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Re-routing the race to the bottom? Transnational Corporations, labor practice codes of conduct and workers' right to organise - the case of Nike Inc.

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“In this industry, the only reason to change is because someone has got a great cattle prod that keeps jabbing you in the rear end…”

Bud Konheim, President of US apparel firm Nicole Miller

Up until April 2000 the founder and CEO of Nike Inc., Philip Knight, enjoyed a close relationship with the University of Oregon. The university had named its library after him and another building after his father. For his part he had donated more than $US50 million to the school and was expected to give a further $US30 million towards expanding the campus sports stadium. The relationship deteriorated sharply on April 14 when Knight learned that his alma mater had decided to join the Workers' Rights Consortium (WRC), an organisation established by student activists and unions to monitor factory conditions in the production of collegiate licensed apparel by Nike and other companies. Knight announced that "the bonds of trust, which allowed me to give at a high level, have been shredded" and that he would be making "no further donations of any kind" to the University. He criticised the WRC as a misguided attempt "to bring apparel jobs back to the U.S." and praised instead the Fair Labor Association (FLA), another monitoring organisation established by a coalition of corporations (including Nike) and human, consumer, labor rights groups. In the same month Nike cancelled planned sponsorships with Brown and Michigan Universities, two other campuses which had joined the WRC. The company's actions were condemned by the student activists who supported the WRC, publicly criticised by the non-corporate groups involved in the FLA and sparked vigourous debate in the press. The episode is a small indicator of the intensity of the debate over labour practice codes of conduct. Such codes have arisen in response to the concerns of a growing international anti-sweatshop network of unions, consumer, student and activist groups who commonly argue that the globalisation of the world economy is forcing governments of countries with few other comparative advantages to engage in a "race to the bottom" in which they compete for investment by suppressing workers' human rights, particularly their rights to organise and bargain collectively. Some groups involved in this movement are seeking to enhance workers' power to respond to the mobility of transnational corporations by seeking to build transnational alliances between unions, but these initiatives are in turn often frustrated by suppression of workers' right to organise at the local level. This paper considers the potential of those codes of conduct which engage civil society groups to advance the protection of union rights, taking as a case study the three codes which most strongly intersect with the
debate on Nike's labour practices: Nike's own code, the FLA and the WRC. While only a minority of companies have adopted such codes, and even fewer have monitoring systems in place to ensure adherence, corporations like Nike are finding that a growing global civil society movement is in no mood to allow credibility with regard to labour rights and other social issues to be easily bought. Equally Activists are encountering strong resistance to independent and rigorous monitoring of corporate labour practices.

It has become "something of an orthodoxy" to describe the power relationship between workers involved in the global competition for low-skilled manufacturing jobs and the transnational corporations in the market for their labour in terms of the "race to the bottom" thesis. Critics of this orthodoxy note that labour costs are never the sole factor influencing investment decisions and in many cases they make a very limited contribution to explaining the geography of production. In many industries “Just in Time” management techniques are employed, making proximity to markets significantly more important than labour costs in determining where production occurs. Nonetheless where production is relatively labour intensive and demand is relatively predictable the mobility of capital exercises a powerful constraint on workers' ability to assert their rights. Such production is increasingly taking place in low income countries, often in specially created Export Processing Zones (EPZs), in which the suppression of workers’ rights in order to attract investment is usually particularly vigorous.

Since the mid-nineties a number of economic geographers have explored ways in which workers might develop international alliances to effectively challenge the mobility and power of capital. Gibson-Graham rejects the representation of TNCs as monolithic, all-powerful organisations and depicts them instead as sites of conflict and instability in which decisions regarding resource allocation can be influenced by a variety of forces, including worker solidarity. Herod and Wills each consider the growth of internationalism amongst unions as a potential means of responding to the mobility of TNCs and criticise the literature for failing to recognise the role workers play in shaping the geography of international investment. Unsurprisingly most studies of transnational organising have been of industries in which production is relatively capital intensive. In labour intensive industries such as apparel in which production is relatively mobile it is very difficult for workers to build unions at a factory level, let alone engage in transnational solidarity. Johns considers the broader internationalism of the anti-sweatshop movement which involves workers, human rights groups, consumer and shareholder groups and other civil society organisations working together in campaigns for the protection of workers' rights. She documents an extensive six year consumer and shareholder campaign by US labour rights groups which persuaded the Phillips Van Heusen company to recognise a union at the Casimas Modernas factory, making it the only factory in Guatemala’s apparel-for-export sector with a collective bargaining agreement. However, using campaign pressure alone to pressure companies to recognise particular unions in particular factories is a haphazard and piecemeal means of promoting labour standards and represents a considerable drain on activist resources for limited and often temporary benefits. Less than two years after the collective agreement was signed at Casimas Modernas, Philips Van Heusen closed the factory, claiming that this was a business decision necessitated by the loss of a key shirt customer.

THE GROWTH IN LABOUR PRACTICE CODES
Codes of Conduct offer the promise of corporations agreeing to put their own resources into protecting labour standards in exchange for greater credibility with consumers. Codes are regulatory instruments which are established by non-state actors. They are usually agreed to voluntarily and a company is not subject to state sanctions if it breaches a code. Although various attempts to codify sets of labour and other standards for Transnational Corporations have been made since the middle of the 20th Century, the latest wave of interest in labour practice codes began in the early 1990s in response to anti-sweatshop campaigns and has grown with the anti-sweatshop movement.  

Codes can be broadly categorised in terms of the actors involved, with those codes which are most influenced by human and rights and labour groups tending both to be more rigorous in the demands they make of companies and to have greater difficulty in attracting corporate involvement (see Table 1). The most common codes are those developed by companies themselves or by industry associations and these also tend to be the least credible, particularly in the area of union rights. In a survey of 121 company codes collected by the Investor Responsibility Research Center it was found that only 18 made any reference to the right of freedom of association, and only 12 referred to the right to organise and bargain collectively.  

Those codes which have been developed by unions and non-government organisations (NGOs) are far more credible but are struggling to obtain corporate cooperation. In some cases unions and human rights groups have persuaded city councils, universities, sporting associations and other institutions to include codes in their buying or licensing policies. While this has so far proved the most successful means of promoting these codes, Nike's response to the WRC is indicative of the strength of the industry reaction against these requirements. In the face of this reaction these institutions have not always been willing to demand credible monitoring of adherence to their codes. Finally, a handful of codes have been (or are in the process of being) negotiated between companies, NGOs and/or unions. In some cases these initiatives have been initiated or are supported by national governments, as is the case with the Fair Labor Association in the US and the Ethical Trading Initiative in the UK. The credibility of these codes is open to question, but they have managed to achieve a degree of corporate cooperation (see table 2).

**Codes versus laws?**

Even writers like Jessop who see potential in regulatory mechanisms negotiated by non-state actors recognise that considerable dangers inhere in this approach. Such negotiations are not outside or above capitalism, but rather represent "another area where the dilemmas, contradictions and antagonisms of capitalism", including its dependence on the "market-mediated exploitation of wage labour" are expressed. Considerable power differentials exist between representatives of corporations and representatives of workers, and there may be a need for state intervention to provide material and symbolic support to the latter or to adapt legislated regulatory regimes in order to enhance their bargaining power at the negotiating table. Crises of legitimacy can also arise owing to the problematic relationship between NGOs or unions involved in negotiating codes, and those workers whose interests and identities they are supposed to represent. This is particularly the case where unions and NGO's from industrialised nations seek to negotiate on behalf of workers from industrialising countries.
Other theorists see codes and other non-state regulatory initiatives as a poor alternative to state regulation. Critics of codes argue that labour standards, human rights and environmental concerns are public rather than private goods and that non-state initiatives are ill-equipped to protect them. They note that a plethora of inconsistent voluntary initiatives is confusing for consumers and that the percentage of TNCs who participate in voluntary codes is small and the percentage willing to subject that participation to independent verification even smaller. The verification which is taking place is usually in the form of "auditing", a discourse and practice which has been criticised for functioning as a substitute for democracy, transforming public accountability into an "expert" activity whose processes and results are commonly concealed on the grounds of "commercial confidentiality."

The growth in codes of conduct need not, however, undermine the development of legislative measures. If a sufficient number of TNCs can be persuaded to abide by credible codes it may undermine and divide corporate opposition to state regulation. Arguably if TNCs are united in their opposition to greater legal regulation of their international activities then the substantial resources they can devote to lobbying and public relations campaigns makes legal reform unlikely. If campaign pressure can induce some TNCs to be part of code initiatives which effectively promote workers' rights, then the opposition of those particular companies to legal regulation might be diminished. They may even come to see it as in their interest that other TNCs are legally required to keep to the same standards to which they “voluntarily” subscribe. Alternatively a failure to establish effective codes may increase demand for effective public responses to the issue, and lessons learned from these experiments might be applied to state initiatives which themselves are far from immune from regulatory failure. Activists in the US and Europe involved in pushing companies to adopt more effective codes are also promoting legislative and parliamentary proposals geared to achieving the same ends. Given the small proportion of transnational corporations willing to submit their production to jointly negotiated codes, in the long term it is likely that the contribution of codes to promoting labour standards will depend on their role in the development of legislated responses to the issue.

NIKE AND CODES

The Nike campaign
Those corporations which have been willing to agree to multi-stakeholder codes have tended to be those targeted by anti-sweatshop campaigns. Of these, Nike has been subject to the most intense public pressure. The international campaign to persuade Nike to improve its labour policies was initiated in Jakarta in the late 1980s by the then coordinator of the AFL-CIO's solidarity office in Jakarta (Jeff Ballinger) and a small group of Indonesian NGOs. Over the course of the 1990s the campaign grew to become one of the key drivers of the international anti-sweatshop movement. As of July 2000 a loose international network of some 40 organisations work on the campaign and are in regular contact via a confidential email list to discuss the campaign's progress and future direction. Representatives of unions from North America, Europe, South Korea and Australia work together with labour rights NGOs, development organisations and religious and student groups from Asia, Australia, Europe, Latin America and North America. Although difficult to measure, indications are that the campaign has had significant success in raising awareness of the issue amongst consumers in the key markets of North America and Europe. Mainstream media interest in the issue has been considerable, and interest via the new alternative media of email and the internet is strong and growing. More than 300,000 people have...
signed petitions or campaign postcards to Nike calling on the company to allow independent monitoring of its factories. During 1997 and 1998 there were three "international days of action" with the most successful involving demonstrations in 95 cities in 12 countries. In May 1998 in a speech to the US National Press Club, Nike's CEO Phil Knight acknowledged that "the Nike product has become synonymous with slave wages, forced overtime and arbitrary abuse." 

**Nike's code and monitoring system**
Initially Nike argued that since it contracted out all its production it could not be held responsible for labour abuses, but by June 2000 the company was claiming to have "the industry's most elaborate system of internal and external monitoring." In 1992 Nike established a labour practices code which at that stage made no mention of union rights and which left it up to suppliers themselves to report on code compliance, although Nike did claim that there was at least one member of its own staff in every factory whose responsibilities included checking that the code was being observed. When monitoring by Nike's own staff did little to alleviate public criticism, in 1994 the company moved to employ auditing firm Ernst and Young (which was replaced in 1998 by PriceWaterhouseCoopers (PWC)) to monitor each factory on an annual basis. In 1997 the process of monitoring by Nike's own staff was formalised into what the company calls SHAPE audits, which are conducted by a staff person in each factory on a quarterly basis. In a small proportion of Nike contract factories workers are also interviewed by researchers from local universities or local research organisations, but to the extent that Nike and the groups involved have been willing to make their methodology public, these programs do not appear to investigate whether workers' union rights are protected.

**The Fair Labor Association**
In August 1996 the then US Secretary of Labor, Robert Reich, convinced a number of US apparel and footwear companies, trade unions and NGOs to form the White House Apparel Industry Partnership (AIP), an organisation whose mission would be to negotiate a Code to promote humane working conditions in the US and overseas. In April 1997 a Workplace Code of Conduct was agreed to and the companies still involved in the Partnership became the initial signatories. The Code included rights to freedom of association and collective bargaining and Nike adjusted its own code to include these rights. The Partnership also agreed on some principles of monitoring, but it took a further 18 months of "difficult" negotiations before, in November 1998, a sub-group of the Partnership comprising four of the companies (Liz Claiborne Inc., Nike Inc., Patagonia and Reebok International Ltd.) and four of the human rights groups (the International Labor Rights Fund, the Lawyers Committee for Human Rights, the Robert F. Kennedy Memorial Centre for Human Rights and the National Consumers League) negotiated a preliminary agreement on a charter document for the Fair Labor Association (FLA) which would oversee monitoring of the code. The religious and union groups involved in the AIP rejected the proposed monitoring system as too weak and pulled out of the process.

Efforts to recruit more companies have had some success and participation by US Universities has also increased membership. Beginning in 1997 a remarkably popular student movement across the US used sit-ins, "knit-ins" and demonstrations to successfully pressure many University administrations to agree to relatively strong policies regarding the production of goods which will carry university logos. Nike, which has many millions of dollars tied up in University contracts, responded by calling on universities to join the FLA. This call was remarkably successful and by
March 2000 135 US universities had joined. The FLA has also responded to criticism of the lack of representation of Asian, Latin American and African workers by establishing an NGO representative council including labour rights groups and unions from Cambodia, Guatemala, Indonesia, Malaysia, Pakistan and Taiwan.\(^{41}\)

**The Workers’ Rights Consortium**

The WRC was formed by the main US Student anti-sweatshop group, United Students Against Sweatshops (USAS) in cooperation with US unions, academics and other groups with whom they work.\(^{42}\) USAS reject the FLA on the basis of its lack of transparency, its failure to protect workers right to a living wage, the lack of independence of the FLA monitoring system and the small percentage of factories which will be independently monitored each year. The student groups has been campaigning to persuade University administrators to leave the FLA and join the WRC. As of April 2000 when the WRC held its founding conference 44 schools had joined and by the following month this had grown to 51. It also has established an advisory council with significant representation by trade unionists and labour rights activists from Asia, Latin America and Africa.\(^{43}\)

**CODES AND WORKERS’ RIGHT TO ORGANISE**

What are the relative merits of these three codes in protecting workers’ right to freedom of association? The relevant issues can be broadly grouped into three categories; the nature and extent of the rights which each code purports to protect; the systems put in place to verify the effectiveness of that protection; and the grievance procedures made available to workers if they believe these rights are being infringed.

**What rights does each code protect?**

Only a minority of corporate codes of conduct refer to international labour standards and many differ from or contradict international labour law.\(^{44}\) The AIP code and (since 1997) Nike’s own code require that employers recognise and respect workers’ rights to freedom of association and collective bargaining, and the FLA Benchmarks and Guidance document indicates that these rights will be interpreted in the light of the relevant ILO jurisprudence. The WRC code is also phrased in language which is in line with ILO conventions.

A key concern of activists and workers is that companies might respond to industrial activity by moving production from unionised to non-unionised factories. Nike has a strong policy stance on this issue, in a September 1998 interview Nike’s Director of Labour Practices insisted that the company would never move production away from a factory on the basis that workers were taking collective action there, arguing that other factors are much more significant in determining where to locate production.\(^{45}\) The company has however failed to respond to allegations by its critics that it ceased ordering from particular factories in Thailand and Indonesia following industrial action.\(^{46}\) Both the FLA and the WRC regard moving production from unionised factories to a non-union location as non-compliance with their codes. The challenge lies in determining whether or not worker activism was the cause of the drop in orders. This is likely to be easy when there has been a direct threat that unionisation will lead to loss of production but extremely difficult in other cases, particularly in the apparel industry where ordering relationships are in any case often highly unstable.\(^{47}\) The task would be made easier by requiring companies to regularly and publicly report the level of orders they have made to each of their suppliers. This would at least give workers, unions or NGOs concerned about the issue evidence which they could
use to put arguments to monitoring bodies and to the public that the company may be
punishing factories which are the sites of union activity. At this stage neither the FLA
nor the WRC require full disclosure of orders either publicly or confidentially to the
monitoring body. 48

A related danger is that companies may use a supplier's failure to keep to code
requirements on union rights as a justification for ending the business relationship and
moving the production to a factory where workers are not trying to organise. If
workers know that reporting problems at their factory may result in a loss of orders
and jobs it can create a "perverse incentive" not to report. 49 It is not yet clear what
process the FLA will require companies to follow before ending relationships with
contractors who fail to comply with the code. 50 According to Ann Hoffman during the
AIP negotiations she and other representatives from the clothing union (UNITE)
pushed for the code to specify that in such situations companies may only drop a
contractor as a last resort, but the companies resisted this. 51 The WRC code explicitly
prohibits companies from "cutting and running" when labour abuses are discovered,
but again proving motivation is a challenge. 52

A considerable proportion of Nike's apparel and footwear (and that of other
companies in the industry) is produced in countries or industrial zones where the right
to organise is circumscribed by law, 53 effectively undermining the union rights of
Nike workers in those jurisdictions and in others which are in competition with them
for investment. 54 Where it is illegal to organise Nike claims it seeks to establish
"parallel means of workers expressing views and concerns to management and means
by which grievances can be addressed...[including] worker-management committees
[and] worker-management periodic open meetings" but the company has declined to
indicate either in which factories these committees are operating or whether workers'
representatives on these committees are elected by workers themselves. 55 According to
students which Nike sent to observe its monitoring program, PWC monitors do not
ask workers about their union rights if contract factories are located in Export
Processing Zones where organising is illegal. 56

This question of what is expected of factories located in areas where it is illegal to
organise has been highly contentious within the AIP/FLA and is yet to be clearly
resolved. Leaks to the press revealed that the labour and human rights groups in the
AIP initially called on the companies to withdraw production from China because it
restricted union rights but the companies refused to do so. 57 In an interview in
October 1998 Ann Hoffman (one of the UNITE representatives at that stage still
involved in AIP negotiations) argued that in such cases companies should either
breach laws preventing the right to organise or leave the country:

The companies should say to the workers - ‘The government says you don’t
have the right [to organise a union], as far as we are concerned you do...if you
want to elect representatives we’ll meet with them.’ If the state takes action
[against the union], the company should refuse to cooperate and should protest,
publicly and loudly...If all else fails the company should get out of there. A
company gets certified or not certified on the basis of meeting the code. If
you’re operating in a country where it’s impossible to meet the code, you should
get out of there. 58

The FLA charter document (released in November 1998) acknowledges that in some
countries implementing the AIP code is "problematic" but it maintains that companies
still have an obligation of "taking steps to ensure that employees have the ability to exercise these rights without fear of discrimination or punishment." What steps are required, and what is expected of companies if governments intervene to prevent workers from exercising these rights remains unclear. For certain countries the FLA will issue "special country guidelines" for participating companies which should help clarify what is expected, although the relevant decision-making process ensures that companies on the FLA board will have considerable power to veto country guidelines which they regard as unacceptable.59

The WRC code also confirms that monitored companies should seek full compliance with the code even where there is a conflict with local law or practice and prohibits cooperation with state authorities in the suppression of workers' right to organise. It goes further than the FLA in requiring that licensing agreements not be renewed in countries where it is deemed impossible to meet the code's standard or else where progress towards implementation of those standards is not being made.60

**How is each code monitored?**

As the monitoring programs to be overseen by the FLA and the WRC are yet to be implemented it is appropriate to defer a thorough examination of them until empirical evidence is available but some comments on the design of each is possible.

The aspect of the FLA program most conducive to protecting workers' union rights is the apt and detailed methodology required of external monitors, the weaknesses relate to how those monitors are selected, the lack of full transparency in their reporting and the length of time between external monitoring visits. Participating companies will select "independent external" monitors from a pool of monitors which have been accredited by the FLA. Liubic argues that such an arrangement renders monitors "neither independent nor external", since "third-party agents, operating for profit and paid by the MNCs they are charged with monitoring, are subject to...vested interest problems." In research interviews Pharis Harvey of the ILRF and Jim Silk of the Robert F. Kennedy Center for Human Rights both recognised that in an ideal system “independent” monitors would not be selected and paid by the companies whose performance they are monitoring, but argued that if companies were not willing to accept such a system then one in which monitors must be accredited and overseen by a group like the FLA (which includes significant representation of human rights groups) was an acceptable and workable compromise.61 While the FLA's accreditation requirements for independent monitors and the benchmark and guidance document for monitoring are relatively stringent, there are still grounds for concern that companies wary of having to deal with a unionised workforce may act in bad faith and seek to employ independent monitors who have the skills to pass the accreditation procedures but are not motivated to rigorously investigate whether workers' union rights are protected. FLA staff will conduct no factory investigations of their own and the addresses of factories monitored will not be made public so it will be difficult for independent researchers to conduct research which verifies how rigorously an FLA accredited monitor has performed an audit. Hence if an investigation has been poorly conducted it will only become apparent to FLA staff if the paperwork appears unacceptable or else a local group makes a formal complaint to the FLA about the factory.

Perhaps a more significant limitation is the infrequency of monitoring visits under the FLA's external monitoring program. Up to 15% of a participating company's suppliers may be "de minimis" facilities which are exempt from monitoring altogether.62 Only
10% of the remaining facilities must be externally monitored each year\textsuperscript{63} and the participating company has some influence over which factories are likely to be monitored.\textsuperscript{64} Hence if a factory has recently successfully passed an external monitoring audit the owner can have reasonable confidence that the facility will not be subject to independent external monitoring again for something in the order of ten years.

The WRC is a more recent phenomenon than the FLA and so less has been finalised. The primary focus is not on monitoring but rather on working with local unions and non-government organisations to inform workers of the existence and content of the WRC code, establishing grievance procedures which are accessible to workers and investigating any complaints which workers make. The organisation has a strong commitment to transparency, companies are required to release not only the addresses of each factory, contractor and sub-contractor but also all objective measures of working conditions covered by the code.\textsuperscript{65} There is a danger that the WRC's focus on working with local NGOs and unions might encourage companies to move production to countries like China where independent organisations are illegal,\textsuperscript{66} but this needs be weighed against the requirement that production be withdrawn from countries where it is deemed impossible to meet the WRC code standard.

**Conclusion**

Thomas L. Friedman (2000) wrote an opinion piece on Nike's response to the WRC which was published in the New York Times and other US newspapers. Entitled "Knight is Right" it criticised the WRC's connections with "protectionist" US Unions who wanted to "trash multinationals". Instead he praised the FLA as a demonstrating that the "best way to create global governance...when there is no global government is to build coalitions, in which enlightened companies, consumers and social activists work together to forge their own rules and enforcement mechanisms".\textsuperscript{67} Friedman's article demonstrates the considerable dangers when "third way" theories of governance associated with Jessop (1998) and others are translated simplistically in public policy debate (and public policy). Detailed analysis of the codes which most strongly intersect with the debate on Nike's labour practices indicates that labour codes and monitoring systems negotiated between corporations and civil society actors are not desirable per se, but rather reflect the particular context in which they are developed and the relative negotiating power of each of the organisations involved. The FLA represents an important advance on the individual self-regulatory efforts of companies like Nike, but its ability to adequately protect workers' right to organise will be undermined by the reluctance of the companies involved to withdraw investment from a country if protecting workers union rights there proves impossible, by the questionable independence of the monitors it will supervise from the corporations they are monitoring and by the limited proportion of participating companies' factories which will be independently monitored each year. No serious analysis of the WRC's approach could conclude that it is protectionist. The Consortium's focus on working with local labour rights groups to ensure that workers are aware of their rights and are able to access reliable and independent complaint mechanisms if those rights are infringed has considerable potential to assist those workers to exercise their union rights, but it will be a challenge for those student activists, unionists and University administrators who support the WRC to ensure that the strength of corporate opposition does not derail the process altogether. It must be remembered that only a small minority of Transnational Corporations are currently participating in jointly negotiated voluntary monitoring initiatives like the FLA, and even fewer have any of their production subject to activist codes which are
independent of corporate influence like the WRC. Whether these developments form part of a process toward effective international regulation of labour standards depends substantially on whether the international anti-sweatshop movement, which has utilised new information technology to build broad international alliances between unions and other civil society organisations, is able to maintain momentum and build the capacity to significantly influence policy decisions at the global scale.

Footnotes

1. PhD student, School of Geosciences, University of Newcastle, Australia. The author also coordinates the NikeWatch campaign for the aid organisation Community Aid Abroad in a voluntary capacity (see www.caa.org.au/campaigns/nike). This paper draws on audio-taped research interviews with key individuals involved in the development of labour practices codes of conduct. These interviews were conducted by the author in North America, Europe and Asia between September and December 1998.

2. (IRRC 1998, p. 11)

3. These quotations are taken from Knight's statement on his company's website - see (Knight 2000).

4. For examples of press articles on the issue see (Bhagwati 2000; Duin 2000; Friedman 2000; Orecklin 2000). The NGO members of the FLA sent Knight an open letter criticising his actions - see (Golodner et al. 2000).


7. This is not to say that capital mobility is never used to undermine workers' power in industries which employ "Just in Time" techniques. See Wells (1998a, 1998b) and Murray (1998) for examples of relative wage costs in automobile plants in Latin America, the US, Canada and Europe and a discussion of the implications for the maintenance of labour standards.

8. In the apparel industry developing countries almost doubled their share of global exports between the early 1970s and the mid-1990s to account for more than 60% of exports in 1996 (U.S. DOL 1996, p. 15). The International Labour Organisation's 2000 report on rights at work found that in many countries workers, particularly those working in Export Processing Zones (EPZs), are denied freedom of association either in law or practice and face intimidation if they try to exercise these rights (ILO 2000a).

9. (Gibson-Graham 1996)

10. (Herod 1995; Wills 1998)

11. (Breitenfellner 1997; Wells 1998b)
12. (Johns 1998)


15. (Liubicic 1998).


20. (Jessop 1998, p. 41)


25. See Koh (1998) for an analysis of the varied and non-linear processes by which human rights norms become enshrined in international law and are subsequently institutionalised by states within national legal systems.


27. For examples of such proposals see (Howitt 1998) (US Congress 2000) (CCC 1999).

28. Of the corporations involved in the FLA, Adidas, Nike, Phillips-Van Heusen, Kathie Lee Gifford, Liz Claiborne and Reebok have all been subject to public exposure of conditions in their suppliers factories at various times.

29. To give a very broad indication of the level of media interest, a search of all the publications on the Dow Jones Interactive Index for articles carrying the words "Nike" and "sweatshop" reveals 2254 articles between 1 January 1988 and 30 June 2000. The same search found 201 for Adidas, 702 for Reebok, 72 for Mattel, 107 for Levi's, 1224 for the GAP, 58 for Toys R Us and 73 for Kathy Lee Gifford's clothing line at Wal-Mart. This is clearly a blunt measuring instrument. No doubt a percentage of articles containing those two words do not make any connection between them, or else argue that criticism of Nike's factories is misplaced. At the same time many articles which do address the question of Nike's labour practices may not use the word "sweatshop". See Chan (1996), Egan (1998), Feeney (1997), Franklin (1998),

30. In 1997 and 1998 the Canadian Catholic Organisation for Development and Peace collected more than 200,000 signatures on a petition calling on Nike to adopt independent monitoring. In Belgium in 1998 the Clean Clothes Campaign collected more than 100,000 signatures in a similar campaign. In Australia 8,000 campaign postcards have been signed.

31. (Lamb 1999).

32. (Burns 2000, p. 5)

33. See (Nike Inc. 2000a)

34. In 1997 an Ernst and Young report into the Tae Kwang Vina factory in Vietnam was leaked to the Transnational Action and Resource Center, which published a damning critique of the auditing methodology (O'Rourke 1997a; O'Rourke 1997b).

35. SHAPE stands for Safety, Health, Attitude of Management, People and Environment. See (Nike Inc. 1999d).

36. The Global Alliance for Workers and Communities are involved in an "assessment of worker/community needs" in 21 of Nike's more than 600 suppliers. According to the director of the Global Alliance (Kevin Quigley) it will not be monitoring the protection of workers' right to organise (Quigley K., pers. comm., 1 June 2000). Evidently at Nike's request the University of Economics in Ho Chi Minh City also conducts ongoing focus groups with workers from Nike contract factories in Vietnam but Nike has declined to reveal what questions workers are asked.


38. See (Harvey 1999).

39. By June 1999 Phillips-Van Heusen Corporation, Nicole Miller, L.L. Bean and the Kathy Lee Gifford clothing line (marketed through Wal-Mart stores in the US) had agreed to participate in the monitoring program (Buzbee 1999) and by March 2000 Adidas-Salomon A.G., Eddie Bauer, Inc. and Levi's Strauss & Co. had also become members (FLA 1999a).

40. (Appelbaum & Dreier 1999).

41. In 1998 Women Working Worldwide (a small NGO based in the United Kingdom) conducted a research exercise involving consultation with women factory
workers from Bangladesh, India, Sri Lanka, Pakistan, the Philippines and Indonesia regarding their attitude to codes. The importance of workers being consulted during the development of codes emerged as a strong theme (Hale 1998, p. 3)

42. (Appelbaum & Dreier 1999).

43. (WRC 2000a).

44. (Diller 1999).

45. (Kidd, D. 1998, pers. comm., 29 Sep.).

46. In a letter delivered to Nike in March 2000 a number of labor rights groups claimed that in 1998 Nike abandoned the Par Garment factory in Thailand and the PT Tainan I factory in Indonesia after workers engaged in industrial action there and called on Nike to restore its relationship with those factories. See (Bissell et al. 2000). At the time of writing Nike has given no indication that it intends to respond to this letter. The author was a signatory to this letter.

47. In the apparel industry some of the largest companies put in orders to thousands of different factories (each of which produces clothes for many different companies) and levels of orders fluctuate greatly with different seasons and with changes in fashion. One company member of the Ethical Trading Initiative has 17,000 suppliers spread across many countries. Others have between 500 and 5,000 suppliers (ETI , p. 17). See also (LARIC 1999, p. 7).

48. FLA monitors will have access to information about the production levels of a factory they are monitoring if their investigations require it (Harvey, P. 2000, pers. comm., 5 July). They will not however have access to all levels of orders made by the participating company, and so will not be in a position to investigate whether production might be being shifted to factories which are not unionised.

49. See (WRC 2000)

50. The relevant section requires signatory companies to "Work with Company factories and contractors and suppliers to correct instances of noncompliance with the workplace standards promptly as they are discovered and to take steps to ensure that such instances do not recur" and to "Condition future business with contractors and suppliers upon compliance with the standards" (AIP 1997).

51. (Hoffman, A. 1998, pers. comm., 2 Oct.)

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66. (Athreya 2000).

67. (Friedman 2000)

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1 PhD student, School of Geosciences, University of Newcastle, Australia. The author also coordinates the NikeWatch campaign for the aid organisation Community Aid Abroad in a voluntary capacity (see www.caa.org.au/campaigns/nike). This paper draws on audio-taped research interviews with key individuals involved in the development of labour practices codes of conduct. These interviews were conducted by the author in North America, Europe and Asia between September and December 1998.

2 (IRRC 1998, p. 11)

3 These quotations are taken from Knight's statement on his company's website - see (Knight 2000).

4 For examples of press articles on the issue see (Bhagwati 2000; Duin 2000; Friedman 2000; Orecklin 2000). The NGO members of the FLA sent Knight an open letter criticising his actions - see (Golodner et al. 2000).


6 (Schoenberger 1997, pp. 63-75).

7 This is not to say that capital mobility is never used to undermine workers' power in industries which employ "Just in Time" techniques. See Wells (1998a, 1998b) and Murray (1998) for examples of relative wage costs in automobile plants in Latin America, the US, Canada and Europe and a discussion of the implications for the maintenance of labour standards.

8 In the apparel industry developing countries almost doubled their share of global exports between the early 1970s and the mid-1990s to account for more than 60% of exports in 1996 (U.S. DOL 1996, p. 15). The International Labour Organisation's 2000 report on rights at work found that in many countries workers, particularly those working in Export Processing Zones (EPZs), are denied freedom of association either in law or practice and face intimidation if they try to exercise these rights (ILO 2000a).

9 (Gibson-Graham 1996)

10 (Herod 1995; Wills 1998)

11 (Breitenfellner 1997; Wells 1998b)

12 (Johns 1998)

13 For consideration of the history of labour practice codes see (Athreya, Collingsworth & Harvey 1998; Liubicic 1998; Murray 1998).


15 (Liubicic 1998).

16 (Connor 1999).


20 (Jessop 1998, p. 41)

21 (Liubicic 1998).

22 (Utting 2000) (Diller 1999).

23 (Power 1994, p. 306)


25 See Koh (1998) for an analysis of the varied and non-linear processes by which human rights norms become enshrined in international law and are subsequently institutionalised by states within national legal systems.


28 Of the corporations involved in the FLA, Adidas, Nike, Phillips-Van Heusen, Kathie Lee Gifford, Liz Claiborne and Reebok have all been subject to public exposure of conditions in their suppliers factories at various times.

29 To give a very broad indication of the level of media interest, a search of all the publications on the Dow Jones Interactive Index for articles carrying the words "Nike" and "sweatshop" reveals 2254 articles between 1 January 1988 and 30 June 2000. The same search found 201 for Adidas, 702 for Reebok, 72 for Mattel, 107 for Levi's, 1224 for the GAP, 58 for Toys R Us and 73 for Kathy Lee Gifford's clothing line at Wal-Mart. This is clearly a blunt measuring instrument. No doubt a percentage of articles containing those two words do not make any connection between them, or else argue that criticism of Nike's factories is misplaced. At the same time many articles which do address the question of Nike's labour practices may not use the word "sweatshop". See Chan (1996), Egan (1998), Feeney (1997), Franklin (1998), Greenhouse (1997b), Herbert (1997), Klein (1999) and Shakespeare (1995) for examples of press articles.

30 In 1997 and 1998 the Canadian Catholic Organisation for Development and Peace collected more than 200,000 signatures on a petition calling on Nike to adopt independent monitoring. In Belgium in 1998 the Clean Clothes Campaign collected more than 100,000 signatures in a similar campaign. In Australia 8,000 campaign postcards have been signed.

31 (Lamb 1999).

32 (Burns 2000, p. 5)

33 See (Nike Inc. 2000a)

34 In 1997 an Ernst and Young report into the Tae Kwang Vina factory in Vietnam was leaked to the Transnational Action and Resource Center, which published a damning critique of the auditing methodology (O'Rourke 1997a; O'Rourke 1997b).

35 SHAPE stands for Safety, Health, Attitude of Management, People and Environment. See (Nike Inc. 1999d).

36 The Global Alliance for Workers and Communities are involved in an "assessment of worker/community needs" in 21 of Nike's more than 600 suppliers. According to the director of the Global Alliance (Kevin Quigley) it will not be monitoring the protection of workers' right to organise (Quigley K., pers. comm., 1 June 2000). Evidently at Nike's request the University of Economics in Ho Chi Minh City also conducts ongoing focus groups with workers from Nike contract factories in Vietnam but Nike has declined to reveal what questions workers are asked.


38 See (Harvey 1999).

39 By June 1999 Phillips-Van Heusen Corporation, Nicole Miller, L.L. Bean and the Kathy Lee Gifford clothing line (marketed through Wal-Mart stores in the US) had agreed to participate in the monitoring program (Buzbee 1999) and by March 2000 Adidas-Salomon A.G., Eddie Bauer, Inc. and Levi's Strauss & Co. had also become members (FLA 1999a).

40 (Appelbaum & Dreier 1999).

41 In 1998 Women Working Worldwide (a small NGO based in the United Kingdom) conducted a research exercise involving consultation with women factory workers from Bangladesh, India, Sri Lanka, Pakistan, the Philippines and Indonesia regarding their attitude to codes. The importance of workers being consulted during the development of codes emerged as a strong theme (Hale 1998, p. 3).

42 (Appelbaum & Dreier 1999).

43 (WRC 2000a).

44 (Diller 1999).

45 (Kidd, D. 1998, pers. comm., 29 Sep.).

46 In a letter delivered to Nike in March 2000 a number of labor rights groups claimed that in 1998 Nike abandoned the Par Garment factory in Thailand and the PT Tainan I factory in Indonesia after workers engaged in industrial action there and called on Nike to restore its relationship with those factories. See (Bissell et al. 2000). At the time of writing Nike has given no indication that it intends to respond to this letter. The author was a signatory to this letter.

47 In the apparel industry some of the largest companies put in orders to thousands of different factories (each of which produces clothes for many different companies) and levels of orders fluctuate greatly with different seasons and with changes in fashion. One company member of the Ethical Trading Initiative has
17,000 suppliers spread across many countries. Others have between 500 and 5,000 suppliers (ETI, p. 17). See also (LARIC 1999, p. 7).

FLA monitors will have access to information about the production levels of a factory they are monitoring if their investigations require it (Harvey, P. 2000, pers. comm., 5 July). They will not however have access to all levels of orders made by the participating company, and so will not be in a position to investigate whether production might be being shifted to factories which are not unionised.

See (WRC 2000)

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