

Setting new global rules? TNCs and codes of conduct

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The introduction of codes of conduct can be seen as an expression of corporate social responsibility, but also as rule-setting behaviour – attempts to help fill some of the existing international institutional voids. To shed light on these aspects and the (potential) effectiveness of codes, this article examines trends in the adoption and contents of codes of conduct introduced to regulate the behaviour of international business. Using the evidence obtained over the years, it presents an overview of the state of current knowledge on international social responsibility codes, and indicates areas for further research, management and policy attention. It also deals with the definition and types of codes, the background and dynamics of the code ‘movement’, the contents of codes and their compliance likelihood, issues regarding implementation and effectiveness, and ‘next steps’ that can be taken to obtain further insight.

Key words: TNCs; corporate social responsibility; codes of conduct; NGOs; international organizations; business associations; self-regulation

Introduction

The initiation of codes of conduct can be perceived of as rule-setting behaviour, which contributes to the establishment

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of new institutions.¹ National governments normally prevail in these codification processes due to their formal position as law-makers. In the international arena, however, rule setting has proven to be more difficult, and considerable international regulatory voids have appeared in the course of the 1990s (Braithwaite and Drahos, 2001). The fact that, in the same period, almost every major transnational corporation (TNC) in the world either drew up and implemented a code of conduct or contemplated to adopt such a document, thus did not develop in isolation.

Codes initiated by TNCs can be interpreted as a corporate attempt to fill in some of the international institutional voids, by introducing informal institutions. But what properties do and will these new institutions have? Company codes of conduct are also an expression of corporate social responsibility. Could that imply that the new institutional setting in the world could trip the balance from properties usually propagated by realist approaches towards an idealist approach of international relations (Gilpin, 2002)? To explore these issues, a more detailed assessment of the trends and nature of codes of conduct is necessary.

Such an analysis could also shed some light on the nature of this corporate code development. Are companies indeed increasingly becoming socially responsible and responsive to societal concerns? Is civil society becoming more effective in pressing for responsible business practices? And are governments correct in putting their hopes on corporate self-regulation? Or does this development merely represent better communication strategies, with codes of conduct as a new form of window dressing? And what can we say about the effectiveness of codes of conduct, from a societal and managerial perspective? Do explicit codes help to tackle major present-day

¹ A definition of “institutions” most often used is the one formulated by Douglas North (1994, p. 360), in which institutions “are made up of formal constraints (e.g., rules, laws, constitutions), informal constraints (e.g., norms of behavior, conventions, self-imposed codes of conduct), and their enforcement characteristics.”

world problems, do they set new institutions that operationalize the principles of either a realistic or an idealistic world order? And are they useful instruments to facilitate the multiple dilemmas involved in managing across borders – the difficulties that TNCs face when operating abroad?

Seven years ago we started our research project on TNCs and codes of conduct by posing these broad questions. Using the evidence that has been obtained over the past few years, this article addresses the questions formulated above by presenting an overview of the state of current knowledge with regard to international responsibility codes, and indicating areas for further research, management and policy attention. It subsequently deals with the definition and types of codes, the background and dynamics of the code movement, the contents of codes and their compliance likelihood, issues regarding implementation and effectiveness, and next steps that can be taken to obtain further insight.

Definition and types of codes

International responsibility codes encompass guidelines, recommendations or rules issued by entities within society (adopting body or actor) with the intent to affect the behaviour of (international) business entities (target) within society in order to enhance corporate responsibility. In this definition, the adopting body can be any societal actor, whereas companies are always the target. It should be noted that companies might design codes for other purposes than for the sake of their own ethical behaviour and corporate responsibility. It is highly conceivable that codes adopted by companies are in essence meant to influence other societal actors: regulators, customers, communities, suppliers and contractors, competitors or shareholders. The possibility that codes may serve other purposes than social responsibility as such is relevant when analyzing their properties and substance.

Hence, two types of codes exist. On the one hand, societal, non-profit actors may use codes of conduct to guide and/or

restrict companies' behaviour, thus trying to improve corporate social responsibility. Adopting bodies are either governments or international organizations (at the macro level) or social interest groups such as consumer, environmental and minority organizations, trade unions and churches, at the meso level. On the other hand, codes can be drawn up by companies (micro level) or business support groups (meso level) such as industry and trade associations, chambers of commerce, think tanks and business leaders forums. In these cases, codes serve to influence other actors and/or to carry out voluntary or anticipatory self-regulation.

With regard to the effect on other actors, one might think of new market opportunities, risk reduction, increased control over business partners or improvement of the corporate image. Except for control over business partners, whereby codes can potentially become strategic instruments, the other aspects are related to public relations. This could be seen with suspicion, as mere rhetoric (e.g. environmentalists who accuse TNCs of "greenwashing"), but also in a more straightforward, almost existential way, in that companies need a societal license to operate.

Codes can also play a role in the relationship between the public and private sectors. Companies generally resist excessive government laws and regulations that are seen to restrict their freedom of action. The chances of successfully preventing such an command and control approach increase if companies can convincingly show that they can regulate themselves. Self-regulation encompasses voluntary standards adopted by companies or their business support groups in the absence of regulatory requirements, or those that are taken to help compliance or exceed pre-existing regulations (Hemphill, 1992). Thus, codes of conduct are drawn up to anticipate or prevent mandatory regulation.

Waves of codes since the 1970s

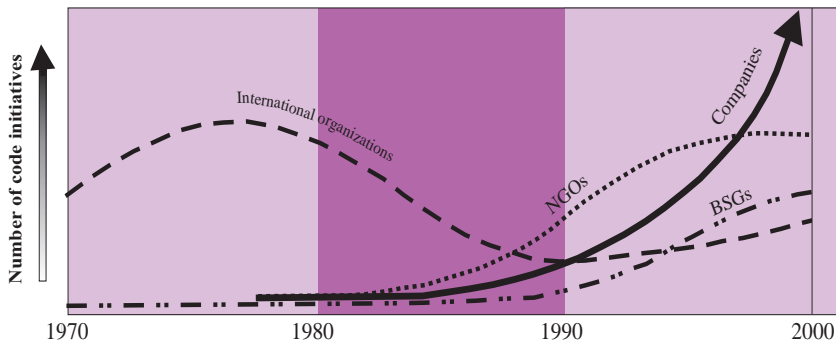
The first attempts to regulate TNCs' behaviour originate in the 1970s, when international organizations such as the

International Labour Organisation (ILO, in 1977), the United Nations Commission on Transnational Corporations (UNCTC, in 1978) and the Organisation for Economic Co-operation and Development (OECD, in 1976) almost simultaneously tried to design codes of conduct. Governments of both developed and developing countries that faced major inroads of TNCs in their economies showed interest in the debate. Critical social interest groups also pushed the discussion further. But the lack of international consensus about the function, wording and potential sanctions against non-compliant companies in particular, moderated the original intention to make the codes mandatory. Instead voluntary codes were agreed, which had only limited effects. The ILO code, for example, was adopted voluntarily by one company, but after trade unions used this code in an industrial dispute with the company's managers, no other company dared to do the same.

In the 1980s, codes of conduct received rather scant attention. The 1970s' draft codes of the ILO (the Tripartite Declaration of Principles concerning Multinational Enterprises) and the OECD (the Guidelines for Multinational Enterprises) performed an exemplary function (Getz, 1990). The boldest initiative to develop a code that stimulated TNCs to maximize their contribution to economic development, was the United Nation's draft code. It never was finalized and adopted, however, and was finally abandoned altogether in 1992, due to differences of interest between developed and developing countries (van Eyk, 1995; WEDO, 1995). In the 1980s, the discussion on corporate codes of conduct was largely confined to business ethics, and was carried on primarily in the United States. A growing number of university centres and specialized journals focused on the study of business ethics. United States companies had traditionally been interested in business ethics for a number of national reasons, particularly related to practices of litigation. The international dimension of the debate, however, remained limited, and attention to business ethics in other than United States companies was rather modest (Langlois and Schlegelmilch, 1990).

In the 1990s, the efforts to formulate (global) standards for corporate conduct re-emerged. Besides international organizations, governments and NGOs, companies and their business associations (business support groups) started to draw up codes in which they voluntarily committed themselves to a particular set of norms and values (figure 1). TNCs, in particular, felt pressured by increasing societal concerns about the negative implications of international production and investment. Leading NGOs, trade unions and churches came up with concrete suggestions for company codes. The challenge for codification was first met by business associations such as the International Chamber of Commerce (ICC) or the Japanese employers' association Keidanren. A growing number of individual companies, such as Nike, Levi Strauss and Shell, also responded by introducing responsibility codes. For Shell, it meant an update of its company code that had already been introduced in the 1970s. For most other companies, the code was their first statement on their (perceived) social responsibility and approach.

Figure 1. Waves of codes of conduct since 1970



Source: the authors.

As a result of these tendencies, at the end of the twentieth century, a plethora of codes and statements of corporate responsibility existed, as shown by different inventories (CEP, 1998; Cragg, 2003; ILO, 1998; Kolk, van Tulder and Welters, 1999; Leipziger, 2003; Nash and Ehrenfeld, 1997; OECD, 1999; UNCTAD, 1996; UNEP, 1998). Particularly the number of

private company codes exploded in the past decade of the twentieth century. Measured by sheer numbers, companies have now taken the lead in the voluntary introduction and implementation of codes of conduct. The corporate governance and accounting scandals in the past few years have been a further incentive for the adoption of codes. Although primarily oriented at more internal ethical codes, increased attention to norms and values certainly has an effect in strengthening the code wave as a whole.

A cascade of codes

In the development of codes, business initiatives have interacted with the continued work of international organizations, governments and NGOs, resulting in a veritable cascade of codes. A dynamic development can be observed in which the introduction of a code by one company, frequently in response to stakeholder expectations, very often leads to the adoption of comparable codes by others. This might, in turn, incite additional requests by stakeholders, which again requires a company response, sometimes in the form of an update of the code and a specification of policies. Industries in which this dynamic process has been shown to exist are sporting goods (Van Tulder and Kolk, 2001) and coffee (Kolk, 2005a).

Industries that have received particular attention regarding international responsibility codes are apparel, footwear, soccer balls, carpets, agribusiness, retail, tourism and, most recently, electronics and coffee (CAFOD, 2004; ILO, 2003; Kolk, 2005a; Sajhau, 1997; Van Tulder and Kolk, 2001; World Bank, 2003a). In many cases, this has been linked to labour rights, particularly the issue of child labour (Jenkins, Pearson and Seyfang, 2003; Kolk and Van Tulder, 2002a; United States DOL, 1997; Wolfe and Dickson, 2002). This focus can be explained from the relatively high (child) labour-intensity of these industries, and the fact that they usually sell their products on consumer markets, not on business-to-business markets. These peculiarities strongly increase the vulnerability of companies to societal demands for action, and thus the likelihood of code adoption, both at the company and the industry level.

The country of origin has also been important in this regard. Societal pressure has been stronger in some countries than in others. The dynamics of this interaction between various stakeholders has influenced corporate inclinations to draw up codes of conduct. The domestic stakeholder context has affected United States companies in particular. A study in the late 1980s, which compared the United States and Europe, underlined that the adoption of corporate codes started much earlier and was more widespread in the United States (Langlois and Schlegelmilch, 1990). A more recent study in the garment industry confirmed this tendency (Kolk and Van Tulder, 2002a). It must be noted that with regard to the types of codes adopted, particularly concerning the implementation and compliance mechanisms included (see below), European TNCs tend to adhere to clearer and more specific monitoring systems than United States firms. Japanese TNCs, finally, are least inclined to adopt codes, which seems in line with their general approach to human resource management that stresses informal coordination and control rather than specific contractual relations (van Tulder and Kolk, 2001).

Different corporate governance systems might also play a role in explaining some of the differences in the approach to codes of conduct. In the “outsider” system of the United States with a one-tier board structure, households hold considerable amounts of shares, whereas the role of the CEO is more prominent. At the same time, the share of socially responsible investment (particularly in the hands of institutional investors) is also the highest in the world. Finally, there is a higher propensity for liability and class-action suits. All this has created a particular dynamic that differs from the situation in Europe and Japan. The European and Japanese systems of corporate governance are more “insider systems” where the role of the CEO has been somewhat less prominent so far, and a two-tier board structure exists. Institutional investor interest in social responsibility, and fear for litigation, have lagged behind the United States situation. Codes of conduct under these circumstances play a different role, perhaps more of an internal control (rule-setting) instrument. In European companies formal

rules prevail, whereas in Japanese companies informal rules predominate. How recent developments in corporate governance will influence this whole dynamic is an interesting question for further research (see also the final section).

The interaction between companies and their stakeholders has thus been a crucial factor in the development and fine-tuning of international responsibility codes. This has not only had an impact on the number of codes adopted, but also on their contents.

The contents of codes: assessing and comparing compliance likelihood

With growing numbers, the interest in the contents of the responsibility codes has increased as well. The different inventories mentioned above usually include a content analysis, of which the specific components singled out for investigation depend on the approach and objectives of the organization/researcher in question. However, taken together, these different elements recur in a comprehensive framework developed to analyze and compare codes of conduct (table 1).

This model, first published in 1999 (Kolk, van Tulder and Welters, 1999), aims to assess the so-called “compliance likelihood”, which is the probability that companies will conform in practice to codes either proclaimed by themselves or developed by other actors, and that these claims will in fact be translated into responsible behaviour and action. The compliance likelihood is determined by the compliance mechanisms included in codes and the extent to which the claims put forward are measurable. The more specific the codes are, the better can they be measured and, subsequently, monitored. Monitoring is expected to enhance codes’ comprehensiveness and compliance likelihood.

The framework has been used to analyze and compare the codes drawn up by a range of companies, international organizations, NGOs and business associations. Examining, at

Table 1. A model to analyze and compare codes of conduct

Criterion		Short elaboration	Classification	
S P E C I F I C I T Y	I S S U E S	1.1 Social	1) employment (employment promotion, equality of opportunity and treatment; security of employment) 2) training 3) working conditions (wages and benefits; conditions of work and life; safety and health) 4) industrial relations (freedom of association; collective bargaining; consultation; examination of grievances; settlement of industrial disputes) 5) force (child labour; forced labour; disciplinary practices)	ranking from: 0 out of 5, to 5 out of 5
		1.2 Environment	1) management policies and systems (subdivided into 4 aspects) 2) input/output inventory (6 aspects) 3) finance (2 aspects) 4) stakeholder relations (7 aspects) 5) sustainable development (3 aspects)	ranking from: 0 out of 5, to 5 out of 5
		1.3 Generic	1) consumer interests (consumer needs; disclosure of information; consumer concerns; marketing practices) 2) community interests (community involvement; disclosure of information; community philanthropy/sponsoring) 3) global development (global issues; socio-political setting; fair and free trade practices; third world development; third world philanthropy/sponsoring) 4) ethics (fundamental human rights and freedoms; fundamental ethical values; bribery and facilitating payments) 5) legal requirements (legal compliance; compliance vis-à-vis business partners)	ranking from: 0 out of 5, to 5 out of 5
	F O C U S	2.1 Organizations targeted	general; firms; industries; business partners; internal operations of specific firms	general/firms/ industries/ partners/ internal
		2.2 Geographic scope	global (general); nearly global (frail); general region (moderate); regulatory system (moderate to strong); specific country (strong)	no/general/ frail/moderate/ moderate to strong/strong
		2.3 Nature	general prescription/description (general); predominantly general (frail); general and specific (moderate); predominantly specific (moderate to strong); specific (strong)	no/general/ frail/moderate/ moderate to strong/strong
	M E A S U R E	3.1 Quantitative standards	% of issues quantified: >90% (predominant); 51%-90% (majority); 25%-50% (medium); 10%-25% (minority); <10% (few); none (no)	predominant/ majority/ medium/minority/few/no
		3.2 Time horizon	1) quantification % of >90% (predominant); 51%-90% (majority); 25%-50% (medium); 10%-25% (minority); <10% (few); none (no) 2) qualitative division into none defined; vague; clear	ibid.; and none/ vague/clear
		3.3 Reference	none defined; home country; host country; international; or combinations	like preceding box
C O M P L I A N C E	4.1 Monitoring systems and processes	good insight into system and process (clear); reference to some parts, but criteria or time frames are lacking (clear to vague); only general reference to monitoring without details (vague)	clear/clear to vague/vague/ none	
	4.2 Position of monitoring actor	firms themselves (1st party); business associations (2nd party); external professionals paid by firms (3rd party); combinations of different actors (4th party); NGOs (5th party); legal authorities (6th party)	ranking from: 1st to 6th party	
	4.3 Sanctions	measures have no large implications, e.g. warnings and exclusion of membership (mild); threat to business activities (severe)	none/mild/ severe	
	4.4 Sanctions to third parties	measures such as fines, or demands for corrective action (mild); severance of relationship, cancellation of contract (severe)	n.a./none/mild/ severe	
	4.5 Financial commitment	classification according to level of fee or relative investment	low/moderate/ high/very high/none	
	4.6 Management commitment	no commitment stipulated (none); includes a list of endorsing firms (explicit); or with regard to company codes, when business partners must sign it (explicit); commitment implied (implicit)	none/implicit/ explicit	

Source: Van Tulder and Kolk (2001), pp. 273-274.

the time, these four actors' codes with regard to focus, measurability and compliance mechanisms, the codes issued by business associations proved weakest on all scores. This reflects their lowest common denominator principle: many of the meso codes succeed in attracting considerable numbers of subscribing companies because the statements are very vague. This role of a business association in providing so-called "club goods" has been demonstrated more specifically in the case of the Chemical Industry's Responsible Care programme (King and Lenox, 2000; Prakash, 2000).

One might see business associations codes as awareness-raising tools. However, once this function has been fulfilled, they seem to become public relations exercises and alibis for avoiding more drastic steps rather than active means to increase corporate social responsibility. Only better monitoring and especially the imposition of sanctions might prevent adverse selection, in which the least performing companies tend to subscribe most frequently to business associations codes (Lenox and Nash, 2003).

Whereas business associations codes proved weakest as to specificity and compliance, codes developed by NGOs, trade unions and other social interest groups scored higher, also when compared to international organizations and company codes. At the same time, however, the compliance likelihood of these NGO codes was not very high. Measurability – with regard to quantitative standards and time horizons – turned out to be even lower than in some company codes, something that also applied to sanctions and financial commitment. A relatively large number of NGO codes did make references to home-country and international standards, though, and were stricter regarding monitoring systems and monitoring actors. In that sense, they clearly fulfilled the function of putting pressure on other actors.

On average, leaving aside the considerable variety that exists, company codes scored better than business associations codes, especially concerning the organizations targeted, their reference to standards, monitoring systems and position of the

monitoring actor. Codes drawn up by international organizations were stricter than company codes on aspects such as their nature and the position of the monitoring actor. It must be noted, however, that the compliance likelihood of international organizations codes was generally not very high (and less than NGO codes). This reveals partly conflict of interests and/or lack of support. Policy competition between national governments often hampers stricter formulations. Taking this into consideration, companies might be better capable of developing cohesive codes that can also be implemented.

Regarding the relatively limited compliance likelihood of international organizations codes, it must also be noted that some of them were never intended to be put into practice, serving mainly as model codes (ILO, 1998). This means that international organizations have had a function in triggering other coalitions and code development. The beginning of an era of multilateral diplomacy can be witnessed in which companies, governments, NGOs and sometimes also business associations bargain over the formulation and implementation of codes of conduct. Examples include the Apparel Industry Partnership (Sethi, 2003) and, more recently, the multi-stakeholder initiative Common Code for the Coffee Community (Kolk, 2005a). In addition to garments and coffee, other sectors have also shown interesting developments – particularly the extractive industries (oil, mining, diamonds) (Sullivan, 2003), and banking. Multi-stakeholder initiatives sometimes interact with corporate initiatives taken by front-runner companies and/or pressurised by NGOs and public opinion.

These are dynamic, in a sense never-ending, processes as codes will continuously be drawn and redrawn on the basis of social bargaining, in which new alliances might be formed. Such an interaction between the different actors has been shown in the sporting goods industry and coffee sector where it led to more sophisticated codes, especially on the part of some companies that were most vulnerable to societal demands, also because of their organizational and strategic peculiarities (Kolk, 2005a; Van Tulder and Kolk, 2001; Kolk and Van Tulder, 2004).

The framework for analysis indicated above (table 1) has proved helpful in delineating and tracing such developments, and can be used in follow-up research on new trends as well (see final section), also to see whether the peculiarities of the different types of codes (international organizations, companies, NGOs, business associations), still holds in the 21st century.

Codes and specific issues: child labour and poverty

In addition to an examination of codes for their specificity and compliance in general, the framework can also be used to focus on particular issues. Especially with regard to child labour, the model has been fine-tuned and elaborated for more detailed analysis, with particular attention to minimum-age requirements, monitoring and sanctions (table 2).

Table 2. A model to analyse and compare corporate codes of conduct on child labour issues

Criteria	Short elaboration	Classification	
S P E C I F I C I T Y	1.1 Minimum age to employment	Does the code include a minimum age to employment? If so, what age?	yes (age); no
	1.2. Applicability	Is this a universal minimum age or are country-specific exceptions indicated?	n.a.; universal; country-specific
	1.3. Organization targeted	To whom is the code addressed? General, governments; internal operations of specific firms; business partners (suppliers, subcontractors, vendors, manufacturers)	actor category (exact wording)
	1.4. Reference	Is reference made to international standards (ILO, UN), either implicit or explicit, or to home-country or host-country laws?	none; home; host; international (implicit/explicit)
	1.5. Nature of code	Are alternative measures included in the code (such as education for children)? Or does the code only prohibit child labour?	broad; strict
C O M P L I A N C E	2.1 Monitoring systems and processes	good insight into system and process (clear); reference to some parts, but criteria or time frames are lacking (clear to vague); only general reference to monitoring without details (vague)	clear; clear to vague; vague; none
	2.2 Position of monitoring actor	firms themselves (1st party); BSGs (2nd party); external professionals paid by firms (3rd party); combinations of different actors (4th party); NGOs (5th party); legal authorities (6th party)	ranging from: 1st to 6th party
	2.3 Sanctions and their scope	there are no measures included (none); they apply to company employees (internal); and/or to third parties (respectively all and external)	none; internal; external (actor category); all
	2.4 Type of third-party sanctions	measures such as fines, or demands for corrective action (mild); severance of relationship, cancellation of contract (severe)	n.a.; none; mild; severe

Source: Kolk and Van Tulder (2002b), p. 264.

Codes can also be examined on other social issues in which the role of companies is considered to be important. An example is poverty. In the international discussion on how to combat poverty, the potential contribution of the private sector is frequently mentioned nowadays by a number of international organizations, NGOs and business associations. Company codes can therefore be analyzed to see to what extent they address the different components related to poverty alleviation, as distinguished by international organizations such as the ILO, UNCTAD and OECD. Table 3 contains a model with the policy measures that internationally operating companies can take to diminish poverty (the content issues that relate to equality of opportunity and treatment, conditions of work, and collective bargaining). The second part of the framework, the “context issues” focuses on what companies can contribute to the eradication of poverty and to greater involvement of the poor.

Table 3. A model to evaluate corporate conduct in relation to the eradication of poverty

Criteria	Short elaboration	Classification	
C O N T E N T I S S U E S	Equality of opportunity and treatment	1) Eliminate any discrimination based on race, colour, sex (gender equality), religion, political opinion, national extraction or social origin 2) Respect human rights	Ranging from: 0 out of 2 to 2 out of 2
	Conditions of work	1) Wages and benefits should be not less favourable than those offered by comparable employers 2) The normal working week should not exceed forty-eight hours plus twelve hours overtime (with overtime being remunerated at higher rates) 3) The minimum age to employment is respected (for light work: 13 years) 4) The highest standards of safety and health are followed	Ranging from: 0 out of 4, to 4 out of 4
	Collective bargaining	1) Workers have the right to have (and establish) representative organizations of their own choosing which are recognised as partners in collective bargaining 2) The company provides workers' representatives with adequate means and facilities (including information) to conduct meaningful negotiations	Ranging from: 0 out of 2, to 2 out of 2
C O N T E X T I S S U E S	Address special needs	1) Carry out activities in harmony with development priorities, and social aims and structure of the host country (general policy objectives) 2) Obey national laws and regulations	Ranging from: 0 out of 2, to 2 out of 2
	Dynamic comparative advantage	1) Adopt/develop technology to the needs of host countries 2) Invest in high-productivity, high-technology, knowledge-based activities 3) Establish backward linkages with domestic companies 4) Give consideration to conclude contracts with national companies	Ranging from: 0 out of 4, to 4 out of 4
	Training	1) Provide training for employees at all levels which develops useful skills and promotes career opportunities 2) Participate in training programmes organised by/together with governments 3) Make services of skilled personnel available to assist in training programmes	Ranging from: 0 out of 3, to 3 out of 3
	Monitoring	1) Foster and strengthen local capacities to monitor poverty reduction programmes (participatory methods) 2) Encourage the development of local poverty reduction indicators and targets 3) Design poverty monitoring systems which provide evaluations of anti-poverty programmes	Ranging from: 0 out of 3, to 3 out of 3

Of these two issues mentioned as examples for further elaboration of the content analysis scheme, especially the child labour scheme has been used in different publications. These have shed further light on compliance likelihood and stakeholder interactions. A comparison of child labour codes of the four actors (international organizations, business associations, NGOs, companies) showed that, here as well, those drawn up by NGOs turned out to be most specific, and those developed by business associations the least (Kolk and van Tulder, 2002b). A dynamic interaction could again be noted, resulting in at least some company codes in particular industries that are specific regarding minimum age to employment, monitoring and compliance (Kolk and van Tulder, 2002a). These studies also showed, however, that the imposition of severe sanctions proved to be a complicated issue, pointing at the dilemmas of codes and the underlying discussion about their effectiveness.

On implementation and effectiveness

In the past few years, several studies and NGO campaigns have focused on whether, how and to what extent codes have indeed been implemented by companies, and how monitoring and verification has worked in practice. Some companies and industries have received particular scrutiny. Case study examples include the electronics sector (CAFOD, 2004), apparel (BSR, IRRC and O'Rourke, 2001; Jenkins, Pearson and Seyfang, 2002; Oldenziel, 2001) and sports footwear, especially Nike (e.g. Connor, 2001). They point to the limitations of corporate codes of conduct, particularly of those that are vague and lack clear monitoring mechanisms. Deficiencies include the fact that most codes have so far failed to take a supply chain approach, to reckon with home-based workers and to sufficiently involve employees, both in the formulation of the codes and, most notably, in the audit process. The inability of auditors to monitor adequately (independently) codes and reveal suppliers' disguising practices is mentioned as well.

Concerns about the quality of the audit process and the costs of monitoring were also raised in two other recent studies on code implementation commissioned by international

organizations (ILO, 2003; World Bank, 2003b). The ILO (2003) focused on the management systems for such implementation in footwear, apparel and retail. Based on (and citing) anonymous information derived from 329 interviews with managers and workers from TNCs, their suppliers and a limited number of other actors, it concluded that the sports footwear companies were most advanced in the implementation of codes in their operations. TNCs in this industry had drastically reduced the number of suppliers, and delved relatively deeply into the systems of these remaining suppliers. Apparel companies, which work with much more suppliers, were less advanced in the implementation. Retail companies, finally, have usually thousands of suppliers and, also due to the fact that their key activity is to market and sell other brands, seemed to be least focused on code compliance for their own products.

In addition, sports footwear was, comparatively speaking, most advanced in integrating social responsibility in regular management systems, while the other two industries approached it more as an add-on to systems already in place. The report noted that the “research consistently revealed an inadequate, if not poor, level of integration of CSR and Code compliance responsibilities in the internal structure of MNEs and suppliers” (ILO, 2003, p. 246). The sourcing department, crucial in managing the relationship with and imposing requirements on suppliers, was “often the least involved with CSR and Code compliance issues”.

The other recent report, published by the World Bank (2003b), summarized the findings of (partly group-wise) interviews of 199 individuals from 164 organizations and companies in apparel and agriculture. It focused particularly on three barriers to improved code implementation, formulated by the World Bank as input for the study. These involved a plethora of codes, the top-down approach and the insufficient understanding of the business case. Especially the first barrier was not really supported by the interviewees. While recognizing the inefficiencies related to the large number of existing codes, they did not see much added value in working towards one

harmonized code. Most respondents already observed a convergence of forms and contents, and mentioned to see potential for improvement in taking a more focused (industry-level) approach.

The ILO (2003) study neither found that suppliers experienced great problems because of being confronted with multiple codes from different TNCs, since compliance with the most stringent code satisfies all parties. Moreover, if codes focus on different areas (e.g. one on health and safety, another on working hours), compliance with all of them helps to improve standards across the board. Such overall compliance might be possible, but an important difficulty faced by suppliers is that they usually have to bear the costs for (extra) requirements themselves. It can, therefore, not be ruled out that the multiple codes argument is merely used as a pretext for non-compliance (World Bank, 2003b), hiding more complicated economic issues related to the distribution of costs and benefits (of code compliance) over global supply chains, including the fact the cost savings were the motivation to outsource production in the first place (Kolk and van Tulder, 2002a).

As a greater concern than the mere existence of a multitude of codes, both studies mentioned the inconsistent interpretation and application of provisions (World Bank, 2003b), indicated by the ILO more specifically as the lack of indicators and performance metrics related to labour, social and ethical standards. As part of this problem it was stated that for example labour standards aim at governments, not at companies, which complicates application at the factory level. Like the ILO, the World Bank study referred to the complexity of global supply chains as another barrier to implementation of social responsibility. Even more than apparel, agriculture consists of a number of rather different commodity-driven industries.

This points at the broader, structural economic aspects related to codes of conduct, where contradictory forces exist. With regard to monitoring, for example, it could be argued that TNC cooperation to develop shared schemes might be useful to

reduce costs, avoid duplication and facilitate compliance on the part of suppliers. This departs from the assumption that such more operational issues are non-competitive, a view not always shared by TNC headquarters staff who fear that sensitive (factory) information might be disclosed. A common approach also makes the efforts of an individual TNC less visible, which might be undesirable in case this company is specifically targeted by NGOs or consumers and wants to show its own corporate social responsibility profile.

A final issue that needs to be raised is the effectiveness of codes of conduct – in other words, can codes be a useful mechanism for addressing social responsibility? The World Bank (2003b) refers to trade unions’ view that law enforcement and collective agreements are much more effective; NGOs have also emphasised that (existing) regulatory standards need to be strengthened and implemented (Jenkins, Pearson and Seyfang, 2002). The debate on the effectiveness of codes of conduct has been addressed in a study that focused on child labour (Kolk and van Tulder, 2002a). It developed a two-by-two matrix to outline the different perspectives that can be taken (figure 2). While applied to child labour in this case, it identifies in general the extent to which a code of conduct can be effective in dealing with a particular social responsibility problem.

Figure 2. Effectiveness matrix of corporate behaviour on social issues

		Effective in dealing with child labour	
		YES	NO
Having a corporate code of conduct	YES	Position 1	Position 2
	NO	Position 3	Position 4

Source: Kolk and van Tulder, 2002a, p. 261.

The positions range from support for the positive impact of corporate codes of conduct (position 1), to emphasis on the unintended negative side-effects of codes, such as, in this case, the impact on children in case of strict sanctions (position 2), to an effective corporate approach by other means that codes (position 3), and, finally, a situation in which it is seen as a public, not a private, responsibility to address social responsibility issues (position 4). Effectiveness was explored by a close examination of the nature of the child labour codes that companies have drawn up, and by a survey among a focus group of companies and stakeholders who were asked for their views. The respondents considered codes to be important, though not the only, instruments for addressing child labour. The study also identified the different managerial and policy dilemmas surrounding corporate codes. These aspects of codes, including the complicated issues surrounding effectiveness and implementation examined in this section, are clearly areas that need further investigation. Below some other steps that could be taken will be mentioned.

Next steps: an agenda for research, policy and management

While codes of conduct might be relatively weak, they are nevertheless part of the new current rules of the game and a vital input for the creation of new international institutions in an era of uncertainty regarding the shape of national and international regulatory regimes (Braithwaite and Drahos, 2001). Especially because many codes are drawn up by large TNCs, their impact goes far beyond the confines of these individual companies. They affect suppliers and other actors within and beyond their value chain, and spill over to other regulatory regimes and rule-setting activities by international organizations.

The actual nature of the international institutions created by companies is still relatively obscure. In the international arena it has always been difficult to enforce agreed-upon rules. The establishment of new rules induced by TNCs certainly adds to filling some of the international regulatory voids. If companies

support specific international regulation or model codes (the ILO Declarations, the Universal Declaration on Human Rights, the OECD principles of good governance), this might even be considered as a step towards the further operationalization and implementation of multilateral idealist rules for the global society. This could be the case even if codes of conduct are relatively weakly monitored. In that sense, the proliferation of codes of conduct that contain more and more provisions on social responsibility issues can be interpreted as a move into the direction of more idealist global rules. At the same time, codes of conduct can also be used as means of controlling international supply chains, thus representing a step towards implementing realist global rules, based on the dominance of a few core players (TNCs). It remains vital, therefore, to explore further the dynamics and efficiency of the rule-setting process shaped by corporate codes of conduct. Some future directions will be indicated below.

As mentioned in this article and in the various studies carried out on the contents (compliance likelihood), interaction among the various actors has been an important factor in the development of (more sophisticated) company codes. However, further steps can be taken to improve our understanding of the role and effectiveness of codes. This means first of all that attention needs to shift towards TNCs to investigate how codes (their own codes, but also for example multi-stakeholder initiatives) fit into the strategic choices and dilemmas faced by these companies and their managers. Such a perspective, which examines the management of strategic and ethical trade-offs (Kolk and Van Tulder, 2004), connects strategic peculiarities and imperatives to the organizational purpose to see what room of manoeuvre managers have in dealing with their moral free space (Donaldson, 1996), how they (want to) position themselves and the type of ethical leadership aimed for.

Here the difference between United States, European and Asian TNCs can be further examined. Country/region of origin has been shown to frequently play a role in responsibility and accountability (cf. Kolk, 2005b). This article suggested that

countries of origin play an important role. This can be further expanded to the influence of (efficient) stock markets on the adoption of more or less stringent codes. The same applies to the role played by specific investors such as mutual funds, ethical investors or households. Some evidence points at the fact that particularly European TNCs tend to favour more concrete codes with better monitoring procedures, while there are different approaches in the United States and Japan. Does this also imply that codes of conduct originating from European TNCs contribute more to the effectuation of new (or renewed) formal global institutions? And does the more informal approach of Japanese TNCs mean that they will also be least interested in a further formalization of other international institutions? In this regard, it will be interesting to investigate the impact of the strengthening of corporate governance, ethics and reporting guidelines in the different regions (in the aftermath of responsibility crises and regulatory responses such as Sarbanes-Oxley).

Further research on the code formulation and operationalization process in various types of TNCs could also focus at an examination of how foreign affiliates contribute to this process. It could be argued that, if there is a diffusion in innovations and marketing approach between headquarters and affiliates, there could be a similar transfer of best practices in terms of voluntary codes across countries within the same TNC. It seems worthwhile to investigate whether such a process of code decentralization actually takes place and to what extent this is linked to the effectiveness of codes.

Important is also the relative size of companies. Our approach included primarily large TNCs. Smaller TNCs can clearly devote less resources to the adoption and enforcement of codes. They, however, can be more interested in either following the codes pioneered by larger companies or adopt a more informal approach to setting codes of conduct. In the former case this might be part of an attempt to legitimize themselves, in the latter case this would add to the relative institutional chaos in the international arena.

In addition to this management approach, which examines the strategic effectiveness and appropriateness of codes of conduct at the company level, a global commodity or value-chain perspective can be taken (Barrientos, 2002; Gereffi, Humphrey and Sturgeon, 2005), focusing on operational effectiveness as well. This not only helps to map the structure and governance of a global network, but also to trace the impact of codes of conduct in the different parts of the value chain. Moreover, it considers how codes of specific actors interact, what the role of powerful or leading actors is or should be, and where the responsibility (must) lie for the formulation, implementation and enforcement of codes of conduct. The debate on these topics is being waged in with regard to, for example, coffee (Kolk, 2005a), cotton and the extractive industries.

Besides a focus on the *company* (micro level) and the *chain* (meso level), an *issue-specific* perspective seems equally appropriate. Since many companies have drawn up codes that pay particular attention to topics such as child labour, specific issues can be singled out for further analysis in order to assess what role corporate codes of conduct can play in shaping new global institutions. This leads to a more general, macro approach, in which international societal issues (global public goods) are identified, followed by an examination of what companies might do to help solve these problems.

Different from J.F. Rischard (2002) who describes “global problems”, we emphasise the fact that issues very often originate from unequal or inappropriate distribution, not so much from want for technological advances, and that they can arise at different levels. While a range of interrelations and interactions exists that should be taken into account, a classification might nevertheless be made, consisting of four categories:

- core social/economic issues that are related to the growth regime of a country, and which are often supposed to be at the heart of any other (re)distribution and wealth problem; this involves particularly income disparity, unemployment and poverty;
- individual rights issues, which cover health, social and human rights (for example, hunger, torture, unequal levels of

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- vulnerability to diseases and unequal access to medicines and education, freedom, work security);
 - group rights issues that relate to the specific rights and problems of groups in society (which refers to discrimination on the basis of for example gender, race and age, and to worker and indigenous rights);
 - macro/generic rights issues which are connected to the availability of and access to resources and public goods in general, the right to a safe, peaceful, democratic and clean environment.

This classification of issues can be used to generate ideas about the way in which companies are part of the problem and/or part of the solution. It goes without saying that companies that are part of the problem, by directly or indirectly e.g. employing children, prohibiting freedom of association, paying workers less than subsistence levels, or by adhering strictly to HIV-medicine patents or investing in countries where torture takes place, are also important in helping to solve the problem. That explains the drive to adopt corporate codes of conduct, which many companies have done as a defensive reaction, in order to prevent damage to their reputation. Sometimes, however, other companies (or actors) than the ones (in)directly involved in causing/aggravating the problem can play a role in alleviating the situation or putting pressure on the former group. Examples include companies that provide HIV or other medicines to workers and their families, which proactively adopt a code of conduct on issues that do not (yet) affect them (e.g. Shell's primer on child labour), or which force polluting companies to change policies because future business will be threatened (e.g. insurers, banks and pension funds that require a precautionary policy on climate change before investing in companies).

The identification of global issues and (groups/networks of) companies that are part of the problem and/or the solution seems a promising area for further research and essential to a better understanding of how the effectiveness of codes of conduct and other (self)regulatory instruments can be increased.

An adequate assessment of the specific role of companies as part of the problem and/or solution is also a vital input for negotiations over specific issues at the international level, and for the formation and/or adjustment of international regimes and public/private partnerships.■

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