

# **From Soft Law to Hard Law and From Mattel to Mercedes - A New and Game Changing Tactic for Unions and Labor Activists.**

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How have Mercedes found itself faced by a German lawsuit over its labor union practices in the United States? How did the Japanese company Panasonic find itself under investigation by the US authorities over labor practices in Mexico? There are more; Ikea is accused in Germany of poor labor practices in Bangladesh; Uber has been investigated by the Dutch contact point under the OECD Declaration and Armani are in trouble in Italy. These and more issues have arisen in the last 12 months and are rightly causing consternation in the C suite in the United States, Japan, the UK and Denmark. We explain this new, and game-changing twist on an old game ... and it is gaining traction fast.

What we see today is a significant turn of the crank where a company based in one country; faces charges in another; for alleged poor behavior in a third country. We describe it below as “triangulation” ... the linking of a campaign objective, with the people who can make decisions, and by using their vulnerabilities. This has been made simpler by recently passed laws in countries like Germany, France, the UK and Italy. These will be supported by European legislation on global supply chain disclosures that is already close to enactment in 27 countries.

It has taken about thirty years for the story we see unfolding today to emerge. Over this time, advances have come in bursts as laws, strategies and tactics have evolved as cases of “international companies behaving badly” have hit the headlines. **Today we are at a major inflexion point as “promises to do better” are replaced by “mandatory disclosures and compliance”.**

## **“In the beginning” ... the name and shame era**

Supply chain labour issues came to prominence in the 1990's with NGO led campaigns in companies like Nike and Mattel over the use of child laborers by their suppliers. Most campaigns had imaginative themes ... “Just Stop It” at Nike and the pre-Christmas

campaign showing children making Barbie Dolls to be sold to the children of well-off families in the West. The Mattel campaign evolved to “The Real Toy Story” following the merchandising of the Disney Pixar movies. A spoof advertising company “Adbusters” sprang up parodying the companies’ own campaigns like those featuring “Joe Chemo” for Camel brand cigarettes. Companies responded by signing up to, or producing their own supply chain codes of conduct. Leaders in the field included the European multinationals Unilever and Philips. Nike led the way in publishing supply chain audits and action plans.

## **Chang from “employment codes” to “Human Rights” codes**

To this point the campaigns had been NGO led and focused on improving employment conditions in emerging countries. The tactic was simple; Identify an issue ... and put pressure on the C Suite to fix it. Trade unions saw the NGOs not as allies, but as competitors for the voice of labor. That changed when “employment codes” became “Human Rights” codes, and the unions saw a major opportunity to reposition the right to organize as a “human right”. They sought to equate company tactics to maintain a union free environment in developed countries like the United States or the United Kingdom as much a violation of human rights as forced labour in China. The Rana Plaza building collapse in Bangladesh in 2013 that killed more than 1,000 garment workers did much to cement cooperation between unions and NGOs. The so-called Bangladesh Accord held international businesses responsible for the disaster and successfully demanded they pay to support families, union organisers and building inspections. Around 200 international companies without a single employee in Bangladesh signed the accord.

## **Joining the dots ... the art of “triangulation”**

### ***A case study:***

One of the first successful campaigns that brought together unions, NGOs, emerging market labor practices and US union organization was in the company G4S. This case, in 2005, set the pattern for the hard law campaigns emerging today.

The Florida based security company Wackenhut had fought off union organizing campaigns in the United States for many years. In 2004 the company was acquired by the UK and world leading security company G4S. The unions approached G4S headquarters in the UK with a request for neutrality in organizing campaigns in the US. The company refused. In 2005 the NGO “War on Want” produced a damning report on security industry practices in Southern Africa and G4S was named explicitly. Back in the

UK, the international trade union UniGlobal offered to work with G4S to present a joint approach to the issue and portray G4S not as the problem, but a leading part of the solution ... working in cooperation with trade unions. The price of that deal was the recognition agreement and subsequent contract struck in 2008 with the US union SEIU to represent 35,000 Wackenhut workers. The tactic was a simple one ... define the objective; identify key influencers on the decision; and home in on the company's biggest weakness.

The agreement in Starbucks for single table bargaining in the United States for Starbucks workers is a modern-day study in triangulation. For the target – substitute Starbucks employees for Wackenhut; for the key influencers - replace UK management with US shareholders; for the weakness - link the proposals for employee representatives on the board of the company and a 20% dip in the company share price. The unexpected bonus for the union was the subsequent ousting of Starbucks CEO Laxman Narasimhan, and the immediate statement by his replacement that he would "... make its employees and customers very happy".

## **Today ... from “show and tell” to “mandatory disclosures and compliance”**

The soft law name and shame campaigns of the 90's were game changers in their own right. They drew attention to appalling labour practices in the supply chains of well-respected companies. Companies in turn took note, and many worked hard to take responsibility for cleaning up their act in a real and meaningful way. Others at least took to “greenwashing” their practices with "tick box" supplier commitments to do better.

The shift to hard law came in two international agreements:

- First, the snappily titled “International Labor Organization Declaration on Fundamental Principles and Rights at Work” reached in 1998. For the first time, this instrument meant that every member of the ILO accepted the principles underpinning the 10 ILO Core Conventions on Child Labor, Forced Labor, Discrimination, Trade union Organization and Health and Safety ... whether they had ratified the Conventions or not. This brought the United States (with just two ratifications) into play.
- The second was the “UN Guiding Principles on Business and Human Rights” adopted in 2011 based on the work of the Late John Ruggie. This made the role of employers clear and simple. The “Protect, Respect and Remedy” pillars called on **governments** to protect human rights, **employers** to respect them, and for people to have ready **access to remedies**. For employers this brought the obligations to **identify, prevent, mitigate, and be accountable** for their owned and non-owned supply chain activities.

## ***ESG Laws***

Companies moved fast, introducing comprehensive Corporate Sustainability reports based in the Ruggie Principles. Governments were less quick but have begun to take decisive action. This is particularly the case in Europe where governments in the UK, Germany, France and Italy have put in place laws to allow foreign actions to be judged in national courts. The early cases are coming in, but involve Ikea, Mercedes, Armani and several investment banks. There are more laws to come, and they will be bolstered by the European Union Directives on sustainability reporting that will bring information into the public domain and require the involvement of trade unions in the development of actions plans.

## ***Trade Deals***

The US has its own system of State laws being led from the West Coast, and at the Federal level signed an international trade agreement (the USMCA treaty between the United States, Mexico and Canada in 2020) that allows Americans or Canadians the right to have complaints of unfair labor practices in Mexico investigated by US authorities ... the so called “Rapid Response Mechanism”. The penalties do not come through the courts, but take the form of trade sanctions against companies that deny access to US and Canadian markets. To date the US has investigated companies including the Japanese firm Panasonic; Germany’s Volkswagen; French company St Gobain and US headquartered tyre manufacturer Goodyear.

This issue is already high on the agenda of a number of CHROs and C-Suite executives ... if it isn’t yet, it will be.