Righting the relationship between hard law and soft law: the role of international intergovernmental organizations

Emily Sims, International Labour Organization

Overview

- Define terms and clarify roles
- Identify limits and challenges
- Explore how to optimize the relationship
- Specify the role of international inter-governmental organizations

Definitions

- Soft Law
  - Set out expectations
  - « Voluntary »
  - Workers are third-party beneficiaries
  - CSR fuelling growth of soft law in national contexts
- Hard law
  - Set out obligations
  - Workers have enforceable rights

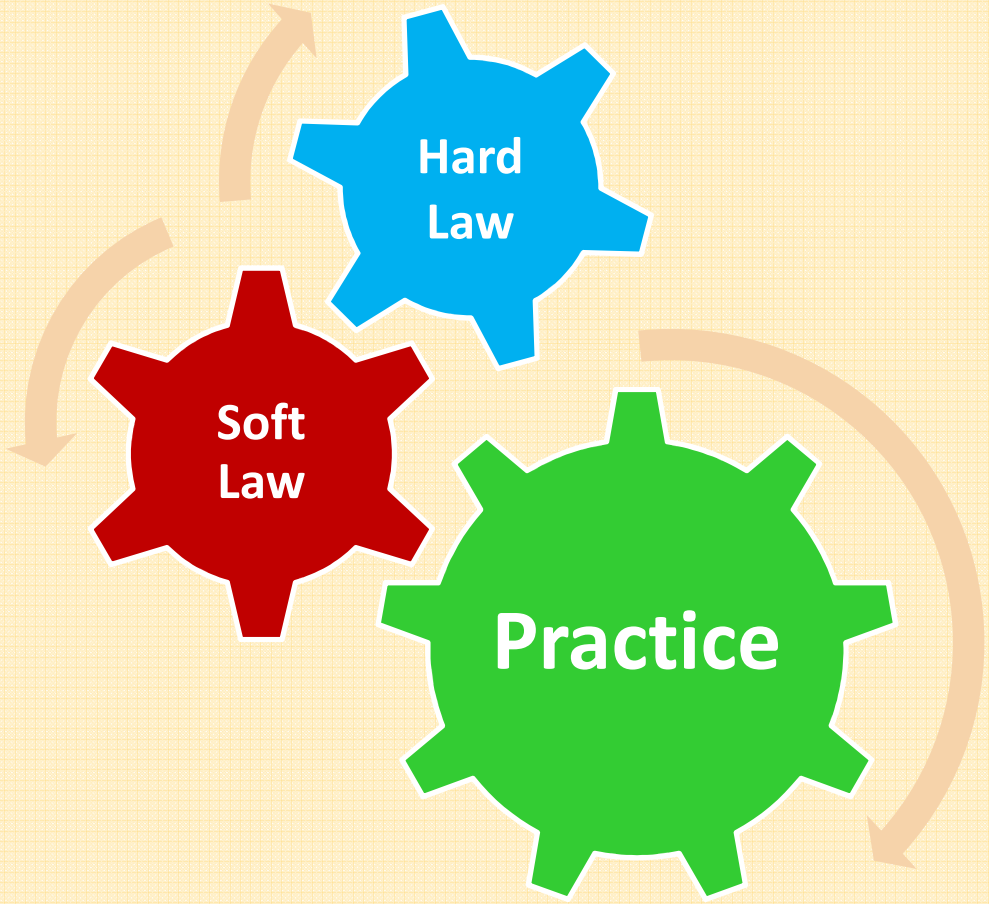
Sources of soft law

- Authoritative international bodies
- Private sources
  - Company codes
  - Industry initiatives
  - Multi-stakeholder initiatives

Important contribution of soft law

- Fills gaps in regulation
- Encourages continuous improvement
- Helps build culture of respect for the rule of law

Relationship between soft and hard law



Limits of soft law

- Cannot ensure respect for all workers' rights
- Should not become a way for governments to off-load their responsibility to protect workers' rights and human rights more generally
- Doesn't address, and often aggrevates, power imbalances

Company Views on the Challenge of Soft Law

Despite the risks, companies are increasingly taking the CSR plunge...

only to find themselves sucked into the vortex of ever-changing goal postes...

and wondering what is the impact of all the money they are spending.

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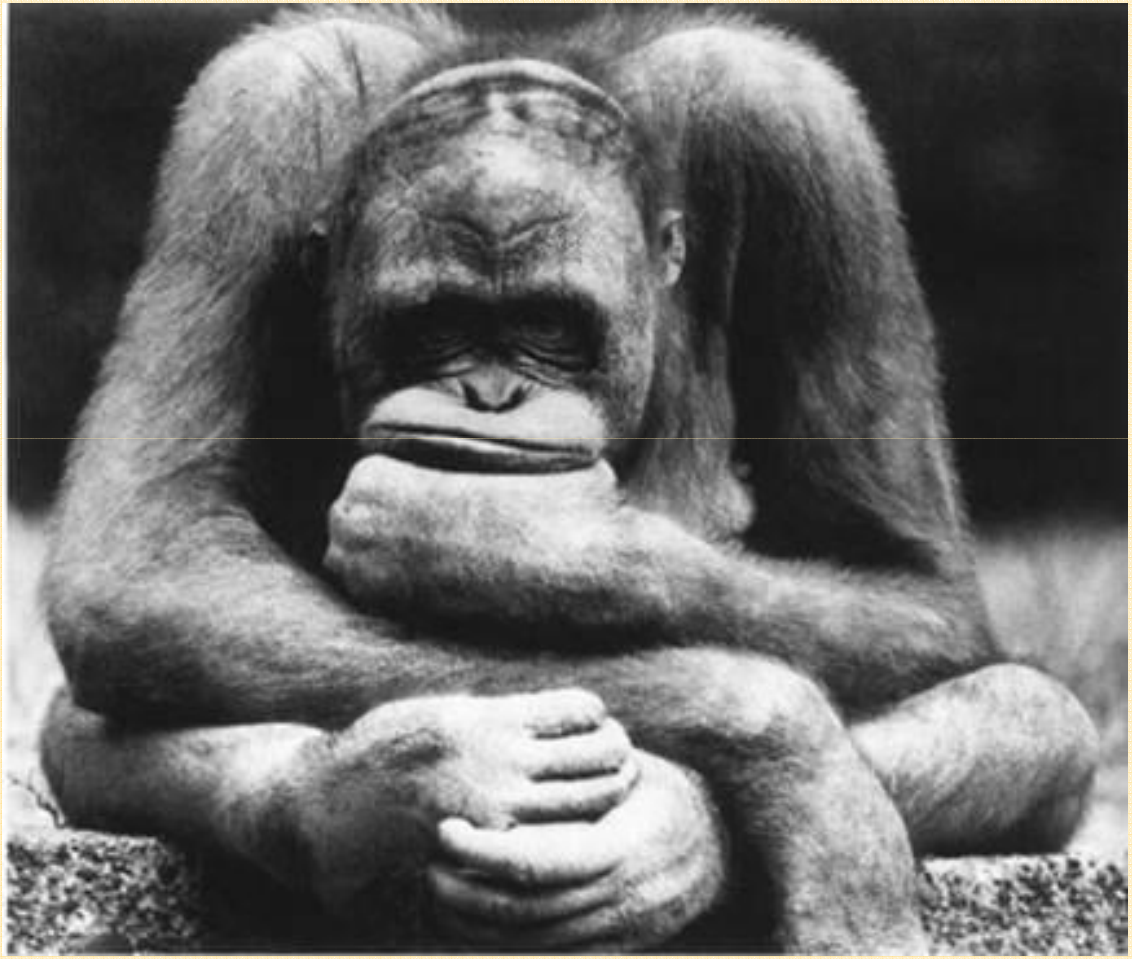
PROBLEM:

Faith-based approach to CSR

SOLUTION:

More critical assessments of the impact of soft law on economic and social development

What to do?



1. Don’t let hard law go soft

- Ensure that soft law reinforces rather than undermines hard law
- Codification of soft law should advance social progress

2. Reinforce Dialogue Processes

Multi-stakeholder

- Development
- Governance

Include the target actors

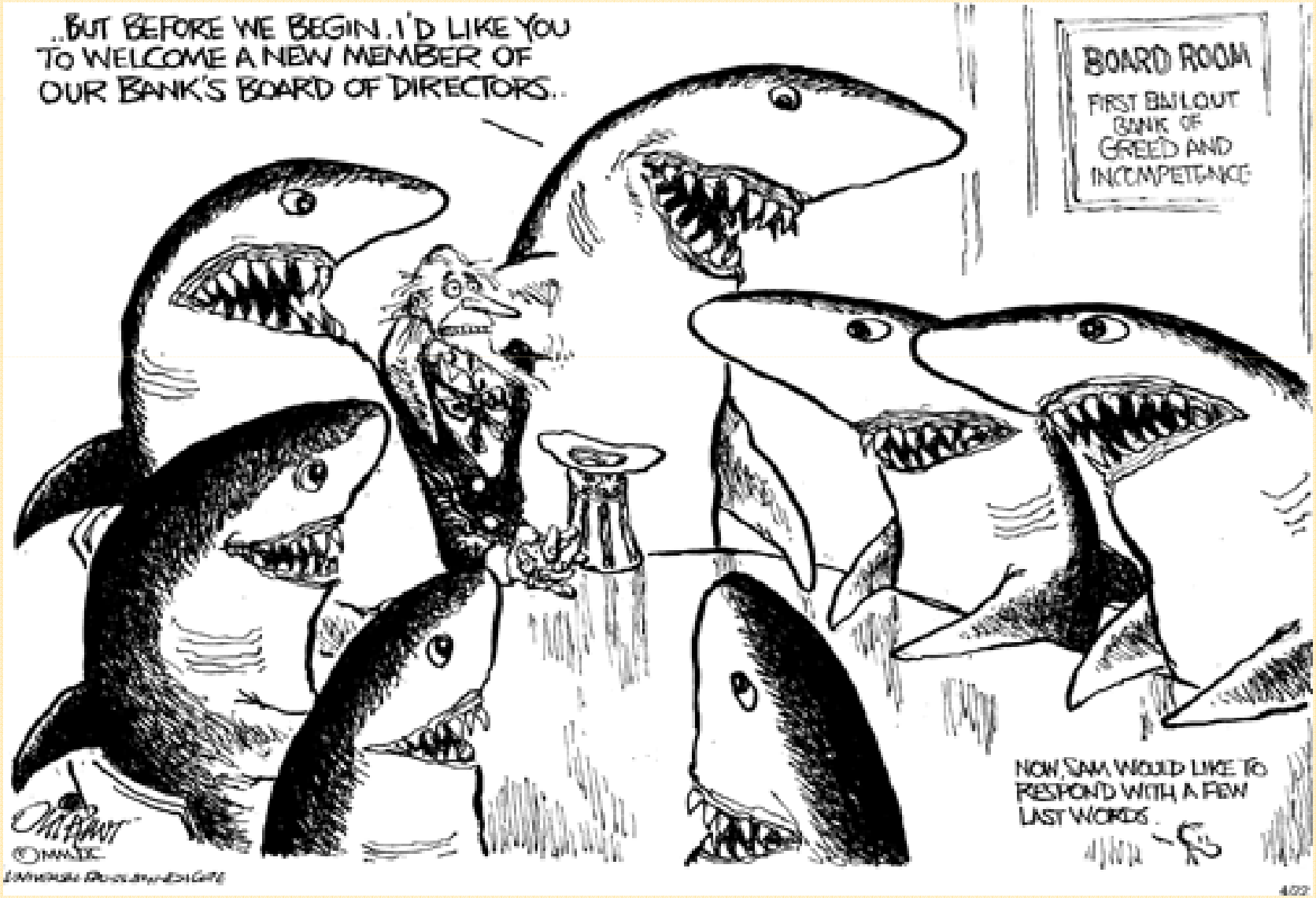
- Suppliers
- Workers

3. Pay close attention to Hard law <u>on</u> soft law

- Guard against unintended consequences
- Understand the dynamics

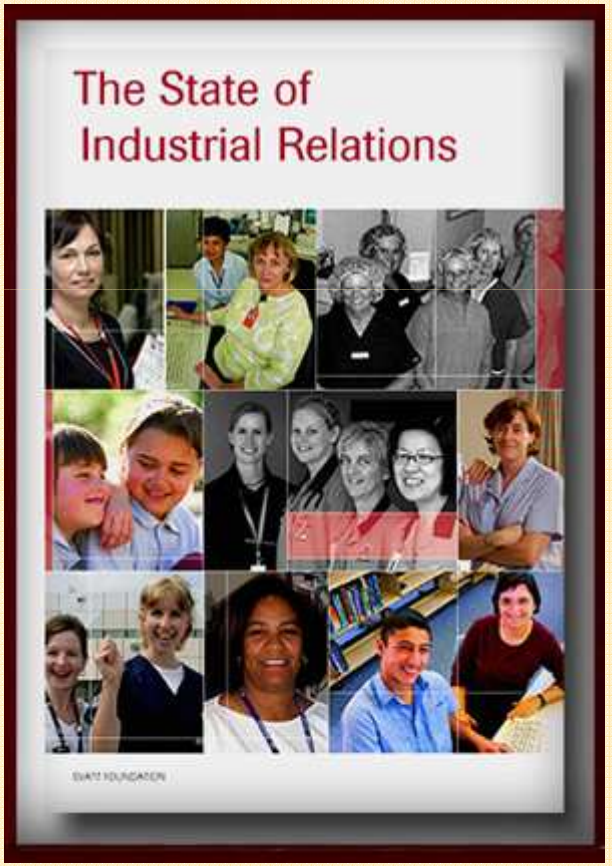
4. Don’t take logic of either approach to extremes

5. Guard against capture



6. Don’t forget the institutions!

- Soft law should reinforce the institutions which strengthen respect for workers’ rights
- Most important is good industrial relations



What should International Inter-governmental Organizations do?

- Look at the big picture
- Ask unpopular questions
- Don’t get caught up in the same potential conflicts of interest

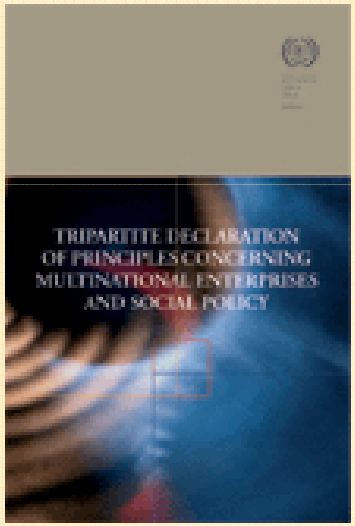
Policy coherence between IIOs

- Responsibility of IIOs
- Responsibility of member States

ILO approach

Framework: ILO MNE Declaration

« to maximize the positive contribution
of MNEs and to minimize difficulties of
their operations »



→ strengthen government policies
→ strengthen company policies
→ encourage synergies between public and private policies

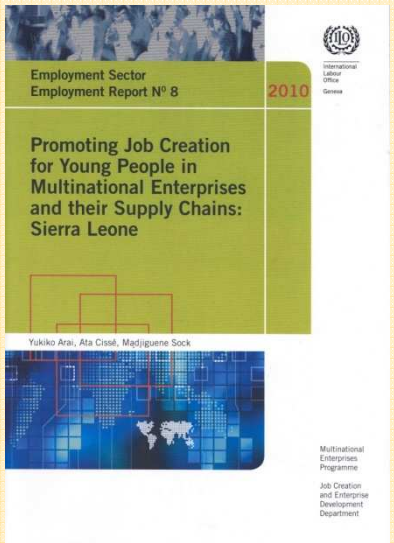
ILO action

Engagement with other IOs

- OECD, UNCTAD, UNIDO, etc.
- European Commission
- Ruggie framework
- Private IOs such as ISO

Direct engagement

- ILO Helpdesk for Business
- Action-oriented research
- National and regional dialogues
- Research on impact



Conclusion

IIO Objectives

- Challenge extremes
- Help get balance right

IIO Safeguards

- Have a solid political foundation
- Policy coherence across IIOs
- Set the example

THANKS