on February 20, 2004); Trim Bissell (Campaign for Labor Rights), *Analysis of the Fair Labor Association [1998]* (at www.sweatshopwatch.org, accessed on January 29, 2004); Medea Benjamin (Global Exchange), *What’s Fair about Fair Labor Association (FLA)? [1998]*, at www.sweatshopwatch.org, accessed on February 20, 2004; Sweatshop Watch, ‘Fair Labor Association = Starvation Wage’ in *Sweatshop Watch*, Vol. 4, No. 3, December, 1998; Sweatshop Watch, ‘Universities’ Proposed Code of Conduct Fails to Make the Grade: Students and Advocates Propose New Alternative Code’ in *Sweatshop Watch*, Vol. 4, No. 3, December, 1998; Maria Stephens, ‘Code Name: Cover-Up’ in *UNITE! Magazine*, Winter ’99 (at www.uniteunion.org, accessed on 19 February 2004); People of Faith Network, letter to AIP/FLA founders, March 16, 1999; United Students

7.6 Struggles to define the problem

Looking at back at the process as a whole, obviously the terrain, on which the struggles to define the problem played out, changed dramatically during the process. First, the process was one in which sweatshops and corporate responsibility was increasingly politicized, both in terms of the number of individuals and organizations actively engaged in the politics of it, and in terms of its expanding significance at all levels of political life – from the high politics in D.C. to campus activism across the U.S. and organizing drives in Los Angeles, New York City and Central America... Second, and in part related to the first, the worst and most scandalous of all the cases in this process actually concerned conditions *within* the U.S., i.e. the El Monte slavery scandal. Third, unlike previous two cases, public labor agencies – in conjunction with media reports, campaigning, and so on – actually played a rather prominent role in pushing and supporting this development by stepping up enforcement efforts, engaging in aggressive public relations, and by producing a steady stream of – highly publicized – surveys of industry practices, documenting labor rights violations. Again, the U.S. Department of Labor was a central player, but in this case in relation to problems within its own jurisdiction. Fourth, the fact that there was not only a steady stream of media exposes and activists claiming this or that injustice, but there was also this steady stream of reports coming from the agencies responsible for upholding the law implied that: 1) the credibility and legitimacy of campaign and media claims about labor rights violations and sweatshops were, if not directly, then indirectly supported by the latter; and 2) it became increasingly difficult to deny the existence of a general problem of considerable proportions in numerical terms.

Thus, it was rather undisputed from quite early on in the process that sweatshops had returned to the U.S., and that such conditions also prevailed elsewhere – the factual existence of sweatshops in general terms

Against Sweatshops, *Students Speak Out Against University Alliance with Apparel Industry Partnership*, press release, March 16, 1999 (at www.sweatshopwatch.org, accessed on February 20, 2004); Lawyers' Committee for Human Rights, *Rights Groups Applaud University Support for Fair Labor Association; Groups Address Student Concerns About School Affiliation With FLA* (New York: LCHR, Media alert, March 26, 1999); United Students Against Sweatshops, *Student Activists Nationwide Protest Corporate Sweatshop Code; Demonstrators Call on Universities to Reject FLA and Launch Nation-wide University Anti-Sweatshop Initiative*, press release, April 15, 1999 (at www.sweatshopwatch.org, accessed on February 20, 2004); Howard, 'Why Unions Can't Support'.

was not a significant part of the struggles. There were denials of factual existence, of course, but generally not with reference to the problem *in general*. Guess?, for example, continued to deny in absolute and factual terms the existence of sweatshop conditions *in specific cases*, but generally speaking companies responded to charges in a different way – particularly by denying prior knowledge of such conditions at suppliers, by blaming suppliers (passing on the buck), and by issuing more or less sincere commitments to follow up and act on the reported problem(s). In many cases, the form of counter-claim – including the one favored by Guess? - was closely related to matters of legal liability and the kind of pressure faced (targeting and economic coercion below).

The general existence and gravity of the problem was disputed, though, but rather than sweatshop conditions as such, it was the claim that illegal sweatshop conditions were a problem which was contested. The Conservative Caucus of the Californian State Assembly, for example, argued the following in relation – opposition – to the idea of legislating joint liability:

‘People do not work in sweatshops to enjoy a break from six-figure incomes and expense-account lunches. They work long hours for low wages in lousy conditions because they have no better alternative [...] If public policy denies them that alternative, they can increase the supply of workers already competing for low-wage jobs and further depress wages, they can turn to crime, or they can try welfare, homelessness and starvation [...] [Contractors] will not raise wages, reduce hours, and install air conditioning, because if they do, some other wicked s.o.b. who does not do those things will undercut their prices.’⁶⁰⁹

If not always in so expressly and directly cynical terms, the same line of reasoning was present in many warnings against the dangers of over-regulation and not meeting the demands of the market, the international competition (as in the response of the AAMA to the AIP agreement) – and, with respect to sweatshop conditions outside of the U.S., obviously the numerous references to local laws, cultures and traditions, and stage of economic development and the appropriateness of certain conditions that might be considered sweatshop-like elsewhere.

⁶⁰⁹ Cited from Bonacich and Appelbaum, *Behind the Label*, p. 226.

Although such lines of reasoning were forwarded repeatedly, by some economically and politically rather powerful actors, the main effect, however, was not a broader re-definition of the problem during the process – i.e., sweatshops did not generally come to be seen as acceptable because of these. Quite the contrary, one might say. At the same time, however, reasoning in terms of impersonal market mechanisms, economic forces of globalization and laws of nature of economic development as decisive factors was rooted in some of the most fundamental and dominant ideological elements of the time – i.e., elements of a rationality that was not just that of the AAMA or the Conservative Caucus in California, but which was much more widely shared, even by many of the more “critical” players in the process (the Clinton Administration and the DOL, for example). In that sense, this line of reasoning did play a fundamental role in the process, not by re-defining the problem and making sweatshops acceptable, but by explicitly articulating the limits of the possible. There was, of course, also a very material side to all of this: the steady move to off-shore production. As detailed earlier, several of the big players in the industry increasingly de-verticalized and did their contracting-out outside of the U.S.

The steady stream of enforcement reports and the rather aggressive and highly public(ized) – at least from mid-1994 until the formation of the AIP – approach of the Department of Labor and Labor Secretary Reich in naming individual corporations and targeting the retailers and apparel manufacturers collectively not only meant that factual denials of sweatshops became an increasingly difficult road to travel. This added to and supported claims in the media, by campaigners, academics, etc., that the problem was widespread, of considerable proportions, and – which the above counter-claims implicitly acknowledge – structural or systemic.

With respect to the nature of the problem, the enforcement reports furthermore showed that there were relatively low non-compliance rates on child labor in particular, and in many cases no violations were found at all. Thus, while serious when occurring, the problem of child labor was of a rather limited extent compared to the previous two cases. Moreover, the image of sweatshops was a powerful one with deep cultural and historical roots, cf. earlier, and it was increasingly documented as a real and growing problem – at home. Adding to this the gravity of the abuses of adult workers in some of the more egregious cases, particularly El Monte, and the fact that there was a legal framework outlawing (by definition) sweatshops in the U.S. and an increasingly aggressive approach to

enforcing this, the conditions were simply not there for a debate to be focused exclusively or mainly on child labor alone: in this case struggles to broaden the agenda beyond child labor, or to de-link other issues and narrow it down, were not significant.

Age and gender did play in, to some extent, and was particularly marked in the campaigning by the National Labor Committee. For instance in its 1995 campaign against the GAP, where the two young girls told stories of *'being forced by the contractors to work 13 to 18 hours a day. Many girls are forced to forgo basic education to work in the sweatshops. And, for their hard work, they received sub-poverty wages even by their respective countries' standards. The girls also endured humiliation and abuse: they were allowed only two 5 minute bathroom breaks during their 14 hour days; to force them to work faster, supervisors hit them and threw shirts in their faces; to retain their jobs, the girls must take birth control pills; and those who get pregnant were given pills to induce miscarriages.'*⁶¹⁰ Obviously, this added to the symbolic power of the allegations, but it was also a reflection of the conditions and workforce composition in the Central American maquila industries.

Struggles related to the nature of the problem, however, did take center stage in the later stages of the process. First of all, the legalistic understanding of sweatshops was increasingly challenged by many non-business actors, including some of the AIP members, as being too narrow, particularly on the issue of wages – the legal minimum in contrast to the notion of a living wage. Second, there was a struggle concerning the actual meaning and substantive implications of the freedom of association: where some, including members of the AIP, argued that an inclusion of this in the agreement would not be reconcilable with doing business in certain places (most notably, China), others argued that it would. Both played a central role in relation to the modelling process and the splintering of the AIP and will be discussed further below.

Finally, as for the gravity of the problem, the conditions and abuses reported in the media and the numerous campaigns were often quite grave, as in the quote just above. As in the previous case, a “worst case” of slavery played a pivotal role, but not in the same way. The El Monte raid could not be de-legitimized as a case of sensationalist journalism, and the

⁶¹⁰ National Labor Committee, *Charles Kernaghan*; quote from *Sweatshop Watch*, ‘Sweating for the GAP in Central America’ in *Sweatshop Watch*, Vol. 1, No. 1, Fall, 1995.

conditions revealed were arguably not only as grave as it gets – the slavery was right next door. The revelations triggered a public debate and outrage and, cf. above, made for a shift toward a more aggressive stance on part of the Department of Labor. Furthermore, it laid the grounds for new grassroots organizing (e.g., Sweatshop Watch) and the ensuing expansion and more aggressive nature of trade union and labor rights NGOs campaigning. Indeed, El Monte was foundational to the Year of the Sweatshops and to the eventual formation of the AIP task force precisely a year after the raid. Why it took a whole year and a series of additional exposés and scandals is a relevant question, and one that will be discussed in relation to modelling.

7.7 Targeting

A general feature of this process was that – as in the previous case – the targets were not the production companies, the contractors, but rather the buyers: the retailers and the “manufacturers.” Indeed, public labor authorities, organized labor, and large segments of the activist community and involved academics were basically in sync on one point, which transpired in the targeting throughout the process: sweatshop conditions were widespread and resulted from a structural problem for which the contractors should neither be seen as the main culprits nor as the ones with the key to solve the problem. The manufacturers and, in particular, the retailers were the ones in control, exerting the pressures downward in the hierarchy, and the ones collectively with the ability to change things.

Thus, although the stepped up enforcement efforts of the various public agencies did focus on production sites, the main thrust in the new strategies was to get at the buyers – to create joint liability through the hot goods provisions and thereby push companies into “voluntary” compliance agreements. Obviously, this was essentially a form of economic coercion – threatening the confiscation of goods and, for compliance agreement firms, heightened risks of legal liability – and will be discussed further below. As noted earlier, the approach was used with increasing vigor from 1994 onwards, and it was combined with an increasingly aggressive approach to public communications on sweatshops, in particular by the Department of Labor and the Labor Secretary. In this, Robert Reich lunged out at the retailers and manufacturers in general and at their collective industry bodies, the NRF and the AAMA, as well as specific companies that were singled out and named – as “bad guys” in relation to the enforcement raids,

and most of the leading companies above were at some point tied to sweatshop conditions in the U.S. by public authorities. And as “good guys” on the Trendsetter List – although being on the List did not provide shelter for the companies.

As the chronology of events above illustrated, the campaigning by organized labor, labor rights NGOs and students was significant during the entire process. As mentioned, a general feature was that these consistently targeted specific retailers and/or “manufacturers.” Many campaigns focused on some of the not-so-big and less famous companies, such as the Jessica McClintock campaign in the early stage, but most of the more high-profile top companies in the earlier section were targeted in at least one campaign during the process. Except for the El Monte scandal, all of the major exposés in this case were driven by campaigns and the media attention generated – the GAP, Liz Claiborne, Kathie Lee... Obviously, the National Labor Committee played a prominent role in this. The December 1995 agreement with the GAP is often hailed as the first time a U.S. apparel company agreed to independent monitoring, and the Kathie Lee scandal in mid-1996 was instrumental in setting in motion the events that within a couple of months led to the formation of the AIP.

Moreover, the Kathie Lee exposé hit the headlines at a politically critical juncture: 1996 was election year, and the Democrats needed the backing of the trade unions. Furthermore, within a few days after the initial Congressional testimony, the Department of Labor released the first national report:

‘Labor Secretary Robert B. Reich today released the first-ever national report on garment worker abuse that shows, in a six-month snapshot, that almost half the nation’s garment contractors investigated in this fiscal year were found to be violating federal minimum wage or overtime laws.’⁶¹¹

This was, however, probably as far as Reich could go in terms of raising problematic issues at that point: the course for the 1996 election campaign’s economic message had been set, in Reich’s words, for *‘nothing but happy talk’* whereas *‘the darker side of the economy - increasing job insecurity, widening inequality - must not be mentioned. It will be hidden*

⁶¹¹ U.S. Department of Labor. Press Release, 3 May 1996. *Labor Secretary Releases Nationwide Garment Report Revealing Sweatshops Persist in U.S. Apparel Industry.* Washington, D.C.: U.S. Department of Labor.

*from view for the next six months. I can't talk about it. I'm locked in the cabinet.*⁶¹²

Finally, it should be noted that industry players themselves did some targeting of their own. Obviously, individual companies responded to their being singled out in various ways, as discussed in the previous section. One of the most common responses was to deny any prior knowledge of the alleged problem, of course, and then to re-target the criticism by blaming the next node – the “manufacturers” and/or the contractors. As for collective industry bodies, a similar approach was taken by the National Retail Federation.

7.8 Economic coercion

As in the previous case, trade sanctions – actually imposed or the threat thereof – were insignificant in the sense of being a factor driving the present agreement into existence and shaping its particular form. Certainly, there was in the broader context a growing debate over trade and labor standards. Yet, it has to be recalled that some of the big scandals and exposés driving the sweatshop agenda by the mid-1990s, were in fact centered on working conditions and labor practices within the U.S. Tellingly, by the mid-1990s labor rights groups were increasingly dismayed with the Clinton Administration’s balancing of trade and labor rights concerns (cf. below), and it could therefore be argued that the threat of trade sanctions even in a rather vague and indirect form was not a central force in shaping business responses to the agenda.

If we turn to “other regulatory interventions”, as mentioned earlier, when the AIP was established, there was some movement on the Hill and a couple of sweatshop bills were introduced in September of 1996 – the Child Labor Free Consumer Information Act and the Stop Sweatshops Act (see note 582). The former would have introduced a voluntary child labor labeling system for apparel and sporting goods, whereas the latter was a proposal to amend the Fair Labor Standards Act so as to make manufacturers and retailers legally accountable for sweatshop conditions at their contractors. These met with strong resistance from most business quarters:

⁶¹² Reich, *Locked in the Cabinet*, p. 321.

‘Politically, the “Stop Sweatshops” bill was anathema to the Republican majorities in both houses of the Congress [...] The American retailers militantly defend the principle of their separation from and freedom of responsibility for the production of garments they sell.’⁶¹³

Moreover, being introduced so shortly before Congress was to adjourn, the bills stood no real chance of being acted upon in 1996. Thus, although Democratic Representative Clay explained the late introduction by the fact that the sweatshops bill had been postponed to await the AIP process, but then introduced because more was needed than the voluntary AIP initiative, the introduction was widely viewed as a symbolic token to labor in election time.⁶¹⁴

Obviously, these bills were not part of the AIP mandate, but the movements on the Hill were part of the context in which the mandate was put together, and the nature and the fate of the two bills is informing of the ‘limits of the possible’ in terms of the Administration’s more regulatory options: there were some real political constraints in addition to the Administration’s preferences for a voluntary and private venture. As one of the company members of the AIP put it,

‘There were some voices up on Capitol Hill, some legislators, who were beginning to talk about legislation requiring... placing restrictions on imports that could be found to be made with sweatshop labor. And in response, the White House decided that it would attempt to convene not a mandatory initiative but a voluntary initiative. And so it did.’⁶¹⁵

More importantly, perhaps, there were a number of regulatory innovations and interventions on part of the labor authorities: the re-discovery of the hot goods provision, the release of enforcement reports, of Trendsetter Lists, the introduction of compliance agreements, etc. For many companies, certainly the fines, confiscations and costs following an enforcement raid or a law suit may have been significant in the shorter term. Yet, if we consider the process as a whole it would seem farfetched to claim that these regulatory interventions were a central factor, at least in

⁶¹³ Ross, ‘The New Sweatshops’, pp. 111-112.

⁶¹⁴ Barrett, ‘Sweatshop bill’.

⁶¹⁵ Interview with Doug Cahn.

terms of the direct and immediate material implications associated with regulatory sanctions (the fines, confiscations, etc.).

At the same time, many of the activities of those authorities involved are perhaps better understood and interpreted on par with, for example, the campaigns of labor rights organizations. Along with the legislative proposals mentioned earlier, they contributed to adding pressure on the industry. In particular during the first term of the Clinton Administration and Reich's term as Secretary of Labor, especially the U.S. Department of Labor pursued a rather aggressive strategy, relying heavily upon publicity generation related to the release of an updated Trendsetter List, a new enforcement report, etc. A strategy, it may be recalled, dubbed a 'No Sweat crusade' by Maria Echaveste in the conversation with Reich where she suggested that he seek to enlist Kathie Lee as an endorser of corporate responsibility. Viewed in these terms, the Department of Labor in particular was certainly one of the key forces in shaping the sweatshop agenda and, through an aggressive public relations strategy, in putting pressure on the industry.

The Clinton Mandate given to the AIP task force was, of course, also a regulatory intervention, and certainly a central one. As a force of economic coercion, however, it was first and foremost significant with respect to those few, designated members of task force (further below).

Furthermore, as the Chronology of events above showed, there was a literal explosion in the number of campaigns and in the negative publicity on the industry and the sweatshops in it. These may, moreover, be said to have come in several waves. The El Monte scandal was central in one of these, and the Kathie Lee scandals were no less central to the negative publicity and campaigning activities in mid-1996. By comparison, the working conditions revealed by the El Monte raid were indisputably worse than those in the Kathie Lee scandal. Yet, the pressures generated on the industry by all of the above – the regulatory interventions, the continuously aggressive Secretary and Department of Labor, the campaigns and negative media coverage – were quite different by mid-1996 than they had been a year before. In addition to a number of high-political reasons discussed in the following section, these pressures were instrumental in creating the basis for the establishment of the task force in mid-1996. And because of this pressure, witness the proliferating codes of conduct at the time as well as the number of companies signing on to Compliance Agreements, a quite

considerable number of companies could have been “persuaded” to join the task force – or some other type of group and process.

As far as the particular constellation of the AIP task force is concerned, however, it may be argued that this resulted less from economic coercion than from happenstance and personal contacts (being at the Fashion Industry Forum, for example, and being in the right conversation) as well as the specific political situation within the Department of Labor and the Administration. Certainly, the prominent corporate members of the task force had all been targeted in campaigns or involved in controversies related to child labor and labor rights – indeed, Nike was still very much at the centre of attention, cf. the Chronology above – but they had also already gone considerably farther within the CSR arena than had the majority of apparel industry companies.

7.9 Modelling the solution

Givens

As mentioned, in early August of 1996 the members of the AIP task force were given a two-pronged mandate by President Clinton. At the time, there were a number of aspects that were more or less given.

First, a fairly broad agenda – i.e., the inclusion of a broad range of issues – was a given for a more collective initiative in mid-1996. During the process, the struggles to define the problem had not established a narrow agenda or point of departure, e.g. in terms of primarily child labor or a particular subset of labor rights.

Second, with respect to child labor, an important exclusion in depth was also a given. Curiously (especially in light of the previous two chapters and the “lessons from Bangladesh”), the fact that aspects such as social protection and rehabilitation, which by then appeared to have become standard concerns of “best practice” in cases of focused interventions on child labor, were not raised or discussed at all.⁶¹⁶

⁶¹⁶ When asked directly about the reasons for this, several interviewed task force members seemed kind of surprised, and it appears that the discussions were quite simply based on the shared presupposition of both companies and NGOs alike that this was not part of what a code of conduct should do. As one NGO member of the AIP stated, when asked if and why these matters had not been part of the code discussions: ‘No, it’s not part of it.’ (Interview with Linda Golodner). Hence, according to several members, child labor was the easiest issue to deal with. As Harvey put it, ‘We didn’t

Third, the inclusion of monitoring and verification, in one form or another, was a given element in a potential effort at the time. This would not have been the case just a few years earlier, but from mid-1995 onwards, monitoring and verification had become a central element in partnership agreements and the broader debate on corporate responsibility. Previous agreements, and perhaps most importantly the GAP-NLC agreement on independent monitoring from late 1995, had set new precedents, and for the AIP initiative it would have been highly problematic to aim at an agreement which did not – as a minimum – include some semblance of independent monitoring. Hence, it was an integral part of the mandate’s taking steps to ensure that sweated labor was not used, and the task force would have to deal with the issue of what to do with the results of the monitoring of the code, how to inform the wider public on this.⁶¹⁷

Fourth, although a voluntary and private code of conduct initiative and effort was perhaps not the given and natural form, there were a number of reasons why the mandate was produced at that particular time and took on that particular form. To begin with, by mid-1996 it had also become increasingly clear that – in spite of the growing political focus and the new tactics employed by labor enforcement agencies – there was little improvement in compliance with basic labor laws within the U.S. apparel production. Furthermore, as noted, private company codes within the industry were proliferating at that point in the mid-1990s, and the previous chapter also evidenced the interest of trade unions and others in the development of codes at the time. Also, the Department of Labor had just conducted its 1996 “child labor” hearings, focusing on the apparel industry

have to fight on it much. The issues became not whether child labor was good or bad, but how to define it, how to deal with youth labor, whether Convention 138 provided a significant enough guidance for youth labor, and what kind of protection for youth labor – particularly on hazardous occupations. And what age to set the child labor limit at.’ (Interview with Pharis Harvey).

⁶¹⁷ Labeling was also considered in relation to the AIP mandate. In June, Secretary Reich had asked the ILO to consider a “No Sweat” labeling program, and he had also sought to make this part of the formal AIP mandate. Labeling was not explicitly in the mandate, but it was not ruled out either. Instead, the mandate referred in somewhat vague terms to “options to inform”: ‘First, they will take additional steps to ensure that the products they [companies] make and sell are manufactured under decent and humane working conditions. Second, they will develop options to inform consumers that the products they buy are not produced under those exploitative conditions.’ See Ramey, ‘Reich’s sweatshop war goes offshore’; Barrett, ‘Sweatshop bill’.

and codes of conduct, and a report was being prepared on precisely that topic. As a senior DOL official put it:

*‘Codes of conduct was clearly becoming a big issue. Was being talked about a lot, it was being talked about tripartite, it was being talked about in the context of the ILO, the whole labor standards, the social clause and the WTO was really heating up. So politically, on the international level, this was an enormous issue.’*⁶¹⁸

The nature and the timing of the mandate, however, need to be understood within the broader political context. Given the recent shut-down of the federal government and the dominance of balancing the budget as a concern within the Administration, boosting big government funds for labor authorities was arguably a mute issue for both political and economic reasons – certainly in the sizeable amount it would take to re-regulate so as to effectively deal with the widespread and systemic nature of the sweatshop problem in the industry. Yet, the Clinton Administration had already demonstrated a preference for a private, self-regulatory approach on labor rights in relation to international trade:

*‘In 1994 President Clinton separated trade policy disputes from U.S. pressure for improvement in Chinese human rights, effectively establishing separate negotiating tracks for these arguably related issues.’*⁶¹⁹

As mentioned, the Model Business Principles were an attempt to counter the criticisms particularly on these matters, and the idea behind the AIP was very similar in nature. The AIP was just as voluntary, only now the private actors were asked to draw up the solution, rather than the Administration handing out a set of principles for U.S. multinationals. Furthermore, in spite of the more aggressive approach of the Department of Labor, this too subscribed to ‘voluntary compliance agreements’ – explicitly basing the strategy of its No Sweat campaign on its own lack of resources to police the industry. In other words, this was not merely a matter of a politically and economically constrained Administration: it also positively preferred playing the role of facilitating an ‘innovative’ (private and voluntary) partnership approach to sweatshops, bringing the warring parties together and assisting them in finding a solution to the problem. The Administration was in effect seeking to take the political opportunity

⁶¹⁸ Interview with former Department of Labor official.

⁶¹⁹ Hemphill, ‘The White House Apparel Industry Partnership Agreement’, p. 131.

in the growing “need” for standardization by facilitate the brokering of a new “model” code of conduct.

Moreover, 1996 was an election year, and Clinton needed to secure the backing of organized labor for the election. As Terry Collingsworth of the ILRF put it:

‘[...] in the one field that mattered, the linkage between trade and labor, and whether you would get negotiating authority and trade agreements and so on that had labor standards, Clinton was just like all the Republicans. He wanted to trade first, talk about labor second. So that he was not advocating for this in that one arena that mattered, and then the way to throw bones to the labor movement and the human rights movement was to try to put these little band-aids on. Like trying to support an initiative like the Apparel Industry Partnership, FLA.’⁶²⁰

This, in part, may account for the timing of the mandate. After all, one might wonder why a task force was not established a year earlier, in the wake of the El Monte scandal. Obviously, the El Monte scandal *did* attract the attention of the Administration and the Department of Labor alike, and shortly thereafter UNITE had furthermore suggested that some high-level commission be established to address the sweatshop issue, propose solutions and facilitate partnerships (cf. above).

However, it also has to be recalled that the Clinton Administration had presented its Model Business Principles (MBP) in March of 1995. In the period following El Monte, the MBP might still have been seen as a potentially successful initiative by the Administration. By mid-1996, however, it had become clear that this was not going to be the case. Furthermore, although Reich and the Department of Labor had been putting some pressure on the apparel industry since 1994, during 1996 sweatshops became much more politicized, particularly with the Kathie Lee Gifford scandals:

‘In the summer of 1996, the NLC hit the publicity jackpot when, following Charlie Kernaghan’s testimony at a congressional hearing, TV celebrity Kathie Lee Gifford’s Wal-Mart clothing line was linked to child labor and human rights abuses, first in Honduras, and then by UNITE workers to wage violations in a New York City sweatshop. Gifford’s saccharine TV

⁶²⁰ Interview Collingsworth.

*personality and her precious association with children's charities were a perfect foil for revelations about child labor.'*⁶²¹

So, in the wake of the National Labor Committee's exposé of Kathie Lee and Wal-Mart, Labor Secretary Reich moved on the issue to make a deal with Gifford, and then hosted the unprecedented Fashion Industry Forum in mid-July where the Administration could 'feel this out' and where the ground was laid for the AIP ceremony a couple of weeks later.

Splits and compromises: conflicts unresolved

As the Department of Labor also noted in its 1996 report, 'Creating a corporate code of conduct is an easy task.'⁶²² The Administration's Model Business Principles from 1995 were available, as were many other codes of conduct – individual company ones as well as multi-stakeholder ones – and shortly after the White House ceremony in August, it might be noted, the FIFA Code was announced – and hailed by Robert Reich and senior DOL officials. Yet, if codes were 'hot' and exploding in numbers, they also varied considerably in their approaches to the range of issues included, implementation, monitoring and verification.⁶²³ There was no generally accepted and authoritative code, and the task of fulfilling the Clinton mandate was far from easy.

Already before the April 1997 agreement the divisions were publicly visible. Moreover, the agreement was merely a preliminary compromise, leaving the major conflict points unresolved, in what was characterized as '*a fragile, highly compromised agreement contingent on developing a strict implementation program.*'⁶²⁴ After a long period of deadlock, there was a decisive turn in mid-1998 as the so-called June 12 proposal was leaked to the media and eventually resulted in the break-up of the task force:

⁶²¹ Andrew Ross, 'Introduction' in Andrew Ross (ed.), *No Sweat: Fashion, Free Trade, and the Rights of Garment Workers* (New York: Verso, 1997), p. 27.

⁶²² U.S. Department of Labor, Bureau of International Labor Affairs, *By the Sweat & Toil of Children (Volume III)*, p. 116.

⁶²³ U.S. Department of Labor, Bureau of International Labor Affairs, *By the Sweat & Toil of Children (Volume III)*, p. 114.

⁶²⁴ Howard, 'Why Unions Can't Support', p. 36.

*‘The employers’ response to this final proposal [...] was to accuse UNITE of obstructing an agreement and to declare that they would no longer continue to negotiate if UNITE was at the table. Four of the NGOs accepted this condition and proceeded to negotiate [...]’*⁶²⁵

The non-industry members that walked out were UNITE, the RWDSU, and the ICCR.⁶²⁶ As noted, a subgroup of the task force then continued to meet and eventually produced the November 1998 agreement.

There were numerous conflict points involved in this, three of which were particularly significant in the process and in terms of explaining the nature of the agreement. First of all, there was the matter of *freedom of association and the right to collective bargaining*, also referred to as ‘the China issue’: how would a potential agreement deal with countries in which those rights and freedoms were not enjoyed by workers, and where the companies signing up to the agreement therefore would most likely not be in a position to abide by potentially strict language in an agreement? Obviously, for the companies in the task force and within the apparel industry more broadly, this was a major issue given the significance of China as a leading production site, cf. earlier. For some of the non-industry task force members, in turn, this was the central concern:

*‘So, does signing on to this code of conduct mean that we have to withdraw or refrain from purchasing goods and manufacturing in China, so that was an unacceptable... It was unacceptable to the businesses around the table to make that declaration. [...] And it was unacceptable to the trade unions, as I understand it, to not deal with the China issue.’*⁶²⁷

Hence, the parties were caught in a situation where one side would have to compromise on a central concern, with profound implications for the

⁶²⁵ Howard, ‘Why Unions Can’t Support’, p. 36.

⁶²⁶ In the following, I focus mainly on the ICCR and UNITE. The other trade union member, the RWDSU, also left, but ‘There was only one union really that left, UNITE, left. The Retail Clerks never really were there.’ Interview with Terry Collingsworth. UNITE had also tried to get the ILRF to leave the task force, organizing a number of unions on the ILRF board to threaten to leave the board if the ILRF did not leave the AIP. A ‘very, very ugly board meeting’ resulted in a majority of 1 vote to give Pharis Harvey (ILRF) the mandate to continue negotiations, and the labor members left the ILRF board. Interviews with Doug Cahn and Pharis Harvey.

⁶²⁷ Interview with Doug Cahn.

compromising party. Industry players were not willing to accept strict language with universal applicability on this point, if it meant staying out of China. UNITE, in particular, was equally unwilling to make concessions on this point:

*'They never would seriously deal with the issue of freedom of association. For us, for the union, that's a fundamental issue. One of the basic ILO core labor standards, what we call internationally recognized labor rights. They couldn't deal with it. Meaning, it led to what was often called the China Question. [...] There is no freedom of association in China. Every company on the Apparel Industry Partnership was producing in China. You know, big time. So, our position was, "Well, okay. So if you are producing in China, then you are not allowing people freedom of association. And if freedom of association is in the Code, then you don't meet the Code." Rather clear-cut. That was unacceptable. They couldn't deal with that. [...] You know, "Well, are you just going to write off China?" "No, we're not going to write off China. But what's the point here, if... You either stand for these values, or you don't.''*⁶²⁸

The 1997 compromise left the matter unresolved, leaving in the open the actual and substantial implications of the moderate formulation agreed upon. In essence, the 1997 compromise merely postponed the hard bargaining:

*'Task force members expect battles over doing business in China. Labor and human rights groups called on companies to pull out of that fast-growing industrial giant because it restricts freedom of association and collective bargaining, two violations of the code of conduct. [...] Labor union officials say they expect a struggle with companies over the steps their Chinese factories should take.'*⁶²⁹

The split in 1998 was in no small measure related to the inability of the task force members to come to an agreement on this point. The June 12 proposal, leaked to put pressure on the negotiating parties, thus contained the following language: 'If, despite the best efforts of employers to adhere to these and other appropriate special guidelines approved by the Association, no Participating Company is able to demonstrate progress toward implementation of those provisions of the Code addressed by the

⁶²⁸ Interview with Mark Levinson.

⁶²⁹ Greenhouse, 'Accord to Combat Sweatshop Labor'.

country guidelines, the Association shall determine whether production under such circumstances is consistent with the Workplace Code and Principles of Monitoring.’⁶³⁰ This was not acceptable to the industry members: *‘In other words, if companies were doing all they could and the problems persisted, then the host government would be put on notice that there could be consequences for its failure to protect internationally recognized workers’ rights. The companies would not hear of this. Nobody was going to tell them where they could or could not produce. Why, we were telling them they had to get out of China! [...] In fact, the companies were not being told they had to get out of China, and they knew that. [...] To the contrary, if they were going to take the code seriously, the companies had to become a force for change and for enforcement of workers’ rights. That meant that the firms had a responsibility to engage the Chinese government [...].’*⁶³¹

Yet, the 1998 break-up also demonstrated that there were disagreements among the task force non-industry members: not all shared the intransigent stance of UNITE. According to Harvey, who represented the ILRF in the negotiations, *‘[freedom of association] was the primary reason that UNITE pulled out of the negotiations. They seriously wanted to bar companies from producing in countries where freedom of association was not allowed by law. [...] I think all the rest of us saw that that was not a workable solution. That there were good things that we could do in China, and that we shouldn’t hold the whole process hostage to that one issue.’*⁶³²

Hence, when UNITE left the task force, the negotiation structure basically changed, and a compromise was reached: requiring employers to recognize and respect the right of employees to freedom of association and to collective bargaining, the Code contained special country provisions to *‘[...] hold companies and their subsidiaries, contractors and subcontractors accountable for recognizing worker organization for the purpose of collective bargaining, and for not collaborating in official or unofficial suppression of such worker organizations.’*⁶³³ As noted (in Chapter 1), the ILRF listed this as one of the strengths of the AIP/FLA Code, while at the

⁶³⁰ Cited from Howard, ‘Why Unions Can’t Support’, p. 41.

⁶³¹ Howard, ‘Why Unions Can’t Support’, pp. 41-42.

⁶³² Interview with Pharis Harvey.

⁶³³ International Labor Rights Fund, *Assessment*.

same time listing as one of the Code's weaknesses the fact that it '[...] does not force companies to leave a country where laws don't respect freedom of association, although actual production in that country must meet the standards of the FLA for the company to be certified.'⁶³⁴

A second conflict point concerned *wages and the matter of a living wage*. As Pharis Harvey puts it, '*the living wage issue was a very hard one. It took a lot of intense negotiations to reach [...] some resolution on the living wage issue that we could all live with. All but ICCR and UNITE.*'⁶³⁵ As noted earlier, there were different notions of what constitutes a sweatshop, the less restrictive one placing considerable emphasis on wages in particular. Hence, while the conflict reflected differences of understandings within the task force of the nature of "the sweatshop",⁶³⁶ for the non-industry members of the task force, this was a central concern, in particular for the ICCR:

*'They're basically a shareholder activist organization. And they negotiate with companies to establish a fair wage policy, and they felt that they couldn't sign on to the FLA code, if it didn't have a fair wage component. And that the component that we settled on, which was to come back and address that issue after a year or two – which we are now starting to do – wasn't adequate for them, because the companies would say, "Well, why did you join this effort? Why are you arguing that we ought to have a fair wage, when you're part of an initiative that doesn't have any?'"*⁶³⁷

For the industry members, in turn, the living wage issue was seen as going beyond the responsibility of private companies and the aim of eliminating sweatshops, as an attempt at redefining the nature of the problem (and the purpose of the AIP), and – obviously – the material/economic and administrative ramifications of an agreement containing language on a living wage were quite significant:

⁶³⁴ International Labor Rights Fund, *Assessment*.

⁶³⁵ Interview with Pharis Harvey.

⁶³⁶ Cf. Daniel E. Bender and Richard A. Greenwald (eds.), *Sweatshop USA: The American Sweatshop in Historical and Global Perspective* (New York: Routledge, 2003); Daniel Bender, 'Sweatshop Subjectivity and The Politics of Definition and Exhibition' in *International Labor and Working-Class History*, No. 61, Spring 2002.

⁶³⁷ Interview with Pharis Harvey.

*'The NGOs started out demanding a requirement that businesses pay workers a "living wage," or enough to meet basic needs. The companies, says Karp, were unanimously opposed to the idea. When asked why, she argues with a stern face that if large U.S. companies raise wages in a developing country, they can cause inflation, or drive other businesses away. Beyond that, it's not clear, country to country, what a "living wage" would be, she insists: "We're not going to go through and do an analysis of what is a living wage. We are in a business. We were saying [during the negotiations] that we weren't even going to join this if it says we have to pay a living wage.'"*⁶³⁸

Again, the 1997 agreement left the conflict unresolved in a compromise that was somewhat vague, but not easily reached:

*'A compromise was proposed: Would the companies simply acknowledge that "wages are essential to meeting employees' basic needs"? A seemingly harmless admission, and eventually the companies consented, but not without a fight, says former Department of Labor official Echaveste [...] "I sat about six hours negotiating one sentence," she says. "You're sitting in that room and you want to go and break some heads, because of course what you earn has to do with how you provide for your family!" [...] Karp took a hard line on the wage issue, but she also played a conciliatory role [...Echaveste:] "She kept saying [to the NGOs] that the Apparel Industry task force could not be so far out that no one would follow," she says. "At the same time, she would say to the industry that this can't be just form over substance.'"*⁶³⁹

And, again, the compromise reached merely postponed the hard bargaining:

'the key issue of paying a sustainable living wage requires further work by the Partnership and Association. In its WORKPLACE CODE OF CONDUCT, the Partnership at first acknowledges the importance of paying employees sufficient wages: "Employers recognize that wages are

⁶³⁸ Jaskunas, 'The Sweatshop Dilemma', p. 38.

⁶³⁹ Jaskunas, 'The Sweatshop Dilemma', p. 38.

essential to meeting employees' basic needs," but only goes as far as setting a wage floor well below the sustainable living wage [...],⁶⁴⁰

In the deadlocked period from mid-1997 to mid-1998, the companies were still reluctant to give in on this point, while the NGOs and unions kept pushing. One of the proposals on the table was the establishment of a method to determine what constituted a living wage in different locations. Yet, agreeing to this would amount to nothing less than agreeing to a living wage, and so *'As a substitute for this proposal, the Department of Labor offered to do a survey of publicly available data on the subject and submit it to the Fair Labor Association for its consideration.'*⁶⁴¹ The question still remained, however, what the parties would do with the survey. Again, the 1998 break-up demonstrated that there were disagreements among the task force non-industry members – UNITE and the ICCR being, in particular, unwilling to accept the exclusion of living wage requirements in an agreement – and the change in the negotiation structure once again made possible a compromise. Compared to a requirement on the legal minimum wage, the industry players had made some concessions, but so had the remaining nonindustry members: compared to the June 12 proposal, the November 1998 agreement *'retains the DOL survey and some of the language of the final union/NGO proposal. [...] The missing words would have established a process that examined workers' basic needs, minimum and prevailing wages, and the extent to which the latter meets the former. The elimination of this language releases the Association from the specific obligation of determining a living-wage standard. In its place is the vague charge to review the DOL survey and perhaps other studies and their implications, "if any," for the code.'*⁶⁴²

To the ICCR in particular, supporting the November 1998 agreement would have been an unacceptable, self-contradictory and potentially counterproductive decision:

⁶⁴⁰ Interfaith Center on Corporate Responsibility, *A Step Towards Eliminating Sweatshops*; Interfaith Center on Corporate Responsibility, *In Sweatshops, Wages are the Issue*.

⁶⁴¹ Howard, 'Why Unions Can't Support', p. 39.

⁶⁴² Howard, 'Why Unions Can't Support', p. 39.

‘The sustainable living wage – a wage which allows workers to live a sustained and healthy life – is central to our concept of affirming the dignity of every worker and central to our work with individual companies. This core issue for our membership is not adequately addressed, yet is essential to any effective anti-sweatshop strategy.’⁶⁴³

Finally, the third of the main conflict points was the matter of **monitoring and verification**:

‘While the NGOs conceded that human rights groups don’t have the resources to monitor all apparel factories, they insisted that local NGOs be involved [...] “The last thing you want,” [Karp] argues, “is a bunch of accountants from New York walking into a factory in Vietnam and talking to underage women.” But Karp’s peers on the partnership, many of whom advocated the use of accounting firms as monitors, were wary of the prospect of incorporating outside activists into their business. “A lot of people interpret this as – you’re forcing on the contractor a representative for the workers,” says committee member Stanley Levy, who represents apparel maker Karen Kane Incorporated [...]’⁶⁴⁴

For the non-industry members of the task force, this was an important enough concern, but it does not seem to have been so essential as to result in a walking out from the negotiations in itself: the above issues and the double intransigence of industry and some nonindustry members were much more central in producing the 1998 break-up. Yet, for some of the *industry* players the notion of external NGO or trade union monitors was unacceptable: already before it was presented, the 1997 Agreement was criticized not only by the AAMA, but also by the President of the California Fashion Association, Lonnie Kane (who happened to also be President of Karen Kane Co. and an AIP member). Furthermore, on April 10, one of the participating companies - Warnaco Group - quit the task force: “We don’t want an association monitoring our company,” said the Group’s CEO, Linda Wachner, voicing a critique similar to that of Lonnie Kane – which ‘also dropped out of the partnership at the last minute on the

⁶⁴³ Interfaith Center on Corporate Responsibility, *Interfaith Center on Corporate Responsibility’s Analysis: White House Apparel Industry Partnership Agreement*, Nov. 3, 1998 (New York: 1998).

⁶⁴⁴ Jaskunas, ‘The Sweatshop Dilemma’, p. 39.

same grounds.’⁶⁴⁵ By all counts, this was an issue on which the industry members were not in agreement, and several task force members pointed to one of the companies (Warnaco) as particularly difficult: ‘[the industry members] had their very heated debates as well. [...] there was a good bit of happiness when one company pulled out. That had been a very difficult company for them to deal with as well.’⁶⁴⁶ Some of the other companies, in turn, were already engaged monitoring and verification activities similar to those being discussed, albeit the negotiations would place more general requirements on participant companies.

The above, moreover, suggests that, with respect to this conflict point, the 1998 break-up was less significant in determining the final nature of the agreement. First of all, already at the 1997 compromise, the most intransigent industry opponents of concessions on this conflict point had left the task force. They were not the most prominent and powerful corporate members of the task force, but their departure enabled the remaining ones to make some concessions on this point: in the 1997 compromise audit firms hired by companies as well as local independent NGOs would be allowed to monitor on the two conditions that i) they must consult local NGOs or workers representatives (if any), and ii) they would have to be accredited by a body to be created to implement the Principles of Monitoring. Already at this point, prominent corporate members such as NIKE and Phillips van Heusen indicated that they would use internal monitors and accounting firms.⁶⁴⁷ Secondly, while the non-industry members to resign from the task force were highly critical of the November 1998 agreement, had they achieved significant concessions on the above conflict points, they would have been able to justify concessions on monitoring and verification. Yet, the break-up was not altogether insignificant: the final negotiations involved hard bargaining over the specific monitoring requirements and the relationship between internal and external monitoring in particular. In the end, the companies accepted external monitors in the agreement, but were able to draw some concessions on the specifics (cf. Chapter 1).

⁶⁴⁵ Quotes from Ramey, ‘Warnaco quits’, and Jaskunas, ‘The Sweatshop Dilemma’, p. 39. See also Greenhouse, ‘Accord to Combat Sweatshop Labor Faces Obstacles’; Bobrowsky, *Creating A Global Public Policy Network*, p. 33.

⁶⁴⁶ Quote from interview with Harvey; corroborated in other interviews.

⁶⁴⁷ Jaskunas, ‘The Sweatshop Dilemma’, p. 39.

In sum, on the first two conflict points in particular the interests of the involved parties were profoundly conflicting, the formal designation and mandate as well as the consensus-based decision-making in the negotiations further contributing to explain why intransigence emerged as a key negotiating tactic during the process. Moreover, the parties were locked in a situation where the potentials for inclusions and exclusions were such so as to further contribute to this: the agenda and mandate was firmly defined in broad terms (i.e., breadth was not significantly contestable, and narrowing or de-linkage were not realistic options) – instead, the conflicts involved several disputes over the depth and substance of key issues, with potentially far-reaching ramifications for the parties. It goes with the picture that forum-shifting, which was significant in the previous chapter, was not available as an option to the key industry players: a company like NIKE had already taken some serious reputational blows, and Reebok and the rest were already seen as hypocrites by industry critics; the industry players that did quit the task force were, in terms of the negotiations, the less significant and powerful ones, but their departure was not only part of the final shape of the agreement in terms of the actors involved: it was also illustrative of the wider absence of the vast majority of retailers and manufacturers.

As far as the 1998 break-up was concerned, obviously, as one corporate representative put it,

‘[...] the trade unions dropped out and left quite a large hole on that side of the table.’⁶⁴⁸

This made the final compromising possible. Whether the non-industry side could have gained further concessions, had UNITE and the ICCR remained at the table, is an open question. The final negotiations did involve hard bargaining, and in this final stage, the departure of half of the NGO members also gave the remaining ones “added value” to the industry members – in particular the ILRF’s Pharis Harvey, who was now the only remaining “labor” representative left:

‘[...] I think I only had to threaten to resign about 5 times in that process. And I could do that, because I was the only NGO representative that gave

⁶⁴⁸ Interview with Doug Cahn.

*the process a semblance of integrity on labor issues. The others were not labor NGOs. And I knew, I had to have leverage, and I could use it.*⁶⁴⁹

Moreover, already in late 1997, UNITE and the ICCR had become heavily involved in anti-sweatshop campaigning along with the National Labor Committee and others, in part as an attempt at outside-pressuring of the inside-dealings, and with the break-up the two were among the harshest critics of the task force and the agreement.

7.10 Concluding remarks

This chapter has explored the background for the November 1998 agreement between the remaining members of the Apparel Industry Partnership. Why did this agreement come into existence and in that particular form?

First of all, sweatshops had not only returned to the U.S. (apparel production) – the return was accompanied by a growing and, by the mid-1990s, massive attention spanning both high and low politics, and encompassing broad media coverage as well as numerous campaigns, exposés and scandals. Part of this was the U.S. Department of Labor and certain state labor authorities. In 1994 the Department of Labor shifted to a more aggressive anti-sweatshop strategy, and this contributed to placing sweatshops in the apparel industry on the agenda - along with numerous campaign activities by labor and human rights groups. The Department and the Secretary of Labor, Robert Reich, played a key role in the process and a particularly prominent one during the first term of President Clinton. The new strategy involved a more aggressive approach to enforcement raids, the threat or actual use of the hot goods provisions of the FLSA, and the so-called voluntary compliance agreements. It also involved a more aggressive approach to the use of these in the media and in confrontations with the industry, along with new tactics such as naming specific companies tied to sweatshops.

Still, the analysis also found that there was a significantly uneven distribution as far as blame, responsibility and economic pressure across the industry was concerned (i.e., targeting and economic coercion). In a sense, the direction of moral and material pressures was seemingly

⁶⁴⁹ Interview with Harvey.

random, at least as far as majority of above concerned. Yet, across the board of the campaigns, the approach in naming, blaming and pressuring by the public authorities as well as the majority of media reports there was a very considerable degree of unanimity or unidirectionality in terms of the choice of targets – the dominant nodes, i.e., the manufacturers and, in particular, the retailers. Some of these, the analysis found, were in serious financial difficulties during process, whereas those enjoying the most tremendous growth, the discount retailers, were arguably also the least vulnerable in terms of market-based pressures related to social responsibility.

Furthermore, the analysis found that, with respect to the early stages of agenda formation and the struggles to define the problem throughout the process, the extent of the problem did not constitute a major point of contention. There was, rather, a steady stream of documentation of quite pervasive violations, and this was conducive to the growing politicization of sweatshops. The U.S. Department of Labor, particularly during the first half of the process, was prominent in providing such hard and authoritative facts based on enforcement raids. Documenting some very high noncompliance rates and contributing to the construction of the problem as general, widespread and systemic within industry, the Department of Labor's activities indirectly supported the problem claims of the media and a host of industry critics, irrespective of whether such claims were based in concrete and specific instances of corporate irresponsibility or they were framed in more systemic or structural terms. And one might add that the preceding de facto deregulation and the characteristics of the working conditions in the domestic (U.S.) apparel production served as part of the preconditions for the above.

On a broader note, the process was significantly driven and shaped by a couple of exposés or scandals (and the agency underlying these). First of all, the August 1995 raid at El Monte was a bomb that exploded, showing the worst-case scenario sweatshop conditions as really existing right in middle of Los Angeles. There was extensive and high-profile media coverage of the scandal, and it not only gave a boost to existing campaigns and organizing drives, but also led to new campaigns and, indeed, the formation of new anti-sweatshop organizing from below. Also, more high-profile skirmishes between the Secretary/Department of Labor and the apparel industry followed. Second, the National Labor Committee hit 'the publicity jackpot' with the exposé of Kathie Lee Gifford/Wal-Mart. The Department of Labor moved swiftly to 'make a deal' with Kathie Lee, and

soon hosted the Fashion Industry Forum gathering an unprecedented number of industry and non-industry representatives to debate the sweatshop problem - and letting the Clinton Administration 'feel it out'. After several major scandals and cycles of increasing politicization, the Apparel Industry Partnership was formed.

Key to explaining the existence and particular form of the 1998 Agreement, then, is also the establishment of this task force and the nature and timing of the mandate handed down by U.S. President Clinton. The analysis suggested that this was in part a reflection of the political and economic constraints faced by the Administration at the time, but that there was more to it than that: the Administration had already displayed a preference for voluntary codes (which, at the time, were 'hot' and growing in numbers); by mid-1996 the earlier Model Business Principles had proved unsuccessful, and the Administration was in the midst of an election campaign where it needed to secure the backing of organized labor on the background of having keenly promoted international trade agreements and pleasing Wall Street. Moreover, the mandate was, compared to the previous two processes, a peculiar and very different type of driver and shaper of subsequent events: the task as well as the giver of the task with which the task force was presented implied that the negotiations were high profile, subject to public interest, providing its members with certain amounts of prestige as well as depriving them of some forms of leverage that might have been associated with a less prominent negotiation process. And, significantly, the mandate set vague but still quite specific boundaries for the negotiations that ensued.

The analysis also found that the deadlock and subsequent break-up of the task force in mid-1998, and the formation of a subgroup, were central to understanding and explaining the existence and form of the Agreement. The above characteristics of the mandate, in conjunction with the struggles to define the problem and the characteristics of the problem, were part of creating this deadlock: the agenda was locked in terms of breadth, while there were several key conflicts over depth. In other words, forum-shifting and issue de-linkage as ways for the dominant industry players to pursue a minimization of concessions – narrowing the agenda or watering down the substance to reduce the ramifications of the concessions made – were not truly available to the prominent industry members of the task force. To some of the non-industry members, in turn, the depth conflicts involved central concerns on which serious compromises could not be made to fit their core purposes and constituencies. Hence, while the task force

presented its first, preliminary agreement in April 1997, and this automatically opened up for the second round of negotiations, the depth conflicts had been left unresolved, and the task force entered a period of deadlock. The break-up entailing the exclusion of non-industry actors was what made the compromises reached in the subgroup possible.

Furthermore, the analysis also found that depth as far as child labor is concerned was not even considered here, whereas the previous chapter demonstrated how this had clearly been central to the understanding of the problem from the very beginning and had been taken for granted elements of a potential solution. One could, of course, point to the difference in preconditions here: the characteristics of the problem in this case did not significantly involve child labor (found only in very exceptional cases within the U.S. apparel production). Yet, I would argue that the difference involves more than that: industry actors are most likely to take an active interest in depth on child labor where this is associated with a narrow and focused initiative, whereas if broader initiatives – such as codes of conduct – are necessary, this will typically involve other depth and breadth concerns. And, with respect to non-industry actors, while some may be very focused on child labor, others have an interest in focusing on other depth conflicts than those related to child labor. There are, it would seem, radically different logics of inclusion and exclusion, and these relate to the definition and flexibility of the agenda in terms of breadth and depth as well as the type of non-industry actors concretely involved.

8. Conclusions

At the beginning of this dissertation, two basic questions were posed concerning the existence and the nature of the agreements in three prominent cases concerning corporate responsibility and the governance of child labor and core labor rights in the 1990s:

- Why did these agreements come into existence?
- Why did they take on those particular forms?

In the preceding chapters, these questions were pursued at length, as the three cases were analyzed in all of their detail and complexity. In this final chapter, taking a cross-cutting perspective on the three cases and the previous findings, I present the overall conclusions.

To begin with, let us consider the first of the above questions: **Why did these agreements come into existence?** There are number of factors, which, taken together, help explain why these agreements came into existence.

To begin with, activism – real and concrete, not an abstract “risk” – by labor and human rights groups was highly and consistently significant in triggering attention and controversy, in building and sustaining pressure, and in applying pressure at critical junctures in the processes. None of these agreements came into existence because corporations were throwing themselves into the arms of critics and other parts of society, asking for more “stakeholder dialogue” and mutual trust-building. Certainly, there was dialogue and trust-building among some parties in each of the cases, but the analysis also suggests that reaching compromises took both moderate compromisers and more radical critics, and that it was often the sharper criticism that set the wheels turning – and kept them going. All

three agreements were entered into after some rather lengthy processes, i.e., no resolutions were agreed upon overnight. Moreover, in all three cases, there were decisive moments when the processes could have come to a stop or taken a very different direction indeed: the BGMEA rejection of the MOU, the FIFA Code, and the AIP impasse.

But activism is nothing without leverage over, and some degree of vulnerability on part of, companies. As the above also suggests, different forms of economic coercion - the material threats, which the main targets in each of the cases faced - were significant in driving the processes *and* essential to the coming into existence of the respective agreements. There were decisive moments where the processes nearly collapsed or, in the soccer ball case, nearly “ended” with a quite different resolution than the actual outcome. At these critical junctures, the involved industry players were faced with significant material threats, without which the three agreements might not have come into existence: the threat of a massive boycott in the Bangladesh case; the mounting pressure and the emergence of an undesirable non-industry solution in the soccer ball case; and the imminent threat of near-complete failure of the AIP task force caused by the deadlock of two intransigent sides. There is no basis to conclude that a difference in the form of the economic coercion has implications for the coming into existence of agreements, although the analysis does suggest that the more diffuse and less collectively targeting forms might be less effective and, at least, impact the nature of agreements. The analysis does, however, demonstrate that economic coercion does not have to be actual: latent, potential and perceived threats were just as powerful and significant in terms of actually producing change, as illustrated by the fact that the Harkin bill was never enacted and the subsequent boycott never started...

Moreover, all three cases involved considerable media coverage, and overall this was a significant factor in building and sustaining the pressure on companies in the soccer ball and AIP/FLA cases. While not wanting to downplay the seemingly obvious significance of this category, the analysis does provide for some more cautious specifications. First of all, the significance of media exposés and negative publicity appears to be confined primarily to the early and middle stages of the processes – during the final stages they were not significant. In other words, there were no situations where a media exposé directly triggered a chain of events through which the problem was resolved: rather, in the final stages, they had become un-necessary as triggers, and to the extent that negative media exposure may be said to have played a role in the final stages, it was only

as latent or future potentials related to negotiation breakdown in particular – not as actual occurrences.

Secondly, the focus and the pressure – i.e., the targeting and risk of economic coercion – in these two cases were highly uneven across the board of companies within these industries. Those companies that were exposed and most at risk of adverse consumer reactions and, as in the case of Nike, were actually subjects of campaigns, were hard pressed to react in terms of becoming involved in modelling efforts. In that sense, in addition to contributing to the politicization of certain conditions, the media reports were significant in terms of the existence of the agreements. At the same time, however, the unevenness was arguably also quite significant in relation to the particular forms of the agreements, as I will argue below.

Thirdly, the media exposés and reports did not work in isolation from other events and activities. Rather, they interacted with – and in many instances stemmed directly from or related directly to – the campaign and other activities of civil society actors and/or those of public agencies, the U.S. Department of Labor (during Reich’s term in particular). As in Kernaghan’s “media jackpot” exposé of Kathie Lee Gifford and Wal-Mart, the El Monte scandal following raid by labor authorities. *Even here*, the significance of the media blitz depended on other conditions, most notably the broader political situation and the existence of a solution to the problem.

Finally, negative media attention was less significant in the Bangladesh case. Here, the media coverage was predominantly within Bangladesh and was predominantly triggered by the re-introductions of the Harkin bill. The differences suggest that the particular type of site or arena and the particular type of mechanism of economic coercion have some bearing on the degree to which media attention is actually significant.

While the above factors are important in accounting for the coming into existence of these agreements, we also need to factor in that all three were compromises between more or less adversarial parties. As noted, an actual or impending breakdown after some time of negotiations was central in both the Bangladesh and the AIP/FLA case. These were two very different situations, however. In Bangladesh, the industry had already gained important victories and was faced with a serious economic threat – the industry “just” needed to be pushed back into the final round of compromising. In the AIP/FLA case, on the other hand, the industry

representatives and some of their non-industry counterparts were caught in a double intransigence, and the final round of compromising could only proceed after the partial disintegration of the task force. Moreover, thinking in terms of potential zones of agreement, one might say that “too little” was in the interests of very few, while too far-reaching agreements were a no-go for industry players. The latter were, in general terms, not willing to go as far as their most demanding critics, save for the salient child labor issue where in all three cases the solutions went beyond international law. In addition, if we also consider the processes of modelling the solutions, the most noteworthy conclusion in this respect is that the analysis shows that changes on the part of individual companies – even key industry players taking a lead on the issue – did not affect the majority of the other companies to such an extent that the necessary critical mass for a collective initiative was produced. At best, the leaders produced some “followers.”

In conclusion, and in addition to the earlier factors, these agreements were first and foremost made “acceptable” through – and might not have come into existence, had it not been for – the inclusions and, in particular, the exclusions of actors and issues. First of all, the exclusion of critics: in none of the cases were the more intransigent or demanding “counterparts” of the industry – AAFLI in Bangladesh, the trade unions in the soccer ball case, and UNITE and the ICCR in the AIP/FLA case – involved in the final stage of negotiations following these critical junctures. Without these voluntary or involuntary exclusions, the subsequent compromises would have been very different indeed – if reached at all. Second, the inclusion and availability of moderate counterparts which were willing to put their names on compromises falling within the zone of agreement. Third, the inclusions and particularly exclusions of issues or moderations of substantial implications through variety of delimitating and minimizing exercises – geographical, sectoral, special provisions (i.e., “exceptions”), temporal displacement and vagueness of commitments, etc.

In addition to the above, the analysis also showed that in all three cases there had been a real and significant shift in the characteristics of the problem: all three cases involved indisputably existing problems (i.e., conditions), which moreover were of rather significant and growing proportions and involved quite high elements of illegality – and clear-cut market and governance failures of significant proportions:

- Regulation in the form of national legislation was, generally speaking, in place and in the main in accordance with international law. The conditions and labor practices to a considerable extent were illegal under relevant local as well as international laws.
- The enforcement of existing laws, on the other hand, was highly problematic. Whether it was “business as usual” in Bangladesh and Pakistan, or what was referred to as de facto deregulation in the U.S., the relevant public authorities were unable and/or unwilling to enforce these laws in practice.
- The prevailing norms in the early 1990s, as far as voluntary self-regulation on part of the private sector was concerned, did not dictate the active involvement of the contractors/manufacturers in living up to their responsibilities under the law – or the active involvement of the brands and retailers in this. Companies to a considerable extent were involved in violating the law and the rights of workers.

Had the above preconditions been more blurred, developments might have taken different directions altogether: instead of these agreements we might have seen scattered individual company solutions. At the same time, it is clear that these conditions apply in many other situations where no politicization occurred, and had the conditions been more blurred, politicization might not have occurred at all. Still, the above were significant (pre)conditions in the sense that they formed part of the basis for the subsequent developments – a basis implying that industry targets were generally forced into the defensive. The conditions were furthermore significant in the sense that they were part of the reason why there were room and reasons for focusing and politicizing, be it from the activists’ or journalists’ perspectives. The gravity of the conditions, however, was not decisive in terms of the coming into existence of the agreements. The analysis suggests that – in conjunction with other factors – gravity first and foremost bears on the tactical options available during actual struggles to define the problem.

While the above preconditions were not sufficient in themselves, but significant in conjunction with those factors previously mentioned, the analysis also suggests that we need to take into consideration other factors, and I would point to two in particular. First of all, there are the particular circumstances related to activism – sometimes bordering on the

coincidental and/or involving personal ties and relations – such as the particular situation of Terry Collingsworth and AAFLI in Bangladesh, the nature of the work being carried out there, the objectives, etc. This could indicate that while understanding industry characteristics is important in theoretical and empirical terms, a greater emphasis should be placed on mapping and understanding the particular circumstances and interests of “critics” in conceptualizing and analyzing targeting.

Second, the fact that the governance failures and problematized conditions were part of production for consumption in the U.S. and/or Europe was significant. While this is neither sufficient (since other factors played in as well) nor necessary (there are, of course, examples of transnational politicizations of working conditions in production for consumption elsewhere), the analysis does suggest that, to say the least, it raises the “risk” of activism and media interest *because* the production-consumption relations entail significant differences in material and moral leverage as well as in the proximity and relevance involved in reaching broader “Western” consumer-publics. More to the point, the analysis found that the U.S. Department of Labor during the Clinton Administration, as it turned out, was centrally involved in all three cases. So was the International Labor Rights Fund – and, thereby, however indirectly and reluctantly in the first of the three cases, was organized labor interests in the U.S. The same goes for the National Consumers League.

In conclusion, the analysis suggests that the configuration of social forces shaping U.S. “domestic politics” in that particular period – and within a broader global context which, in terms of the global security agenda may be characterized as an interval between the Cold War and the so-called war on terrorism – was significant to the coming into existence of these three agreements. Social forces, hegemony and governance are central elements in the work of Robert Cox, for example, just as the interrelationships between security and economic affairs and between “domestic” and “international” politics are well-known issues within the political science literature, and this could fruitfully – in conjunction with an emphasis on mapping and understanding the particular circumstances and interests of “critics” – be pursued in further research on the politics of corporate responsibility and governance.

Let us now consider the second question: **Why did these agreements take on those particular forms?**

To begin with, the three cases were quite different in terms of how the struggles to define the problem played out. In the Bangladesh case, the negative consequences became a dominant theme from early on. In the soccer ball case, the broadening of the agenda and the subsequent counter-modelling were central in the process. In the AIP/FLA case, in turn, the broad nature of the problem – sweatshop conditions – was virtually given from the outset, and instead the struggles revolved around the depth and substance of the problem. The characteristics of the problem, cf. above, in all three cases implied that the factual existence and extent of the problems did not become significant points of contention. Since the existence of extensive problems were well-documented – as far as both child labor in the Bangladeshi garment industry and the Sialkot soccer ball production and sweatshops in the U.S. were concerned – factual denials and numerical minimizations were neither very meaningful nor, even in the shorter run, tenable tactical options for countering the claims and allegations from the critics and the media. Indeed, the extent of the problem was most significant in the Bangladesh case, where the logics of the stat war were turned upside down. In other words, had the existence and/or extent of the problems been seriously disputable, the processes would have developed differently. This was not the case, as it were, and the analysis suggests that – given such preconditions – when controversies do arise, the struggles to define the problem and the modelling efforts will revolve around or shift to other facets of the conditions and agenda.

As far as the scope of the agreements and these other facets are concerned, however, the analysis also found that the gravity of the working conditions primarily influenced the particular tactical options of different parties in the claimsmaking process, but gravity was not directly significant in terms of shaping the basic scope and focus of the controversies and subsequent solutions. While there had been a real change in working conditions and social relations of production, and while there was in all three cases a rather high degree of illegality involved, in all three cases worse working conditions were to be found just around the corner. Gravity did not, in other words, serve to focus the agenda on the relatively worse problems. This may “just” be a simple fact of politics, rather than an astonishing conclusion as such, but it is a conclusion resting on concrete empirical studies that illustrates why politics more generally also involve or raise concerns about the prioritization, optimality, democracy, and justice

associated with such political problem-definition and problem-solving efforts. Yet, it would seem that such concerns are even more relevant when the central roles are played by nonstate actors and when processes centrally involve the societal roles of private, profit-seeking actors and the rise of a particular form of private authority, CSR, related to the governance of what could be seen as matters of basic social justice. Moreover, the conclusion relates back to and lends support to the basic thrust of the more constructivist scholars within social problems theory. Rather than leaving out gravity in future research, the conclusion should be taken to suggest that several central facets of conditions be maintained, while more emphasis be placed on how these interrelate in shaping the tactical positions, constraints and pressures of the actors.

Of central significance, in turn, the analysis found that – given the rather indisputable existence and extent of the conditions – the degree to which the breadth of the problem was open to struggle and contestation or not had profound implications for the processes and outcomes. A key difference between the agreements is the breadth or range of issues they cover, raising the question, why broad or narrow problems and agreements?

In some situations, breadth is a potential battlefield. This was the situation in both the Bangladesh and the soccer ball cases: in the former, the agenda was locked from early on and narrowly so, whereas in the latter the agenda was broadened. As the two cases demonstrate, whether this potential is actualized depends on the confluence of a range of factors. The nature of the mechanisms of economic coercion differed (trade sanctions/material leverage tied to child labor compared to campaigning and generating negative media attention, in which child labor was a useful focal point). Moreover, so did the types of chosen targets (FIFA and the international ball marketers compared to Bangladeshi manufacturers) and the “sites” of politicization (“Western” media compared to predominantly Bangladeshi). Furthermore, the “lessons” from Bangladesh had been incorporated into the dominant understanding of the problem from the very beginning in the soccer ball case, so the “negative consequences” for the child workers was neither available nor a tenable counter.

In other situations, the agenda or problem is broadly defined, and breadth is not contestable but rather practically locked and broadly so from the very outset. Breadth, in other words, is not a potential battlefield. In the AIP/FLA case this related both to the characteristics of the problem, the deeply rooted notions of sweatshops and the strong historical-cum-cultural

legacy and symbolic power related to these conditions *and* to the fact that the conditions also existed within the U.S.: the agenda and the struggles to define the problem were locked in a particular way, comprising a broad range of labor rights issues, and this was essentially not something which could be contested effectively.

In conclusion, the analysis suggests that if we are to fully understand nature of these agreements, we need to consider breadth/range and depth/substance as interrelated. The analysis provides a basis to conclude that depth/substance will always be subject of contestation, and if/how this contest actually plays out is likely to be determined in part by the actual form of the other dimension, the breadth. The more issues involved, the less substantial will the commitments by companies across the board be. The broader the agenda, the stronger the resistance to make concessions, and the more likely are serious conflicts over substance to affect the process and outcome. This is a general statement, of course, in the sense that corporations are in different positions, and therefore the lengths to which they are willing to go differ correspondingly, just as the severity of the conflicts over substance are equally shaped by the stance of the involved non-industry actors, as also evidenced in the last two case studies in particular. Hence, the nature of the agreement in the AIP/FLA case is not explained solely by reference to the reasons for the broad problem definition being “given” in that case: the other part of the story is that precisely *because* of that the industry participants in the task force fought so hard (and several actually quit). And, when the broadening actually did occur in the soccer ball case, the industry countermodelling efforts – being unable to re-define the problem/solution in narrower terms, following from the above – necessarily had to be one of combining a focused industry commitment on child labor with a broader, but watered-down industry code of conduct.

It follows from the above that although the existence of a significant use of child labor could be seen as a precondition influencing whether a narrowing of the agenda was a tactical option or not, other factors were equally, if not more, important in influencing the breadth of the agenda, i.e. in the struggles to define the problem and the modelling efforts.

Somewhat curiously, in conjunction with the above, the analysis also found that in particular on one of those matters that were included in the definition of the problem and in the agreements in the end – child labor – there was a tendency to actually go beyond international law. Not just in

terms of companies becoming involved in the labor practices of other companies, but in terms of the actual and specific rules that were set, such as the age limits for child labor and the decisions not to condone light work for older children. The analysis clearly found that, contrary to what one might have expected, this was not due to demands from the directly involved non-industry actors. In fact, even when – as in the Bangladesh case – these declared themselves explicitly prepared to accept for instance a combination of light work and education for older children in accordance with international law, in the concrete it was the industry actors that nevertheless opted against such an outcome.

Hence, in order to account for the particular forms of the agreements, it is too simple to just point to the salience of child labor: the use of child labor and the politicization thereof does not, in itself, enable a de-linkage of other issues, cf. above. This may be the case, but that depends on other factors. What can be said, however, is that the presence of certain highly salient issues is conducive or enabling to a construction of corporate responsibility that carries an element of good corporate citizenship, of going beyond the legal minimum and which resonates with those normative pressures stemming from the broader public that underlie the salience of the issues – *without* necessarily entailing a consistently and substantively far-reaching acceptance and operationalization of all international legal minimums, *and without* necessarily entailing concessions on points where the material and practical ramifications for the companies involved would have been potentially dramatic.

Compromises on breadth and depth, moreover, do not occur without compromisers, and so a proper explanation not only involves the inclusions and exclusions of issues and moderations of substance, but also of actors/partners and, in the end, the organizational set-up and identity of the partners to the agreements or some other type of outcome. As noted above, in none of the cases were the more demanding “counterparts” of the industry parties to the agreements: the compromises were made possible and shaped by these exclusions. The effects of the inclusions, on the other hand, and of the ILO and UNICEF as partners to two of the agreements in particular, appear to have been less significant, at least as far as the specific identity of these partners was concerned. Certainly, the inclusion of these two agencies as partners in the Bangladesh and soccer ball cases subtracted considerably from the attractiveness, from an activist point of view, of continuing to campaign on the particular problem (or, the compromise reached). On the other hand, the agreements in these two cases were closer

to the outcomes that the non-industry players were seeking – though not necessarily clear-cut “victories,” they were acceptable – whereas in the AIP/FLA case some of the non-industry members were not able to achieve an acceptable compromise: the required compromise would have been difficult, if not impossible, to “sell” to their constituencies, and it is highly questionable whether the remaining members of the task force could have allied their way out of the ensuing counter-campaign.

Overall, the material threats, which the main targets in each of the cases faced, were significant in driving the processes and essential to the coming into existence of the respective agreements. Except for the Bangladesh case involving potential trade sanctions against the entire garment industry, the manufacturing node – whether in Sialkot, Pakistan, or in the U.S. – received very little direct exposure (and had very little say in the overall politics). Yet, the pressure and the vulnerability of the different dominant-node companies were very uneven. The result being, as it were, that some companies engaged in individual initiatives and became active in discussions among industry players, while other companies did very little except trying to stay below the radar. Furthermore, looking at the processes, it is evident that all three cases stretched over longer periods of time, involving several phases, and the analysis suggests that was primarily due to the uneven vulnerability of industry players discussed above (and the waning threat of the Harkin bill) – and the fact that in all three cases the material pressures in the initial phases were i) insufficient and ii) unevenly distributed, wherefore the necessary critical mass within the industries to overcome collective action problems did not exist. This situation of emerging but insufficient and unevenly distributed pressures in the initial phases – and the absence of strong and effective intervention and display of leadership by relevant public authorities – laid the foundation for the growing pressures in the middle phases, the situation remained open to further struggles to define the problems, and this had profound implications for the modelling in each of the three cases. Thus, looking at the politicization processes and the combination of targeting and economic coercion, there is an apparent paradox here. The cases show that, although from an activist perspective there are many good reasons to focus on a particular industry, producing the necessary critical mass is far from easy, and it often takes sustained focus and mounting pressure over longer periods of time - and the less vulnerable players also need to be targeted and pressured to produce critical mass. Yet, judging by the three case studies, these also tend to be the least attractive targets, both from the media as well as the labor and human rights groups’ points of view...

Finally, the Bangladesh case does suggest that the actualization of the above paradox of uneven vulnerabilities and pressures, and the significance of these in terms of the particular form of the outcome, depends on the form of economic coercion available and potentially applied. The threat of the Harkin bill – and, more generally, the threat of trade sanctions – constituted a threat of a collective nature, i.e. potentially affecting all of the Bangladeshi garment manufacturers, and it was a markedly less diffuse form of economic coercion: the effects of trade sanctions imposed for the Bangladeshi manufacturers were relatively clear and predictable compared to the consequences of potentially adverse consumer reactions for any given company in the other two cases. Had the Sialkot sporting goods industry been faced with potential trade sanctions threatening more than half of their business, on a collective scale, the unevenness of the pressures and vulnerabilities among the ball marketers might have been irrelevant, and modelling efforts might have been markedly different from the FIFA-trade unions and subsequent industry counter-modelling that actually occurred. And had the U.S.-based apparel manufacturers been faced with such a threat, perhaps the modelling efforts would have stretched beyond a few dominant node companies in a task force. In conclusion, trade sanctions and similar economic pressures and threats are not necessarily desirable, but the analysis clearly suggests that their presence as a threat and potential leverage may be significant in terms of the eventual scope and organizational form of the outcome.

In addition, the analysis furthermore suggests a number of reasons why *corporate* responsibility and not enhanced government enforcement to such a significant extent came into focus. For the media, ineffective enforcement *was* often part of the story, *but* the “good” story – where the drama, the scandal, the newsworthiness lay – generally involved the violation of children’s rights, the exploitation of workers and corporate perpetrators, often multinational ones. The labor and human rights groups involved were quite aware of this, but there was also a quite considerable skepticism toward the possibility of achieving real and effective change on the part of the governments in question. Moreover, there was a broad concern with making corporations and global capital more responsible, and the leverage available was over industry players rather than governments.

Indeed, the analysis suggests that the three agreements – and, possibly, CSR more generally – were to a surprising extent rather public or state-backed expansions of private authority, of voluntary and market-based solutions to those governance failures problematized. That is, the

governance changes that occurred were not only indirectly reflections of a broader and more abstract shift in state-market relations and an abstract rearticulation of the public and the private, nor was public involvement in the rise of private authority in these three cases restricted to broad-based political support and encouragement for private and voluntary initiatives. Indeed, in the very concrete and as far as the particular form of the three agreements was concerned, there was a much more active and direct involvement of public sector entities in the inclusion of partners and in facilitating the processes, *and* there was a quite considerable element of public funding which was central in shaping the particular form of at least two of the agreements.

The role of the U.S. Department of Labor, in particular during Reich's term, was quite outstanding in this respect. The Labor Department, the analysis showed, played a central role in the Bangladesh case, in part through the U.S. Ambassador to Bangladesh, most notably with regards to the exclusion of AAFLI from the process and the inclusion of the ILO in the late stage. This affected the organizational form, not to mention bringing the ILO into this type of activity for the first time as well as joining the ILO and UNICEF in this type of partnership program for the first time. The analysis showed that this was in part also related to the particular personal and political preferences within the Labor Department and closely tied to the practicalities of channeling funding as well. Certainly, the analysis does indicate that further research on the Department of Labor within U.S. politics and in relation to the changing form of corporate responsibility in the mid-1990s in particular would be worthwhile.

Finally, as noted, changes on the part of individual companies did not affect the majority of the other companies to such an extent that the necessary critical mass for a collective initiative was produced, nor do such changes appear to have influenced the nature of the agreements to any discernible extent. At best, the leaders produced some "followers." Even in a broader and less agreement-focused sense, the analysis demonstrates that while it is clear that norms and practices associated with corporate responsibility changed during the 1990s, neither in the soccer ball industry nor in the AIP/FLA case did this translate into effective resolutions of the problems on part of the industries in these processes. This is particularly clear in the soccer ball case, where "the lessons from Bangladesh" were explicitly acknowledged from the very beginning of the process leading to the Atlanta Agreement process: yet, the labor practices of the soccer ball

industry were still (left) problematic and there was no industry-wide consensus on acting to effectively resolve the problems in practice. Hence, the analysis – in terms stretching beyond the particular agreements – could be made to suggest that the main significance of the changing norms of corporate responsibility and the rise of CSR in the 1990s lay in the fact that private and voluntary self-regulation as ideas and as certain techniques or elements of responsibility (such as independent monitoring, codes of conduct) came to be seen as increasingly “natural”: the trenches were moving, little by little as far as norms and practices (in principle) were concerned, but the governance failures in practice – the conditions of adult workers in the Bangladeshi garment industry and the Sialkoti soccer ball industry as well as the apparel industry sweatshops in the U.S. – persisted, awaiting politicization and controversy.

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Annex I. Interviews⁶⁵⁰

Anonymous
President, smaller sporting goods company
Queens, New York, 25 March 2003.

Anonymous
Former senior official, United States Department of Labor, Bureau of
International Labor Affairs
Washington, D.C., 15 April 2003.

Adkins, Darlene
Vice President of the National Consumers League; Co-ordinator, Child
Labor Coalition during Bangladesh case
Telephone, 14 May 2003.

Bakvis, Peter
Director, Global Unions
Washington, D.C., 16 March 2003.

Bissell, Susan
Chief, Child Protection, UNICEF India; point person, UNICEF Dhaka,
Bangladesh, during MOU process
Telephone, 3 February 2004.

⁶⁵⁰ An interview with two corporate representatives conducted in early 2003 does not appear on the list as it was off the record altogether; this interview was conducted during a critical point in the Klasky v. Nike proceedings. Furthermore, two persons are listed as anonymous on my decision: they both agreed to be interviewed and cited by name, but I have chosen not to do so out of concern for the potential repercussions this might have for them. Names and transcripts of the interviews are on file with the author.

Cahn, Doug
Vice President, Human Rights Programs, Reebok International
Boston, 13 March 2003.

Collingsworth, Terry
Executive Director, International Labor Rights Fund (ILRF); AAFLI
consultant in Bangladesh and legal counsel to the International Labor
Rights Fund during Bangladesh case
Washington, D.C., 20 March 2003.

Cooper, Keith
Former Director of Communications, FIFA
Telephone, 19 March 2004.

Cove, Tom
Vice President of Government Affairs, Sporting Goods Manufacturers'
Association (SGMA)
Washington, D.C., 1 April 2003.

Golodner, Linda
Director of the National Consumers League (NLC), Co-chair of the Child
Labor Coalition
Washington, D.C., 31 March 2003.

Gorgemans, André
General Secretary, World Federation of the Sporting Goods Industry
(WFSGI)
Telephone, 11 February 2004.

Harvey, Pharis
Former Executive Director of the International Labor Rights Fund (ILRF),
Co-chair of the Child Labor Coalition and member of the Apparel Industry
Partnership Task Force
Corralitos, California, 6 May 2003.

Kearney, Neil
General Secretary, International Textile, Garment and Leather Workers'
Federation (ITGLWF)
Telephone, 27 January 2004.

Levinson, Mark
Chief Economist and Director of Policy, Union of the Needletrades,
Industrial and Textile Employees (UNITE)
New York City, 24 March 2003.

Marks, Jason
Director of Communications, Global Exchange
San Francisco, California, 7 May 2003.

Merrill, David N.
Senior Vice President, Nathan Inc. (U.S. Ambassador to Bangladesh,
1994-1997)
Telephone, 26 March 2004.

Nielsen, Erik
Consultant, Landsorganisationen i Danmark (Danish Labour Organisation)
Copenhagen, 4 June 2004.

Noonan, Tim
Director, Campaigns and Communications, International Confederation of
Free Trade Unions (ICFTU)
Telephone, 25 March 2004.

Ohrt, Jens Erik
Director, Arbejderbevægelsens Internationale Forum (The Labour
Movement's International Forum)
Copenhagen, May 2004.

Roberts, Lesley
Manager of Group Business Standards, Pentland Brands Plc. (Director of
Anti-Slavery International during the soccer ball case)
Telephone, 2 February 2004.