More window decoration or a step forward? An examination of the latest CSR initiatives in Bangladesh's garment industry from a legal perspective

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Abstract
The collapse of the Rana Plaza on April 24, 2013, is the worst garment-factory tragedy ever recorded. The ready-made garment sector in Bangladesh has lately been impacted by many horrible tragedies. Two efforts have been implemented as a result of increased awareness of the role and obligations of multinational companies (MNCs) to take accountability for what occurs in those factories. Leading North American and European brands are involved in these efforts. The MNCs claim to be strengthening their corporate social responsibility (CSR) with reference to such factories via these programs. They are examples of transnational private regulation (TPR) from a regulatory standpoint. Despite their growing popularity, CSR and TPR have received mixed reviews since they are implemented in a legal vacuum. As a result, they cast doubt on their legality, legal standing, and methods for implementation and compliance. In order to determine if the Bangladeshi measures have the ability to improve safety and working conditions in the country's garment sector or whether they are only window dressing, these same topics will be addressed in this piece.

Key-words: corporate social responsibility, international private regulation, occupational health and safety, and Bangladesh's ready-made clothing sector.

Introduction

The collapse of the Rana Plaza on April 24, 2013, which resulted in the deaths of over 1,100 workers and many injuries, was the catastrophic high point of the Bangladeshi garment industry (also known as the Ready-Made Garment, or RMG-industry). The Rana Plaza collapse, the worst garment manufacturing catastrophe in history, has drawn attention to the issues that the mostly female workers in this rapidly expanding sector face on a global scale. They must work to support their families, but they also have to deal with hazardous and unpleasant working conditions, very low pay (the minimum salary is $38, while the average monthly manufacturing wage is $74), and lengthy workdays. The Bangladeshi government has been the subject of demonstrations after the accidents, which have called for stronger safety regulations and their implementation as well as a higher minimum pay.One

The involvement and obligations of multinational businesses (MNCs) that either directly or indirectly place their orders at the Bangladeshi factories are another problem that the incidents have brought back to light. MNCs are working with Bangladeshi suppliers

more often, taking advantage of the country's cheap salaries and loose safety regulations to boost their profitability and price competitiveness. However, trade unions, NGO campaigns, the International Labor Organization (ILO), and public opinion are increasingly putting more and more pressure on them to accept accountability for the actions of the companies that are a part of their supply chain. Two international projects have been implemented in response to these demands, with the goal of improving the working conditions and safety standards in Bangladesh's garment industry, with a particular emphasis on building construction and fire safety.

One is Bangladesh's Accord on Fire and Building Safety.4 Numerous MNCs, trade unions, and non-governmental organizations (NGOs) have signed the Accord. The MNCs, which include major retailers and brands like Carrefour, Tesco, Marks and Spencer, Benetton, and H&M, are mostly of European descent. Several Bangladeshi garment unions and two Global Union Federations (GUFs), IndustriALL Global Union and UNI Global Union, are among the signatories from the trade union side. The International Labor Rights Forum, Maquila Solidarity Network, Workers' Rights Consortium, Clean Clothes Campaign, and the ILO serve as the Accord's independent chair. The Accord's signatories commit to establishing a five-year fire and building safety program in Bangladesh. The Alliance for Bangladesh Worker Safety's Bangladesh Worker Safety Initiative is the second project. 5 Gap, Wal-Mart, Sears, and J.C. Penney are among the North American corporations that make up this company-led initiative. It seeks to create cooperation with the Bangladeshi government, industrial owners, labor unions, and non-governmental organizations. Its objective is to enhance building and fire safety over the next five years by creating standards, conducting inspections, providing training, and empowering employees.

With these programs, the multinational corporations (MNCs) assert that they are strengthening their corporate social responsibility (CSR), which is the obligation of businesses to address the adverse social, societal, and environmental effects of their operations as well as the welfare of their own employees as well as those of suppliers and other businesses that rely on them. From a legal or regulatory standpoint, these are examples of transnational private regulation (TPR), which is regulation by private actors that either replaces (inter-)governmental rules or covers new areas that have not previously been governed by national or international public bodies. In the governance of international labor concerns, CSR and TPR have grown in popularity. However, despite their growing popularity, these projects have been viewed with varying degrees of excitement, as will be covered in more depth below. Evaluations vary from "promising developments that truly aim to make a difference"6 to "largely window-dressing to improve the reputation of companies and ease the mind of the consumers."7 The concerns raised by TPR efforts over their legal standing, legality, execution, and compliance are among the causes of these divergent opinions. This article on the accords with Bangladesh will address these similar issues. They will be closely examined in terms of their validity, legality, and implementation and compliance measures. The final goal is to determine if they are just window decoration or whether they really have

the ability to improve safety and working conditions in Bangladesh's textile sector. Since the efforts are relatively new, the article provides a comparative legal analysis of their potential contribution based on their governance structures, parties engaged, anticipated implementation and compliance methods, and substantive substance. Discussing the two programs' actual execution and results is premature.

The paper is organized as follows. The advancements in TPR and CSR are covered in the next section. The ideas of legitimacy, legality, implementation, and compliance procedures are further upon in Section 3. Using these ideas, Section 4 examines the two Bangladeshi projects, and Section 5 offers conclusions.

CSR and TPR

Multinational corporations (MNCs) claim that by implementing these programs, they are enhancing their corporate social responsibility (CSR), which is the duty of businesses to address the negative social, societal, and environmental effects of their operations as well as the welfare of their own employees, suppliers, and other businesses that depend on them. From a legal or regulatory perspective, these are instances of transnational private regulation (TPR), which is regulation by private players that either covers new areas not previously covered by national or international public entities or replaces (inter-)governmental regulations. CSR and TPR are becoming more and more common in the governance of global labor issues. However, as will be discussed in more detail below, these initiatives have been received with various degrees of enthusiasm despite their rising popularity. Ratings range from "promising developments that truly aim to make a difference" 6 to genuinely "largely window-dressing to improve the reputation of companies and ease the mind of the consumers."7 Among the reasons for these differing views are the issues brought up by TPR initiatives on their legal status, legitimacy, execution, and compliance. These same difficulties will be discussed in this post about the agreements with Bangladesh. Their legitimacy, legality, execution, and compliance measures will all be carefully scrutinized. The ultimate objective is to ascertain if they are just window decorations or whether they really have the potential to enhance working conditions and safety in Bangladesh's textile industry. The article offers a comparative legal analysis of the activities' potential contribution based on their governance structures, parties involved, expected implementation and compliance procedures, and substantive content since they are very young. It is premature to discuss the actual implementation and outcomes of the two projects.

This is how the paper is structured. The next section discusses the developments in TPR and CSR. Section 3 delves further into the concepts of legitimacy, legality, implementation, and compliance processes. Section 4 analyzes the two Bangladeshi initiatives using these concepts, and Section 5 provides findings.

At the same time, these CSR initiatives are subject to a series of criticisms. From an orthodox economic perspective they are seen as unnecessary and draining resources from ‘proper’ business activities.11 Others are sceptical about the real motives and impact of CSR policies and qualify them as ‘ethical marketing devices’ and expressions of narrow business interests,12 or as ways of

engineering new sources of legitimacy, identity and social value of MNCs.13 Also, CSR instruments are regarded with scepticism because of their voluntaristic nature and the absence of a transnational legal framework that could give such instruments a more formal nature and could increase their enforceability.14

Much of the criticism of CSR has to do with the types of governance that it entails. CSR largely falls in the broad category of TPR. It is a rapidly growing area of experimentalist governance which constitutes a response to two developments: the increasingly transnational nature and impact of markets, services and production processes; and the difficulties national governments and intergovernmental organisations face in regulating this process of transnationalisation. TPR is argued to be able to fill this regulatory gap, to adapt rapidly to changes in the market, to mobilise stakeholders and to deliver expertise.15 However, TPR is also a heavily debated phenomenon with critics and supporters. Where weaknesses are concerned, TPR is often criticised for being a legally non-binding and voluntarist type of regulation (soft law), made by actors without any legislative or formal enforcement capacities and whose legitimacy is unclear, which leads to doubts about the implementation of and compliance with such forms of regulation. 16 Supporters rather point to the innovative and positive sides of TPR and highlight the potential of such experimentalist types of governance to fill regulatory gaps.17 Hence, CSR and TPR are subject to a series of questions which concern four dimensions: their legality; their legitimacy; and their implementation and compliance mechanisms. In the next section these four dimensions will be discussed and developed in more detail.

Legality, legitimacy, and implementation and compliance mechanisms

The four factors mentioned above—legality, legitimacy, implementation, and compliance mechanisms—that are essential to the (legal) efficacy of CSR and TPR are covered in depth in this section. The analytical framework for evaluating the (legal) viability of the two Bangladeshi efforts, which will be discussed in section four, is composed of these four dimensions.

Legality

The formal legal position of CSR and TPR efforts is addressed by the legality or lawfulness premise. More specifically, it addresses the actors' de jure authority, or formal competence, in adopting such proposals. Actors that lack de jure power are genuinely incapable of adopting legally enforceable standards since they lack formal legal standing. As a result, their efforts are not legally binding and are referred to as soft law.18. Generally speaking, only governments have the inherent de jure power to use political procedures to establish legally enforceable standards. A portion of the power may be granted by states to commercial entities such as international organizations or trade unions. Consequently, such actors have de jure authority, but it is restricted to the extent of the authority granted to them. Therefore, in order for private actors to acquire de jure authority, they must be granted such authority by the appropriate national or international authorities. However, when it comes to MNCs' global operations, both governments and international organizations lack or have limited capacity to transfer de jure authority to

MNCs or to bind them to their regulations.19. This "regulatory gap" has been specifically debated in the EU, where the European Commission has made many proposals to provide an optional legal framework for transnational collective agreements, but to no avail.Twenty

However, this does not imply that MNCs and trade unions (and especially GUFs) function without recognition, even while they lack de jure ability to establish legally enforceable standards. CSR projects are often supported and promoted by organizations like as the European Union and the ILO. By doing thus, they give these proposals de facto authority, which is the acknowledgment of their practical ability and power. However, since these activities are still voluntary, questions have been raised about their efficacy and validity, as well as the de facto authority and legitimacy of the parties engaged.21.

Legitimacy

Whereas the principle of legality is, among other things, concerned with the formal competence of the actors involved with the adoption of TPR (de jure authority), the principle of legitimacy is concerned with the competence or power of the actors as accepted in practice by those that are affected by those initiatives (de facto authority). In other words, it deals with the more political or sociological interpretation of the authority to adopt norms, which can only be as effective as this authority is accepted in practice. When authority is constructed by a legal framework (de jure), it implies also obedient behaviour, whereas obedient behaviour in practice could construct de facto authority.22 Three broad approaches can be discerned by which de facto authority can be created or enhanced: (i) building on existing norms and standards; (ii) through hierarchical relationships between the actors involved; and (iii) creating inclusive governance structures that include as many relevant stakeholders as possible.

The first approach, building on existing norms and standards, is considered to enhance de facto authority in CSR because it indicates that they are not just randomly chosen standards, rather they are developed by organisations that have de jure and/or de facto authority. Many CSR initiatives indeed do build upon labour standards that are defined either by international organisations like the ILO (core labour standards), the OECD (MNC guidelines) and UN Global Compact (ten principles), or by NGOs, including ISO26.000, SA8000, Fair Labor Association, Fair Wear Foundation or Clean Clothes Campaign.23 In recent years, there is a tendency of convergence of these standards since many of them refer to each other. Moreover, most of these standards directly or indirectly refer to the standards of the ILO, in particularly the right of association and collective bargaining, the abolition of forced and child labour, and equal treatment. Besides these core labour rights it is not uncommon that the issue of health and safety at work is included.24

Secondly, de facto authority can depend upon the power relationships between the actors involved in the adoption and implementation of the CSR initiative. This concerns especially power relations between MNCs and their supply chains (including subsidiaries, suppliers, subcontractors, licensees etc.) and, on the employees' side, between GUFs and lower levels of unions or other workers representation bodies. In the social-economic literature this relationship is often expressed by the level of asymmetry of power between actors. The higher the power asymmetry, the more hierarchical the relationship and the more likely it is that the authority of a lead-company over its supply chain or of a GUF over other unions and workers' representatives is accepted.25

The level of power asymmetry or hierarchy between the lead-company and

its supply chain can be expressed by the governance structure characterising their relationship.26 In general high levels of power asymmetry are characterised by a culture of centralised decision making on business policies by the lead company that is executed by its subsidiaries, suppliers, subcontractors etc. Low levels of power asymmetry on the other hand are characterised by independent businesses working together as equal partners in non-hierarchical networks. Research in this field indicates that in general there is a tendency moving away from strong hierarchical structures towards non-hierarchical network structures. 27 Consequently, the natural de facto authority of the lead company over its chain is declining and weakening.

Similarly, the internal relationship between the GUFs and the affiliated national and local trade unions can be expressed.28 Research in this field indicate that most of the GUFs used to be characterised as decentralised networks in which the GUF functioned as secretariat and information platform. During the last decade though, most of the relationships between the GUFs and their affiliates have become more hierarchical in which setting the GUFs have been empowered with competences to coordinate objectives and provide guidance on how to achieve those objectives, and in some occasions GUFs have the power to adopt binding decisions that standardise operational objectives.29 Despite this increase of the level of power asymmetry, in general GUFs too lack a natural de facto authority over their affiliates.30

A third approach to enhance de facto authority is by involving as many relevant stakeholders as possible in the adoption and/or implementation of CSR initiatives. The involvement of stakeholders can be achieved by the creation of governance structures or networks based on a relationship of trust, co-operation and continuous negotiation/dialogue. In such networks relationships between actors are not, or only to a limited extent, hierarchical and free from any form of constitutional ordering, meaning that the actors involved engage freely (voluntarily) with one another across national borders. 31 Also, legitimacy increases as the number of relevant stakeholders that are actively involved with the adoption, implementation and monitoring of the initiative grows.

Implementation and compliance mechanisms

Due to their inability to learn from their peers' experiences, MNCs' early initiatives to advance labor rights faced an unusual obstacle. The definition of generic and open standards has shown to be a safe place to start when dealing with uncertainty because it allows for sufficient flexibility to define the norms' scope and meaning in accordance with what was practical. Additionally, it gave civil society organizations enough space to examine MNCs' practices. These early encounters demonstrated that establishing rigid guidelines and standards and depending on conventional command and control structures for their execution and adherence would not be enough, particularly as they are often non-hierarchical.32.

Additionally, research has shown a number of additional barriers to CSR's efficacy. One is that the ability to appropriately adopt standards is often restricted at the lower levels of the supply chain. Therefore, non-compliance is a question of both ability and will. Another is the use of financial-style audits to monitor implementation, which are based on a lengthy list of elements that need to be examined and confirmed. These audits mostly rely on opaque and untrustworthy production records.33 Additionally, when suppliers or subcontractors work for many lead firms, each of which has its own set of standards and monitoring programs, they may experience "audit fatigue." The problem of monitoring

manageability is likewise connected to the latter. In addition to spanning many nations, global supply chain networks may include as many as 1,000 or even 10,000 suppliers and subcontractors. Therefore, simple techniques are required to reduce monitoring to reasonable levels. For example, concentrating on the suppliers and subcontractors with whom the MNC has strong, cooperative ties may make a significant impact. 35. One method of choosing these suppliers and subcontractors is to categorize them into first, second, third, etc. tier-factories, i.e., based on how far away they are from the lead company. It is important to keep an eye on the suppliers and subcontractors that are closest to the corresponding MNC because this is where the lead company is likely to have the biggest influence.

In light of these obstacles and challenges, case studies show that a shift in emphasis is taking place in CSR policies from the detailed formulation of the norms – the normative quality of the substance – towards procedures supporting implementation and compliance.36 Hence, the adoption of a CSR initiative 'does not mark the end of the negotiation process, but rather the starting point of an organizational learning process throughout the subsidiaries'.37 The latter than comprises experiments with the exchange of good practices, capability building (training of management and workers and their representatives), continuous deliberation between stakeholders and the development of preventive measures. In regulatory terms, this shift qualifies as a move away from conventional command and control mechanisms that stress enforcement and compliance with fixed rules, towards proactive problem-solving that emphasizes the operation of multi-level networks and aims for preventive actions. The latter then stress the importance of experimentation and deliberation in order to internalise open-ended standards. 38 This tendency is in pace with the developments witnessed regarding legitimacy discussed above: from hierarchical principle agent governance structures towards non-hierarchical multi-centred governance modes. Consequently, the focus in these initiatives is becoming more sophisticated including conventional forms of norm-setting combined with (semi-)judicial review, and forms of experimental governance.

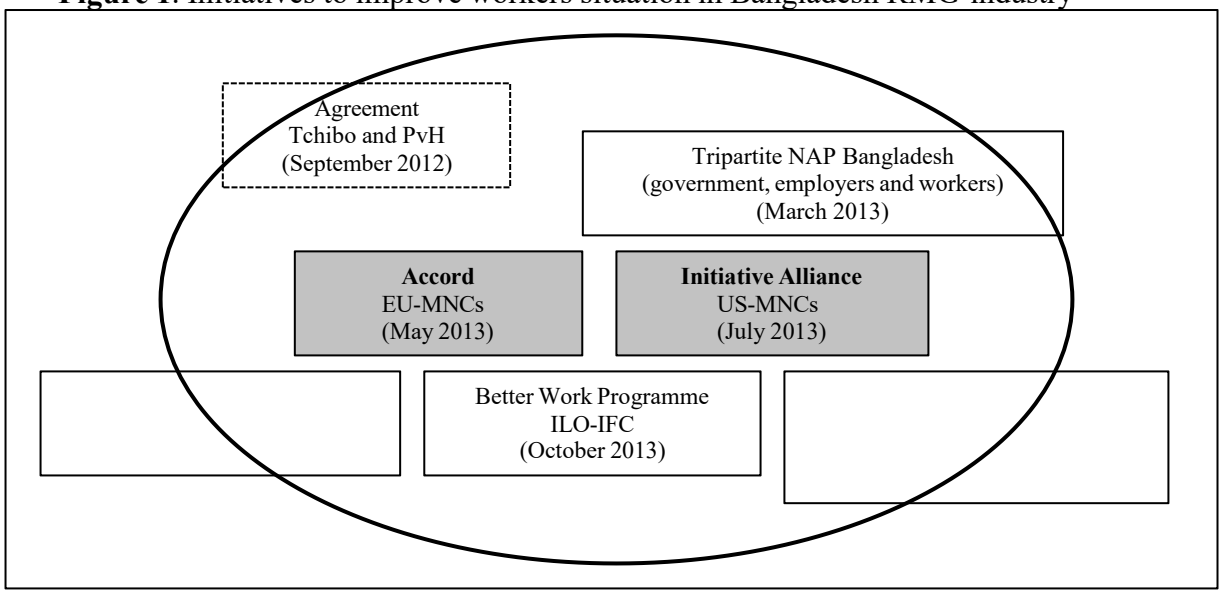
Furthermore, these forms of governance are characterised by the construction of hybrid structures with other modes of governance, that are either private or public of origin and stem from different regulatory levels (national, regional/supranational or international). In this context there are several authors that stress the need for in particular private-public constructions. 39 They argue that this would not only enhance de facto authority but also strengthen compliance mechanisms since it could open paths to legally binding norms and/or judicial review by (national) courts.

1. Bangladesh Agreements

With the rising number of tragic accidents, societal pressure for change in the garment industry in Bangladesh has resulted in several initiatives. These include initiatives of public origin as well as private (see figure 1). Among them (marked grey in the figure) are the two private CSR initiatives that are under analysis in this paper: the 'Accord on Fire and Building Safety in Bangladesh' (further: the Accord) and the 'Bangladesh Worker Safety Initiative

of the Alliance for Bangladesh Worker Safety' (further: the Initiative).

Figure 1. Initiatives to improve workers situation in Bangladesh RMG-industry[40]



Analysis of the Accord on Fire and Building Safety in Bangladesh

The 'Accord on Fire and Building Safety in Bangladesh' was the first private agreement to be adopted after the Rana Plaza collapse, namely at 13 May 2013. This is merely three weeks later which is a remarkably short time given the fact that the conclusion of agreements involving multi-stakeholders is a complex process concerned with the alignment of different and sometimes conflicting interests. That it only took about three weeks is because the Accord is in fact a 'rename' of an agreement that was signed on 20 September 2012 by two MNCs (the German chain Tchibo and PvH/Tommy Hillfiger) with the GUF IndustriAll Global Union and four NGOs – Clean Clothes Campaign (CCC), International Labor Rights Forum (ILRF), Worker Rights Consortium (WRC) and Maquila Solidarity Network (MSN), together with several Bangladeshi trade unions and labour rights groups.41 This agreement had not taken effect yet because it needed at least two more MNCs to sign up to it to initiate its activities. Unfortunately two more tragic accidents were needed in order for other MNCs to join the agreement. At the moment of the 're-launch' of the agreement by the name of Accord, 24 MNCs had signed to it. It remained open for more MNCs to join which has resulted in over a hundred MNCs signing the Accord.42 These MNCs are largely from European origin. On the workers' side, IndustriAll Global Union is joined by UNI Global Union and also national trade unions affiliated to IndustriAll Global Union have co-signed the Accord.43 The Accord is endorsed by the earlier involved NGOs who have signed as witness and is supported by public organisations, including the OECD national contact points, 44 the European Commission,45 and in several ways by the ILO.

In brief the Accord aims to improve the fire and building safety by safety inspections. By the inspection defined risks need to be remediated, for which financial support will be raised by the signatory companies and others. Factory managers, workers and security staff will be trained to enable them to voice concerns and to actively participate in activities to ensure their own safety. The Accord covers a five-year period.

Legality and legitimacy

The Accord deals with fire and building safety in Bangladeshi RMG-Industry which are part of the supply chain of the signatory MNCs. Since the Accord is adopted by private actors only it qualifies as TPR. The Accord states that the Accord is legally-binding, however, since it is a form of CSR by TPR, it lacks per definition a legal framework to give it a formal legally-binding status, hence it lacks de jure authority.

From a regulatory point of view, the following can be noticed with respect to the legally-binding status it is claimed to have. Being an agreement between MNCs and GUFs and national trade unions, it can be binding based on contract law. This means that it is only binding between the parties and regarding the obligations and rights that apply to them. For as far as rights and obligations are concerned for third-parties, in this situation the individual workers and the supplier factories, the Accord cannot create de jure legally-binding norms. However, this does not mean that it cannot create legal facts, in particular when authority to create norms for third-parties is accepted in de facto. As suggested in section three, in many cases governance relations between MNCs and their supply chain, and between GUFs and their affiliates are not very hierarchical, include limited levels of power asymmetry and hence a limited level of natural de facto authority.

Concerning the Accord this problem is partly solved with regard to the governance relationship between the GUFs involved, in particular IndustriAll, and their national Bangladeshi affiliates. Firstly, IndustriAll is, according to Müller, Platzer and Rüb, one of the few GUFs that has developed in the direction of steering body, implying a relatively strong de facto authority over its affiliates. Secondly, the relevant Bangladeshi trade unions have co-signed the Accord and are therefore directly bound by the Accord. This does not apply to the question of de facto authority of MNCs towards their Bangladeshi suppliers. Still, the Accord does address legitimacy in several ways.

The first way to strengthen legitimacy (and therewith de facto authority) is through the promotion of norms and standards defined by other, more authoritative, organisations and initiatives. The Accord deals with fire and building safety that is part of the issue of health and safety at work and which is promoted by the NGOs that signed the Accord as witness and the ILO that supports the Accord in several ways. One of the ways the ILO supports the Accord is with a special programme on working conditions, including health and safety (see figure 1 above).

Secondly, a substantial part of the Accord deals with governance structures to ensure its implementation. It creates several bodies, of which the steering committee and the advisory body are the most important ones. Both include the main stakeholders: the steering committee includes representatives of the signatory MNCs and the trade unions; the advisory body covers a considerably wider range of stakeholders, including the Bangladeshi government, national trade unions, supplier representatives, MNC representatives and representatives of national and international NGOs. The ILO is involved in both as independent chair. The steering committee is responsible for the execution of the Accord, whilst the Advisory Body foresees the former with input and feedback. Hence the Advisory Body's main aim is to ensure a constructive dialogue among all stakeholders (article 6 of the Accord). Via both bodies network structures are created which enhance the de facto authority of the Accord. Furthermore, these bodies not only create governance structures between the stakeholders, they also signal a multi-centred coordination process. Not only is there a wide variety of stakeholders involved with the adoption of the Accord, but also with its implementation.

Implementation and compliance mechanisms

The above aspects, in particular the creation of governance structures that include multiple stakeholders and a multi-centred coordination process, emerge from the literature as essential for the creation

of auditing and training systems that uses mutually recognised incentives and sanctions. The Accord also has a well-designed architecture for implementation and compliance. First of all, it defines a clever 'monitoring strategy': articles 1-3 of the Accord define the personal scope by connecting the intensity of inspections and level of remediation requirements to the production volumes of the supplier factories for the signatory MNCs. By dividing the supplier factories in Tier 1, 2 and 3, respectively high to low production volumes, it not only brings the inspections back into manageable numbers, but it also focuses on supplier factories that are more likely to make a substantial difference in the Bangladeshi RMG-Industry. A qualified, independent Safety Inspector will conduct inspections in the Tier 1, 2 and 3 factories. Based on the reports of the safety inspector – which are disseminated among the stakeholders and partly made public – remediation measures need to be taken by the supplier factory. The inspection norms will be based on the Bangladesh tripartite national action plan46 and further developed in co-operation with the Bangladeshi government. The signatory MNCs are made responsible for their supplier factories to comply. Therefore they can use incentives (mainly financial support and the guarantee of orders for at least the duration of the Accord, which is five years) and sanctions (via a warning system ultimately resulting in the termination of the business relationship) (articles 21-25 of the Accord). The Accord also foresees in a training programme on fire and building safety to be established by a Training Coordinator. The training will be offered for workers, managers and security staff of Tier 1 factories. Local trade unions and specialised staff are to be involved. The aim of this training is to enable workers to voice concerns and participate in activities to ensure their own safety, preferably via Health and Safety Committees that function in accordance with Bangladeshi law.

Although the Accord is adopted in order to fix a problem (reactive), the just described mechanisms show more resemblance with the pro-active problem solving actions using experimentation and deliberation to internalise open-ended standards. The Accord also provides more traditional command-control structures. The first is the use of a hotline for workers to alert the Safety Inspectors about health and safety risks (article 18 of the Accord). More significantly, article 5 of the Accord provides for a dispute resolution 'between the parties to, and arising under, the terms' of the Accord. The dispute resolution knows two instances: the steering committee and a binding arbitration process based on the New York Convention. An arbitration award is enforceable in a court of law of the domicile of the signatory against whom enforcement is sought. The latter is unique and unprecedented in CSR (or TPR) initiatives. The fact that the signatory parties are willing to submit their actions to binding third party dispute resolution enhances the credibility significantly and consequently the effectiveness of the Accord. Hence, it is argued that this provision was the main reason for many North-American based MNCs not to sign the Accord out of fear for risking excessive undefined legal liability.47 This is in particular the case when article 5 is read in conjunction with article 20, which provides in the establishment of a protocol that i) supports and motivates the employer to take remediation efforts in the interest of the workforce and the sector and ii) expedite prompt legal action where the supplier refuses to undertake the remedial action required to become compliant with national law.

To conclude, the Accord applies a mixture of traditional command and control mechanisms combined with experimentalist pro-active problem-solving mechanisms. Together they construct credible mechanisms for effective implementation of the Accord.

Analysis legal dimension Bangladesh Workers Safety Initiative

MNCs' early efforts to promote labor rights encountered a unique challenge

since they were unable to learn from the experiences of their counterparts. When dealing with ambiguity, the establishment of generic and open standards has shown to be a safe place to start since it provides enough flexibility to define the norms' scope and meaning in line with what was practicable. It also allowed civil society groups enough room to scrutinize the actions of multinational corporations. These early experiences showed that it would not be sufficient to set strict rules and regulations and rely on traditional command and control structures for their implementation and adherence, especially when they are often non-hierarchical.32.

Research has also shown some other obstacles to the effectiveness of CSR. One is that lower levels of the supply chain often have less capacity to adequately implement standards. As a result, both ability and will are involved in non-compliance. Another is the use of financial-style audits, which are based on a long list of components that must be verified and scrutinized, to track implementation. The majority of these audits depend on production records that are unclear and unreliable.33 Additionally, suppliers or subcontractors may suffer from "audit fatigue" if they work with many lead businesses, each of which has its own set of standards and monitoring processes. The latter is also related to the issue of monitoring manageability. Global supply chain networks may include as many as 1,000 or even 10,000 suppliers and subcontractors in addition to covering several countries. As a result, basic methods are needed to lower monitoring to acceptable levels. For instance, focusing on the suppliers and subcontractors that the MNC has close, cooperative relationships with might have a big effect. 35. Sorting these suppliers and subcontractors into first, second, third, etc. tier-factories—that is, depending on their distance from the main company—is one approach to choose them. Since the lead firm is likely to have the most effect, it is crucial to monitor the suppliers and subcontractors that are closest to the corresponding MNC.

Legality and Legitimacy

The Initiative deals with safety of the factories in the Bangladeshi RMG-Industry that are suppliers of the signatory MNCs. As such it qualifies as a form of TPR. In the introduction of the Initiative it is stated that it is a legally binding commitment among the founding Alliance members. This means that it is only binding between the signatory MNCs, and hence does not aim to attribute legally binding rights that can be claimed by for instance the workers covered by the Initiative against the signatory MNCs. Consequently, the legal bindingness of the Initiative is clearly limited to claims between the signatory MNCs in order to keep each other equally committed to the programme. This involves in particular commitments concerning contributions to the worker safety fund and sharing of information on the factories the MNCs use and the safety inspection reports concerning those factories. Actions on claims of non-compliance can be brought for arbitration either in New York or in Toronto (article 5(1)(a)(vii) of the Alliance Bylaw). Although with its limits, this is an important aspect. The case study of Robertson on the effectiveness of the Chiquita IFA, for instance, has illustrated the vulnerability and risk of failing of TPR when a significant part of the market actors is not committed.50

Secondly, even though it is claimed to be legally binding for the signatory MNCs only, the Initiative does create

rights and obligations for Bangladeshi supply factories and their workers. When reading the Initiative it gives the impression that it relies on a presumed hierarchical internal governance structure between the MNC and its suppliers – the provisions in the Initiative consequently address either the Alliance or the Alliance Members (i.e. the MNCs). However, such governance structures are rare in the garment industry, therefore, if the Initiative is to be taken as a credible attempt to improve the factory safety it ought to include mechanisms to enhance natural de facto authority.

Regarding the subject matter of the Initiative, it can be noted that factory safety is part of health and safety at work, which is the subject of many an initiative of NGOs and the ILO. However, these organisations are not as intensively involved in the Initiative as they are in the Accord. For example, no reference is made to any of the initiatives of these organisations. Moreover, none of these organisations nor the Bangladeshi government have a guaranteed formal position or representation in the governance bodies that are established to execute the Initiative. The Board of Directors is composed of four company representatives and four stakeholder representatives and an elected chair. The stakeholder representatives could be NGOs and/or the ILO, but can also be anyone else with qualifications in the areas of workers safety, human rights or labour (article 5(2)(d)(ii) of the Alliance Bylaw). Consequently, quite different from the Accord, the core group of stakeholders involved in the adoption as well as the implementation of the Initiative concerns mainly the allied MNCs. Moreover, little effort is made to strengthen de facto authority by broadening the range of actors involved, either in the governance of the Initiative or in its implementation. As a result, certain key stakeholders have a limited role or are simply absent. For example, there is no mentioning of the involvement of trade unions or other of workers' representatives. As a result, the Initiative remains weak in its de facto authority.

Implementation and compliance mechanisms

Although the content of the Initiative is very similar to that of the Accord in terms of activities to be promoted – inspections, remediation and training for factory workers and management – from a regulatory point of view they differ considerably. Whilst the Accord pays much attention to governance and implementation mechanisms, the Initiative focuses on the formulation of norms and on things that at some point 'will be done'. For example, the Initiative states that the Alliance will appoint a Training Committee to develop a uniform set of fire and building safety educational standards. When a factory fails an inspection it is required to take the training programme within 30 days. This sounds reasonable, however, the same section of the Initiative immediately continues to state that Alliance members (thus the MNCs) 'have pledged to work only with factories that ensure a safe working environment' and that they have committed 'not to source from any factory that the members find is unsafe'. Furthermore, regarding the remediation of unsafe situations, the Alliance 'will develop a process for validation and accountability'. Although this seems fair, from a regulatory point of view this means that norms will be set that the factories have to comply with (command and control approach). It leaves little room for a process in which the supplier company can gradually improve the

safety situation by learning, by identifying the underlying problems, and by developing the necessary capabilities (through increased knowledge and understanding as well as financial means) to tackle these problems (problem solving approach).
Similar to the Accord, the Initiative also provides financial support for the factories to remediate unsafe situations as identified in the safety reports. However, the focus lies on the obligations of the MNCs to contribute, rather than on creating financial incentives for supplier factories to participate in the programme, even though the Initiative recognises the difficulties local companies face in accessing affordable investment capital.

Conclusions

This article presents a comparative analysis of two initiatives that have been adopted in response to a series of accidents in the Bangladeshi RMG-Industry, with the collapse of the Rana Plaza at 24 April 2013 as disastrous highlight. The first is the Accord, adopted by mainly European MNCs jointly with two GUFs and a series of national trade unions, and the second the Initiative, launched by an Alliance of mainly North-American MNCs. With these two initiatives the MNCs involved respond to the pressure from society and workers in the Bangladeshi RGM-Industry to take their social responsibility, hence these initiatives are a form of CSR. Since these initiatives are adopted by private actors and have a transnational scope, they also qualify as TPR. Hence, they raise questions about their nature and effectiveness: are they business driven 'ethical marketing devices' (window-dressing) or are they serious human rights driven efforts to redefine and strengthen the social and ethical dimensions of corporate policies? And, from a legal point of view, considering that these initiatives are legally non-binding and voluntarist types of regulation (soft law), do they have the potential to effectively address the fire and construction safety problems in the Bangladeshi garment industry?
What stands out regarding both initiatives is that they have both been adopted in a rather short period of time after the disastrous collapse of Rana Plaza – the Accord within three weeks and the Initiative within 14 weeks. Something that would not have been possible when the route of public measures would have been taken, that is, if there would have been a public regulator on the transnational level. Secondly, what positively distinguishes these initiatives from most other CSR initiatives is that they involve a substantial number of market-leading MNCs and cover a substantial part of the Bangladeshi supplier factories active in the garment industry (somewhere between 35% to 50%).
When comparing the two initiatives on the four dimensions they differ considerably. It is inherent to the TPR nature of both initiatives that they lack legality or de jure authority. This can partly be compensated for by legitimacy or de facto authority and effective implementation and compliance mechanisms. The Accord seems to better accomplish this than the Initiative. Indeed the Initiative relies on traditional command and control mechanism and monitoring by means of financial-style auditing, with little attention for the capabilities of the Bangladeshi factories and workers to identify and address problems, or the dangers of unreliable or false information supplied to audits. As such, it shows strong resemblance with the early period unilateral CSR codes which were often not very successful in practice. Hence, the setup of the

Initiative seems to limit its potential effectiveness from the outset.

The Accord on the other hand provides an interesting mix of traditional command and control mechanisms, especially the arbitration procedure, and forms of experimentalist governance. The emphasis is on developing the capabilities of the factories and workers, and on constructive deliberation with all relevant stakeholders, including the Bangladeshi government, trade unions and NGOs. The Accord accommodates therefore many aspects that have been indicated in the literature as contributing positively to the effectiveness of the CSR and TPR. The setup of the Accord therefore is more promising as to its expected effectiveness in practice and in making a difference where the improvement of fire and construction safety is concerned. However, the proof of the pudding is in the eating and it will depend on the actual use actors make of the two, still very recent, initiatives which one will be most effective in the end. The Accord however seems to offer the best architecture and instruments in this sense and seems most likely to offer a real step forward.

Finally, some shortcomings of both initiatives should be pointed out. First, although the initiatives have no intention to be rivals or to fight for dominance, they are also not complementary. They just coexist. This overcomplicates the situation, especially for the supplier factories, whose suppliers relations are often not limited to factories that have signed up to only one of the initiatives. Consequently they could be confronted with confluence of obligations and processes following from both initiatives. Even when this would be forestalled with determination rules, it remains sub-optimal since two different sets of standards and incentives are set. Another negative aspect is the temporal limitation of five years. Although is admirable that the aim of the initiatives is to remediate the unsafe fire and building situations within a period of five years, considering the magnitude of the problems it is unlikely that this can be achieved in such a short period. Also, it remains unclear what happens after those five years: will the actors involved learn lessons, adjust the content and renew the initiatives for another period of five years? Or will they be abandoned if the pressure from public opinion and workers has lessened?

Finally, the major limitation of both initiative is their material scope. Both only address the issue of fire and building safety and even though this is a major issue that indeed needs urgent attention, the workers in the Bangladeshi garment industry are also confronted with very low wages, bad working conditions, minimal employment and social security and severely limited voice. One wonders what has to happen for MNCs to accept their corporate social responsibility on these equally important and urgent issues as well and to more comprehensively start to guarantee decent work for all.

References

6 See M.P. Thomas, International Labor Standards Regulation and Global Industrial Relations? Framework Agreements, 36:2 Labor Studies Journal, 269-287 (2011).

7 E. Sternberg, How Serious is CSR? A Critical Perspective, in C. Crouch and C. Maclean (eds.), The Responsible Corporation in a Global Economy (Oxford University Press 2011), at 29-54; and G. Hanlon and P. Fleming, Updating the Critical Perspective on Corporate Social Responsibility, 3:6 Sociology Compass,

937-948 (2009).
8 UNCTAD, World Investment Report 2013: Global Value Chains: Trade and Investment for Development (United Nations, 2013).
9 This has led to a widespread interest in CSR in sociology, business studies, political science, and legal studies, particularly labor law. For example, see J. Zerk, Corporate Social Responsibility and Multinationals. E. Garriga and D. Melé, Corporate Social Responsibility Theories: Mapping the Territory, 53 Journal of Business Ethics, 51-71 (2004); A.R. Khan, M.B. Muttakin, and J. Siddiqui, Corporate Governance and Corporate Social Responsibility Disclosures: Evidence from an Emerging Economy, 114:2 Journal of Business Ethics, 207-2013).
10 See, among many others, Corporate Responsibility & Labor Rights, edited by R. Pearson and G. Seyfang, for information on these many forms of CSR. K. Papadakis (ed.), Shaping Global Industrial Relations; Codes of Conduct in the Global Economy (Earthscan 2002). A. Sobczak, Ensuring the successful implementation of transnational firm agreements, 18:2 European Journal of Industrial Relations, 139-151 (2012); and The Impact of International Framework Agreements (ILO/Palgrave 2011).
11 For instance, Sternberg, supra n. 7.
12 S. Banerjee, Corporate Social Responsibility: The Good, the Bad, and the Ugly, 34:1 Critical Sociology, 51–79 (2008).
13 Fleming and Hanlon, supra n.7. 14 M. Anner, The Limits of Voluntary Governance Programs: Auditing Labor Rights in the Global Apparel Industry, working paper 01 "Project for Global Workers' Rights" (2011); and E. Ales et al., Transnational Collective Bargaining: Past, Present, and Future, Final Report for the European Commission, Directorate-General for Employment, Social Affairs, and Equal Opportunities (2006).
15 F. Cafaggi, "Enforcement of Transnational Regulation," ed. F. Cafaggi, New Foundation of Transnational Private Regulation, 38:1 Journal of Law and Society, 20–49 (2011); Edward Elgar, Ensuring Compliance in a Global World (2012); and the German Law Journal's special issue on Transnational Private Regulatory Governance: Regimes, Dialog, Constitutionalization (Vol. 13, issue 12, 2012).
16 Cafaggi (2011), supra n. 15; P. Zumbansen, Osgoode CLPE Research Paper No. 45/2012, Transnational Private Regulatory Governance: Ambiguities of Public Authority and Private Power.
17 Ch. Sabel and J. Zeitlin, Experimentalist Governance, in The Oxford Handbook of Governance, edited by D. Levi-Faur (Oxford University Press 2012).