

SECTORAL ACTIVITIES PROGRAMME

Working Paper

**Responsible contracting:
An approach aimed at improving social and labour practices
in the property services sector**

by Andrew Bibby

Working papers are preliminary documents circulated
to stimulate discussion and obtain comments

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Preface

Property services sector workers clean, guard and maintain offices, shops, factories and other premises for small, medium and large property services enterprises. Some of them work in decent conditions, but many lack rights that others take for granted.

As multinational property services enterprises have expanded globally in the contract cleaning and security industries, the ILO wished to examine efforts to link better quality cleaning and security operations with greater respect for decent work and workers' rights around the world, through two research reports – one on *International framework agreements in contract cleaning and security: A cross-national study*, and the other on *Responsible contracting: An approach aimed at improving social and labour practices in property services*.

Some issues link this work on property services to recent ILO work on developing the Domestic Work Convention, 2011 (No. 189), and Recommendation No. 201, which aim at improving the working and living conditions of tens of millions of domestic workers worldwide. There are also links to the 1998 Declaration the Social Justice Declaration, and to the Labour Clauses (Public Contracts) Convention, 1949 (No. 94).

SECTOR working papers are preliminary documents intended to stimulate discussion and critical comments.

The Sectoral Activities Department (SECTOR) promotes decent work by addressing social and labour issues in specific various economic sectors, both at international and national levels. By tackling challenges for specific sectors, the International Labour Organization (ILO) assists governments, employers and workers to develop policies and programmes that generate decent employment and improve working conditions in each sector. SECTOR's integrated approach cross-cuts throughout the entire Decent Work Agenda, allowing the ILO to respond comprehensively to specific needs of the sectors in relation to employment, social protection, labour rights and social dialogue issues, Recommendation No. 200 and to the general structure of the Report. Plus acknowledgements to various contributors and supporters of the paper.

This paper was written by Andrew Bibby and edited by John Myers (SECTOR).

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Introduction

This report focuses on the property services sector, and in particular on the provision of cleaning and security services.

Buildings need cleaning, and buildings and property also need protecting. There is a long history of companies employing cleaners, caretakers and security staff at their workplaces and premises, sometimes as direct employees but also sometimes through other – more informal – arrangements. For example, it has not been uncommon for caretakers to be provided with “tied” accommodation (either rent-free or at reduced rent), as part of the employment relationship. Some companies have used independent workers or have employed casual labour on an ad hoc basis.

There is also a long tradition of contractors being used in property services, whereby people are employed by a firm that has a contract to do specific work for the premises or workplace, rather than directly employed by the client company whose property is being looked after. Such contractors can range from single-site companies to large national (and increasingly multinational) concerns. The particular nature of security work in particular has led to the development of larger firms specializing in this sector.

The past 30 years or so have seen a shift away from these more traditional arrangements, however, towards more systematic approaches. The idea that companies should concentrate on their core business activities and use contractors or outside suppliers for those which are peripheral is now deeply embedded in business practice and it has resulted among other things in the rapid growth in recent years of companies which make it their business to specialize in property and facilities services.

Trends in property services

Historically there has been separation between companies delivering cleaning services and those in the security industry. There remains only limited cross-over between these two sectors, although the lines are beginning to blur as larger companies seek to position themselves as generic property and facilities services and management businesses.

Security services

The security market has seen considerable growth in recent years. The market includes guarding workplaces and staff, armoured transport and alarm monitoring, as well as other related services. Technology (including such things as video surveillance and digital recognition) is increasingly important, and the sector is also undergoing international consolidation (the two major multinationals each have over 10 per cent of the global market share). North America remains the most important market (around 40 per cent) followed by Europe (about 30 per cent) and the Asia-Pacific region (approximately 17 per cent). Security services for commercial and industrial clients comprise the bulk of the business.¹

The two biggest multinationals are G4S (quoted on the London stock market, with a subsidiary listing in Copenhagen) and the Swedish company Securitas. G4S, the result of a 2004 merger between Securicor and Group 4 Falck, operates in more than 110 countries and has nearly 600,000 employees worldwide. Its annual turnover (2009) was £7,009 million (US\$11.4 billion). Roughly 80 per cent of its business is what it describes as “secure solutions” and 20 per cent is cash handling services. Continental Europe provides 28 per cent of its turnover, the United Kingdom and Ireland 23 per cent and North America 22 per cent.²

Securitas operates in 45 countries, with about 280,000 employees. It claims 11 per cent of the global outsourced security market, with 50 per cent of its sales in Europe and 38 per cent in North America (a further 10 per cent comes from monitoring work and other services). Its workforce is broadly split 50:50 between Europe and North America; almost 80 per cent are male. Its turnover (2009) was SEK62,000 million (\$9.9 billion).³

A third security multinational, Brinks, is based in the United States, operates in more than 50 countries and employs just fewer than 60,000 people. Its revenue of around US\$3 billion comes primarily from non-American operations (71 per cent in 2009). In recent years it has transformed itself from a company operating in a range of sectors (including coal and freight distribution) into one focused specifically on security.⁴

Prosegur also operates as a security services multinational. A Spanish-based company, it also operates in Argentina, Brazil, Chile, Colombia, France, Mexico, Paraguay, Peru, Portugal, Romania and Uruguay. Its workforce is just over 100,000, the

¹ Global Industry Trends, Cleaning and Security, briefing 2009.

² G4S Annual Report 2009.

³ Securitas Annual Report 2009.

⁴ Brinks Annual Report 2009.

vast majority of whom are male. Its annual turnover (2009) was €2,187 million (\$3 billion).⁵

As well as these transnational companies, there are a myriad number of smaller companies and operators. A recent survey of India, for example, (where over a million people work in the industry, and growth has been reported as 25 per cent p.a.) stated that more than 10,000 companies were operating. In Poland, there are an estimated 3,600 companies in the security industry.⁶

Cleaning services

In cleaning, the global market leader is ISS, a Danish-based company which now operates in 50 countries and has 500,000 employees, a five-fold increase in staffing in 20 years. Originally established simply as a cleaning company, this side of the business still contributes 52 per cent of its sales but is gradually reducing in importance (currently, 21 per cent of ISS's sales come from property services, 9 per cent from catering and 7 per cent from security). ISS has grown rapidly primarily through acquisitions (80,000 new staff came to ISS by this means during the single year of 2006, for example).

The ISS group revenue (latest accounts) was DKK70 billion (\$13 billion). The three countries with the greatest numbers of ISS staff are Indonesia (47,000), United Kingdom (41,000) and France (39,000).⁷

OCS is British-based, but operates in 40 countries and employs 61,000 people. Unusually, it remains a family-owned business, now managed by the fourth generation of its founder. OCS began as a cleaning company (OCS was originally "Office Cleaning Services") although the company has diversified into other services, including catering, horticulture, general facilities management, and also security. OCS has recently developed a presence in several Asian countries including China, where it trades as PCS.⁸

As in security, the cleaning industry is highly fragmented. For example, the European employers' association EFCI-FENI estimates that there are more than 158,000 cleaning contractors in the 20 European countries it monitors (18 European Union (EU) Member States, plus Norway and Switzerland).⁹ Together these firms, most of which are small or very small, employ 3.75 million employees, with employment typically growing by over 5 per cent a year. The European market is estimated at EUR 62 billion (USD 86 billion); the global market is broadly double this, at perhaps \$155 billion.

Cleaning is very labour intensive, with staffing typically comprising about 75 per cent of total company costs. It is also an industry with very high staff turnover rates. The British trade association CSSA has reported that, on average, cleaning companies in the United Kingdom suffer 70 per cent staff turnover a year, a symptom perhaps of the casual nature

⁵ Prosegur website: <http://www.prosegur.com>.

⁶ Presentations to UNI Global Union Conference 2010.

⁷ ISS Annual Report 2009.

⁸ OCS website: <http://www.ocs.co.uk>.

⁹ <http://www.feni.be/index.php?id=18&L=0>.

of employment in the sector; even the best companies, CSSA says, face 30 per cent staff churn,¹⁰ a figure which would be considered exceptionally high in many other industries.

The race to the bottom

Services such as cleaning and security tend to be viewed by companies using contractors simply as cost centres. There is little perceived benefit to the client company or to its brand or reputation from paying more than the bare necessity for a cleaning or security contract unless there is seen to be some improvement in terms of quality, corporate social responsibility or similar criteria. Indeed, there can be a perceived risk that, if costs are not driven down, other competitors of the client may be able to undercut them and deprive them of market opportunities.

In other words, there is strong pressure towards a race to the bottom.

Many of the reputable companies who deliver property services share with the trade unions a real concern at the continual tendency in their industry to cut costs. They understand that this is, ultimately, not the basis of a sustainable business sector. However, this insight by itself does not win competitive tenders.

One senior executive for a cleaning services company in Australia put it particularly vividly when he complained that his industry was “devouring itself from within through nonsensical pricing”.¹¹ Another, the Director-General of the British trade body Cleaning and Support Services Association, has called for an end to “the low cost, low price, low margin mentality”. He suggested that, in the United Kingdom, cleaning profit margins have been as low as 4 per cent.¹²

It is a view which emerges very clearly in a number of statements which employer organizations have made in joint initiatives with trade union bodies. For example, the European employers’ organization for the security industry (CoESS) and their union partner (UNI Europa) made the following comment in a report designed for companies and organizations awarding security services contracts:

There is increasing concern among the social partners representing employers and workers in the industry that the application of the principle of awarding contracts to the lowest bidder is leading to a gradual lowering of quality standards...The detrimental effect of lowest price competition, which goes beyond the optimisation of costs, cannot immediately be detected, but is a gradual process ... Lowest price competition has been found to initially lead bidders to weaken the infrastructure of the performance system, which includes staff training, supervision and quality management. In order to cut costs further, they will subsequently lower service levels by employing cheaper labour, with a resulting detrimental impact on staff motivation and turnover rates. Wage and social costs are often cut by switching to fixed-term and part-time labour and ultimately to “shadow self-employed” agents in order to bypass collective agreements.¹³

¹⁰ Andrew Large, PowerPoint presentation at working group meeting of the Cleaning Industry Sectoral Social Dialogue Committee, 2 March 2007, Brussels.

¹¹ “Industry takes first steps towards establishing a council”, *Inclean* magazine, 18 April 2005, quoted in *A clean start for the property services industry*, LHMU and SFWU, n.d.

¹² Andrew Large, PowerPoint presentation op. cit.

¹³ CoESS and UNI Europa, *Selecting Best Value – A manual for organisations awarding contracts for private guarding services*, originally published 1999.

The European employers' organizations for the cleaning and security industries came together with that for the textile industry and with three European trade union federations in 2008 to issue a combined statement urging contracting companies and organizations to select what they called "the economically and socially most advantageous tender" rather than the lowest price tender. In a strong statement, they wrote: "Taking into account qualitative elements relating to, for example, the skills and capabilities of the provider, the company and contract management, the environmental footprint, the working conditions of workers along the supply chain and the respect of international labour standards, national laws and collective agreements including trade union rights is essential."¹⁴

This sort of approach, which links adherence to core labour standards with other concerns including environmental issues, constitutes what we could categorize as the *high road approach* to outsourcing. It is the approach which, as this statement demonstrates, can successfully bring together both employers' organizations and trade unions in a shared strategic approach.

Unfortunately, when it comes to current practice around the world, the high road is at present the road less travelled. Instead, too often, price considerations triumph over all other concerns. This is the *low road*. The implications are spelled out in that same 2008 joint statement:

"This translates into the persistence of a negative perception the sectors may suffer from, as a consequence of the services or goods provided to the end consumer; not only does it have a detrimental impact on the industry but it leaves employees dissatisfied with their working conditions; and lastly, it seriously harms the ability of the sectors to attract new employees, young people in particular."¹⁵

It is necessary to listen to the individual workers themselves to get a real sense of what this approach to outsourcing really means in practice. Cleaners and security staff often feel that they perform their work unseen; here are some examples of what they say, when invited to do so:

"I am worried that all my company now wants from me is to work harder and faster by cutting our hours. I do not think they understand what I do and they do not appreciate us." [Woman cleaner, New Zealand]¹⁶

"They don't look after the staff who have been here for years. Nor do they look after the new starters properly. So the turnover of staff is very high. We have one or two in and out every week. There aren't many of us longer service staff left: maybe only 20 of us have been here more than 20 years. Nearly everyone on the evening shift is a college kid." [British cleaner]¹⁷

The practice of cost-cutting by competitors is one which is seen to threaten better employer practices:

"The company I work with is one of the better cleaning companies. They are not pushy and they respect their workers but there is a question about how long they can afford to do that

¹⁴ Towards Responsible Awarding of Contracts, joint declaration of UNI-Europa, EFFAT, ETUF-TCL, and CoESS, FERCO, EFCI and EURATEX, adopted 18 April 2008.

¹⁵ *ibid.*

¹⁶ A Clean Start for the Property Services Industry, LHMU and SFWU, n.d.

¹⁷ Cleaners' Voices, Unison, 2005.

because they can't resist it if they have some dirty player coming into the market." [Male worker, Australia]¹⁸

Poor labour practices can have a direct effect on the service. This is a hospital cleaner speaking:

"If I've got a streaming cold or flu, morally I should not come to work in a hospital where I can pass it on to other people. But regardless of the morals, I can't afford to stay off work because I don't get paid if I'm sick." [British cleaner]¹⁹

The frequency with which contracts are retendered is also a cause of considerable concern for the staff affected:

"Every time the contract goes up for tender we worry about our jobs. Each time the contract changes I have watched the new contractor expect us to do the same work in less hours. This means that even if they raise our wages the pay packet is cut because we've got less hours on the job." [Male worker, Australia]²⁰

The Australian union LHMU has reported the case of a worker who had cleaned the iconic Sydney Opera House for over nine years when his company lost the tender to a competitor. The new company wanted him to change to night working without pay increments or he would lose his job. As the worker commented, "That is not very fair. Not a nice way to treat a loyal worker."²¹

There is little evidence that the situation has improved in recent years, and some informal evidence suggests that the "race to the bottom" has if anything become worse as companies struggle to contain costs and ride out the economic downturn.

The workers at risk

Both the security and cleaning industries are low paid. They are therefore sectors which tend to employ workers who are relatively unskilled, or who for other reasons (including discrimination) are unable to find work with higher wages. These workers are particularly vulnerable to exploitation.

The cleaning sector predominantly employs women workers, in part a legacy of past cultural assumptions by men that cleaning is to be dismissed as "women's work". As the ILO – among many others – has pointed out, women are, as a group, more likely than men to be engaged in part-time or casual work²² and part-time working is certainly an attribute of the cleaning industry. In Europe, a 2010 study found the percentage of cleaners working part-time varied from 35 per cent in Sweden to 80 per cent in Austria, Germany, the Netherlands and the United Kingdom.²³

¹⁸ A Clean Start for the Property Services Industry, op. cit.

¹⁹ Cleaners' Voices, op. cit.

²⁰ A Clean Start for the Property Services Industry, op. cit.

²¹ Op. cit.

²² ILO, Decent Work for women, International seminar, St Petersburg, 2000.

²³ *Improving the European Social Dialogue in the Cleaning Industry Sector: Examination and Renewal*, UNI Europa and EFCI-FENI, final report, October 2010.

The security industry by contrast is predominantly staffed by male workers (as high as 90 per cent in France and Poland and several other European countries). However, wage levels remain well below average. A recent European academic study found that security workers received less than half the average hourly wage rates paid in the industrial and services sectors in a large number of EU countries, including the Netherlands, France, Austria, Germany and the United Kingdom. In Poland, according to the same study, wages per hour were typically less than one fifth of average wages in the country.²⁴ (Of course, in some instances security work may involve periods of “paid inactivity”.)

Ethnicity, migration status or national origin can also be a major factor. Property services companies employ a higher percentage of people from ethnic minority and migrant groups.²⁵ In the United Kingdom, for example, nearly 40 per cent of workers in the support service sector are of non-British origin.²⁶ The Swedish Building Maintenance Workers’ Union (*Fastighetsanställdas Förbund*) has 36,000 members, 40 per cent of whom are immigrants.²⁷

Employment of illegal migrant workers also has an undermining effect on the ability of law-abiding companies to maintain employment standards and wages; employers’ organizations in the Czech Republic and the United Kingdom are among those reporting this problem of competing with companies and workers operating outside the law.²⁸

Direct employment and indirect employment

The European statement of 2008 signed by employers’ organizations and unions which was quoted above referred to the risk of contractors using “shadow” self-employed workers as a way to avoid employment responsibilities. This is undoubtedly a reality in some markets, particularly in relation to domestic cleaning work (work undertaken in individual homes for the householders or owners), as well as in developing countries.²⁹ The issue of bogus and quasi self-employment was the focus of the ILO’s Employment Relationship Recommendation, 2006 (No. 198).

Important as “shadow” self-employment can be, however, there is perhaps a more substantive issue in outsourcing. This is that the traditional employer/employee relationship – on which so much national labour law and most of the ILO’s labour standards are based – is made more complex through the outsourcing relationship.

²⁴ *The modernisation of work organisation in the European private security industry*, The Centre of Sociology of Work, Employment and Training at the Université Libre de Bruxelles, European project VS/2007/0235, n.d. (2008?).

²⁵ Common recommendations of the European social partners for the cleaning industry, EFCI–FENI and UNI-Europa, 1 March 2004.

²⁶ CSSA Position Paper, Tackling Illegal Working, May 2010.

²⁷ <http://osha.europa.eu/en/seminars/cleaners/speech-venues/cleaning-workers-2013-latest-findings-and-good-practices/good-practice-example-of-better-public-procurement>.

²⁸ Black work in the cleaning industry of the Czech republic, PowerPoint presentation by Mgr Irena Bartoňová Pálková, chairman of the board of Czech Association of Cleaning, 2010 conference; CSSA Position Paper, op. cit.

²⁹ Being discussed at the 100th Session of the International Labour Conference in June 2011, with a view to the adoption of an international labour standard on decent work for domestic workers.

For example, the cleaner who empties the waste bins and vacuums the carpets in a major insurance company's head office is nowadays unlikely to be a direct employee of the insurer. It is a similar situation for the security guard who watches for shoplifters or protects the cash takings in a major supermarket branch. There is, in other words, a triangular relationship between the employee, the contracting company which employs them and the client company which has arranged to contract some services it requires.

This is analogous in some respects to the triangular employment relationships operating when temporary agency workers are employed, a growing phenomenon in the labour market which was addressed by the ILO's Private Employment Agencies Convention, 1997 (No. 181). However, there are also differences. Temporary agency workers may in some jurisdictions have more rights with regard to equal treatment and safety and health at the workplace of a user enterprise than would apply to contract workers who clean or guard premises for a property services enterprise.

In any contracting arrangement, the details of the agreement (including the price being charged and therefore, indirectly, the wages which will be paid) are made under contract law, and therefore the client company is generally entirely removed from having to concern itself with employment law in relation to staff who may, nevertheless, be working in the same premises as its own staff. A client company contracting its cleaning is likely to have little or no more legal responsibility towards those cleaning staff than it would have towards, say, visitors to its premises. Contracting can be seen as an effective way to avoid employer responsibilities.

There has been some discussion in a variety of forums of the concept of "direct" and "indirect employment", with the idea proposed that "indirect" employers should be required to take on more responsibility than is currently the case. The growth of contracting, outsourcing and temporary agency work were among the topics lying behind the discussions at the International Labour Conference that led to the adoption of the Employment Relationship Recommendation, 2006 (No. 198). In practice, as we shall see in relation to responsible contractor initiatives, there are examples of outsourcing companies who do choose to concern themselves with the working conditions of the staff of their contractors. They do so either through choice (perhaps as part of an ethical or CSR policy) or more negatively because of concerns about potential reputational risk or under union or community pressure, rather than because of any legal requirements on them.

Working to escape from the race to the bottom

We compared above what we called the high road and the low road approaches to outsourcing, and we noted that unfortunately many outsourcing deals today are focused purely on cutting costs. Fortunately, there are examples of good practice which can be built on.

It may help to identify the various stakeholder groups who have, or can have, an interest in this process.

Firstly, there are the contracting service companies themselves, together with their national and regional trade and employer organizations.

Secondly, there are the trade unions, again both those operating at national level and those operating regionally and internationally. At international level, the union chiefly involved is UNI Global Union. The IUF is engaged in relation to cleaning work undertaken in hotels and catering establishments, and PSI as regards cleaning and security services in hospitals, educational establishments and the public sector in general.

As mentioned above, particularly in the European context, there have been a number of valuable joint initiatives undertaken by the social partners. These will be looked at in more detail below.

The third important class of stakeholder is, of course, that of the client companies who are choosing to outsource their cleaning, security and property management requirements to contractors.

In some countries, the property companies who own the offices and commercial premises have also become engaged as active stakeholders. This has been extended a stage further, again in some countries, where financial organizations (particularly occupational pension funds in the public sector) that have invested in property have taken an interest in how their properties are cleaned and secured and have intervened in the contracting process.

Governments and other public bodies have identified themselves as active stakeholders. So too have a range of regional and global organizations, including the institutions of the EU and the UN, and the ILO.

Finally, NGOs, faith groups and civil society organizations have in some places also become engaged with the issue.

The approach to finding workable responses to the race to the bottom in cleaning and security services differs from country to country. We can perhaps summarize all this activity within the overall concept of “responsible contracting”. Within this are a number of strands which can be brought together for a strategic response to the problem. We shall consider these in turn.

Social partnership at global level

It may be appropriate to begin by exploring examples of successful social partnership initiatives between property services companies and workers’ organizations, beginning first at international level.

Of the 80 or so Global Framework Agreements (GFAs) signed between multinational companies and global union federations, three (those between UNI Global Union and ISS, G4S and Securitas) directly concern the property services sector. Some steps have also been taken towards a possible GFA between UNI and Prosegur.

ISS flags up its global agreement of 2003 with UNI on its website as a milestone in its corporate responsibility strategy; it links this to its adherence to ILO core labour standards.³⁰ The original agreement was revised and extended in 2008, to include among other things an annual contribution of €100,000 (\$140,000) by ISS to a jointly managed fund to monitor and raise standards in particular markets.

³⁰ http://www.issworld.com/about_iss/corporate_responsibility/100_years_of_responsibility/pages/default.aspx.

[Extract from ISS-UNI Global Agreement]

Both parties are committed to a market for service employment in which workers receive decent work, and a decent wage. Both parties recognize the important role that unions play in raising and maintaining standards for these typically low wage service workers. Finally, both parties recognize that because of obstacles to the creation of unions in this industry, the employer must agree to facilitate the process of union access to workers in order to ensure that the promise of freedom of association may be fulfilled.

Securitas unilaterally adopted a Code of Conduct (revised in 2004) which was based on the UN Universal Declaration of Human Rights and ILO core labour standards, and which committed the company among other things to work to raise standards and wages in the industry as a whole. The Code formed the basis for the subsequent global agreement with UNI, signed in 2006.

The G4S–UNI global agreement was adopted in 2008, and was formally recognized by both parties as “a very significant step forward in their relationship”. The agreement is “to be supported in principle and in practice at all levels in both organizations”. The agreement does, however, implicitly acknowledge some of the problems facing a multinational employer operating in markets where the culture is much less amenable to effective social partnership (see box).

[Extract from G4S-UNI Global Agreement]

Terms and conditions of employment will be determined locally, in accordance with national legal, social and economic conditions. The G4S strategy is that every G4S business must be sustainable in its own right over the long term. UNI’s position is that negotiated terms and conditions should provide at least a living wage while securing a work/life balance for employees.

The parties recognise that G4S operates in a highly competitive environment in which many local competitors do not respect laws on working hours and pay. If any improvements to terms and conditions of employment appear likely to result in a loss of market share or margin to G4S, the local union and management team will develop a joint strategy and action plan to monitor and raise standards among all of the companies in the market and create an environment in which G4S will be able to raise standards without compromising its competitive position.

In practice, even with the goodwill between social partners which the existence of a formal Global Agreement suggests, stresses and strains can develop in relation to particular countries where property service provision is subject to particularly savage cost-cutting. Informally, union representatives suggest that it has been the resistance of national management teams in particular countries which have discouraged other multinationals from progressing towards signing their own Global Agreements.

Social partnership in the European context and at national level

The EU has institutionalized the principle of social dialogue between social partners within its structures, both at inter-sectoral level and at sectoral level. Sectoral social dialogue currently takes place for over 30 widely different industries and has operated in the industrial cleaning sector since 1999, between the European Federation of Cleaning Industries (EFCI–FENI) and UNI Europa Property Services. A separate social dialogue committee operates in the security sector, with the Confédération Européenne des Services de Sécurité (CoESS) representing employers and UNI Europa Property Services again representing workers’ organizations.

Although focused on the European context, the work of these two social dialogue committees demonstrates the common interest which employers and unions can have in working for good practice in outsourcing.

In the cleaning sector, joint initiatives have centred on issues such as the need to encourage daytime cleaning rather than anti-social night shifts, training and health and safety, undeclared work, and public procurement. In security services, the social partners have tackled issues such as third-party violence against staff, cash in transit legislation and worker mobility.

At national level, there have been some useful initiatives undertaken by social partners. In Norway, for example, the National Federation of Service Industries (*Servicebedriftenes Landsforening, SBL*) and the Norwegian Union of General Workers (*Norsk Arbeidsmandsforbund*) operate a certification scheme for companies in the cleaning industry which are deemed to be “clean”. The scheme aims to raise the level of decent work practices in the sector and discourage the use of undeclared work. The scheme had 27 certified companies in 2008, admittedly only a fraction of the total number of firms operating in the country.³¹

In Sweden, a website “All about cleaning” (*Allt om städ*) has been established to offer advice and information to cleaners and their managers, particularly with a view to reducing health and safety incidents in the industry. The website includes a guide to responsible contracting designed for contracting companies and organizations.³²

In several European countries, employment, pay and conditions are nationally negotiated through collective bargaining. In cleaning, for example, single national sectoral collective agreements operate in twelve EU Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Slovenia and Sweden. Regional sectoral agreements also operate in Portugal and Spain.³³

As with cleaning, in the European security industry national collective agreements apply in several EU Member States, with Joint Industry Committees operating in at least nine countries. Generally, these agreements cover the vast number of companies operating. The Czech Republic and the United Kingdom are exceptions in not having national agreements (the Czech Republic and the United Kingdom are also unusual in Europe in not controlling access to the industry through official licensing of operators).³⁴

Encouraging companies to choose “responsible contractors”

Useful as these social partnership initiatives between employers’ organizations and unions undoubtedly are, they run the risk of failing to engage with the third major class of stakeholder in the outsourcing relationship – the client company which is putting out its property servicing requirements to tender.

Past years have seen a number of different initiatives to encourage a responsible approach to outsourcing by client companies. For example, both the cleaning and the security services European social dialogue committees have produced comprehensive and valuable *Selecting Best Value* manuals, which aim to offer practical advice to outsourcing

³¹ Clean development scheme, Norway:
<http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/no002.htm>.

³² <http://osha.europa.eu/en/seminars/cleaners/speech-venues/cleaning-workers-2013-latest-findings-and-good-practices/good-practice-example-of-better-public-procurement>:
<http://www.alltomstad.se>.

³³ Improving the European Social Dialogue in the Cleaning Industry Sector, op. cit.

³⁴ The modernization of work organization in the European private security industry, op. cit.

companies and organizations going through the tendering and selection process. These publications point out the pitfalls of selecting property services purely on the basis of lowest tender price.³⁵ Regrettably, however, in both cases these manuals appear not to have been particularly widely promoted or distributed and are not often utilized in practice during tendering exercises.

There is no universal definition of what constitutes a “responsible contractor”. At worst it can be a meaningless marketing term utilized by a business, in an attempt to persuade potential customers to buy its services. It can also indicate that a company is attempting to demonstrate its social or environmental credentials. Contractors who self-define themselves as being responsible do not necessarily commit to good practice in relation to their workforce or adherence to labour standards.

Nevertheless, there is growing interest in the concept, and the fact that it is as yet a fluid term may be something which ultimately can be turned to advantage.

The organization which has developed the concept furthest in relation to labour rights and working conditions is the international trade union federation UNI Global Union, whose property services sector has been promoting its Responsible Contractor Policy (RCP) for several years.

The Policy is directed primarily at client companies looking to outsource services such as cleaning and security, rather than at the contractors themselves. The Policy (see box) has five main features, in turn covering adherence to ILO core conventions and applicable labour laws, payment of a living wage and social benefits, maintenance of a safe and healthy work environment, recognition of the right of workers to organise collectively and, once a union is recognized, negotiation of a collective agreement. A sixth section, added by UNI more recently, covers implementation and enforcement requirements.

UNI Property Services Global Union Model Responsible Contractor Policy

X is proud of its commitment to rent, own or invest in properties that are well-run and maintained and where tenants or owners and X receive only the highest quality of services. It is the belief and policy of X that high quality property services are only made possible when the staff hired by X directly or by its service contractors are well-trained and that each building has dedicated staff with low turnover.

The Policy seeks to ensure that Contractors should be selected based upon demonstrated ability to provide high quality Services, as evidenced by their record of respect for collective agreements and applicable law or social obligations, staff training and development, payment of fair compensation and benefits to employees, as well as by their experience, reputation, responsiveness, fees and dependability.

Consequently, X agrees that its contractors, which provide property services to X at any commercial or residential property, will abide by the Global Contractor Principles of UNI Property Services Global Union. Any contractor providing property services to an X property or project who fails to abide by the terms of this policy may be subject to termination of contract.

³⁵ *Selecting Best Value* – a manual for organizations awarding contracts for private guarding services (CoESS and UNI-Europa), 1999; *Selecting Best Value*, a guide for organizations awarding contracts for cleaning services (EFCI–FENI and UNI-Europa), 2002.

Global Contractor Principles

1. The contractor shall abide by all applicable labor laws, and the ILO Core Conventions. This includes, among others, laws and conventions concerning freedom of association and prohibition of child labor and discrimination.

2. The contractor shall pay its employees a living wage and other social benefits as necessary to meet basic needs. The wage shall take into account the prosperity of the relevant real estate industry and the cost of living in the market.

3. The contractor shall at all times maintain safe and healthy working conditions.

4. Upon request by a UNI affiliate, contractor shall negotiate a recognition and recruitment policy in which it will agree to:

- (a) recognize unions without delay or resistance so long as the union satisfies the minimum legal requirements under applicable law;
- (b) allow for effective union contact with new and existing employees to recruit members; and
- (c) address resource concerns in order that the union will be able to enforce and monitor standards in the industry.

All employees and supervisors will be advised that employees have the right to join a union and that unfair treatment because of support for a union will not be tolerated. Specific agreements will differ, but every agreement should contain these key elements if requested by either party.

5. Once a union is recognised, the contractor and the union shall negotiate a collective agreement.

Implementation and Enforcement

6. The parties agree that the implementation and enforcement of this agreement are central to the commitment. The following steps will be taken:

- (a) X will publicize this agreement throughout its corporate structure and to all prospective contractors.
- (b) In the event that a UNI affiliate claims that a contractor has not satisfied the conditions set forth above, it shall first attempt to resolve the dispute locally. If local attempts fail, UNI shall bring this matter to the attention of the designated representative of X. The parties commit themselves to ensure that remedial action is put speedily in place.
- (c) In order to assess implementation and address any ongoing disputes which may arise concerning the application of this global agreement, senior corporate representatives will meet a team of representatives from the UNI twice yearly. This meeting will, among other things, review mutual respect for and implementation of this global agreement.

This policy is designed to guide X's selection of contractors who provide property services to real estate properties in which X invests or occupies, in a manner consistent with legal obligations and fiduciary duty.

In its accompanying promotional brochure on its RCP, UNI appeals as much to companies' self-interest as to their desire to be seen to be ethical: "For the millions of property services workers, the RCP is a step towards protection of their rights and improvements in working conditions. For clients, the agreement operates to improve the quality of service and reduce employee turnover, while lowering the risk of embarrassment to the company's global reputation".³⁶

UNI identified a hundred major multinational companies in its sectors which it hoped would be persuaded to adopt its Responsible Contractor Policy. Twenty-three of these were in the banking sector, 11 in insurance, 18 in accounting, 17 in management consulting, 16 in law and 15 in advertising. Letters were sent to CEOs or chairmen, inviting their participation in the scheme.

The results of this initiative in the short term have perhaps been more limited than UNI would have liked. UNI also notes that, to date, it has failed to encourage any of the

³⁶ UNI Global Union, The UNI Property Services Responsible Contractor Policy: The right step for responsible employers, n.d.

client companies with whom it has agreed GFAs to adopt a formal RCP to cover its outsourcing operations. There is a sense of frustration on the union side at the apparent reluctance of multinational companies – even those avowedly committed to corporate social responsibility – to respond.

Where results have been achieved, they have come about through a combination of UNI's global approach with particular national initiatives, often coordinated by UNI's trade union affiliate members in their own countries (see below).

Australia

One particularly good example of this is the Clean Start initiative undertaken in Australia and New Zealand. This was launched originally as a trade union initiative by the two unions concerned (respectively the LHMU and SFWU), focusing on both cleaning and security services. As with UNI's initiative, the unions were keen to emphasise the benefits both to workers and to companies of a responsible approach ("Incomes for cleaners and security officers are so low the industry is incapable of attracting and retaining a workforce that is stable, well trained and competent ... Tenants are dissatisfied with standards of cleaning and security and by any objective measure the standard of cleaning and security in commercial office buildings is at an all time low").

The Clean Start initiative was based on a set of ten principles, which included obligations on contractors but also included requirements on client companies that were outsourcing services (see box).

[Extract from Principles for a Clean Start]

Owners, wanting to promote and protect best practice standards and being conscious of the needs of the industry to maintain its financial viability will support the development, in consultation with the relevant unions and any contractor(s) of:

- (a) A protocol to determine appropriate cleaning ratios needed to ensure a high standard of cleaning and a reduction in the level of occupational illness and injury.
- (b) An analysis of jobs so as to create good jobs capable of attracting a stable workforce to the industry and to reduce its reliance on a continually transient workforce.
- (c) A process of ensuring that all cleaning and security staff are professionally trained to do their jobs in the safest and most efficient manner.
- (d) A jointly sponsored fund to support appropriate training and education for the industry's workforce, and to establish standards of best practice in the industry, especially with respect to occupational health and safety.

Unions will consult with any owners who adopt these principles, about proposed collective bargaining outcomes to determine their financial impact and agree on any necessary phasing in of cost increases so as to minimize the cost to those owners.

Particularly in Australia, the initiative has managed to create wider support and to have a real effect on the operation of the industry. The principles behind Clean Start have been incorporated in a collective agreement for the sector, which has now been widely adopted. The collective agreement, the culmination of twelve months' negotiation, among other things establishes four-hour minimum shifts, job security at change of contract, fair leave, annual wage increases, proper induction and training, and dispute resolution procedures.

In mid-2010 the union was able to report that "the Clean Start campaign in Australia has reached the stage where a critical mass of cleaning contractors in several Australian states have now signed up to the Clean Start collective agreement, and a majority of

cleaning contractors (approaching 50) have signed nationally”.³⁷ As one Australian politician has put it, “Contractors and their clients are finally realizing that the cleaning industry cannot sustain a race to the bottom”.³⁸

United Kingdom

In London, and in particular in the business district of Canary Wharf in east London, moves to improve wages and conditions have again focused on the companies occupying the office blocks. The campaigns, which have been led by the community-based organization London Citizens in conjunction with the trade union T&G (now Unite), were particularly focused on the years 2006–08 and around the concept of the so-called “London Living Wage” (London, as a capital city, is very expensive and campaigners say that the British legal minimum wage is insufficient for low-paid workers).

In a lively campaign which attracted considerable media attention, the organisers among other things awarded a “Golden Vacuum” award to those financial companies deemed to be ‘sucking their cleaners dry’. As one cleaner put it in 2006, “we are working hard for companies earning millions of pounds but we can’t afford to feed our children”.³⁹

The campaign was successful in encouraging a number of major companies to ensure that their office cleaners did receive the London Living Wage. Barclays Bank, for example, announced in 2007 that it was increasing pay levels significantly, and was also ensuring that cleaners received sick pay, a pension and 28 days’ holiday. Speaking subsequently at a London Citizens’ conference, Barclays’ employee relations director Dominic Johnson saw the outcome as very positive. “It’s not something we do just because we want to act responsibly as a business, although of course we do, commercially it make sense. Our retention rates are far higher than industry averages ... Our suppliers have 92 per cent retention rate compared to 35 per cent elsewhere in the industry. This means we get better service from colleagues who feel committed and valued for what they do”.⁴⁰

Another speaker at that same conference, Roger Reeves of PricewaterhouseCoopers, stressed his company’s interest in the wages being paid down the supply chain: “We guarantee [the London Living Wage] to all of our employees and to all of those people who work for our sub-contractors and service businesses. Over the last couple of years we’ve been working hard to make sure that the people who work for the sub-contractors to the contractors apply the same principles”.⁴¹

Poland

An interesting example, this time from the security sector, of a client company taking a direct interest in labour conditions in its contractor companies comes from Poland. The Polish union Solidarność organizes security workers in the country and had signed

³⁷ News report: <http://www.uniglobalunion.org.uk>.

³⁸ Louise Pratt, Senate adjournment debate, 12 August 2009: <http://www.openaustrali.org/senate/?id=2009-08-12.97.1>.

³⁹ Abiola Arowolo: <http://www.facebook.com/group.php?gid=6080881378#!/group.php?gid=6080881378&v=wall>.

⁴⁰ <http://www.citizensuk.org/campaigns/living-wage-campaign/messages-from-living-wage-employers/>.

⁴¹ *ibid.*

agreements with all the major companies except for one. This company agreed to come to the negotiating table in 2008, thanks in large part to the encouragement of one of its client firms, IKEA. IKEA had been encouraged to take this approach by union campaigning in several countries, including its home country of Sweden.

IKEA actually participated in the single unified negotiations which Solidarność held from July 2008 with the major eight contractors, and the retailer agreed to increase their fees to their chosen contractor specifically to help fund a financial “Help Fund” (hardship payments).

The negotiations concluded in a successful collective agreement in 2009, which among other things confirmed security workers’ right to collective organization.

Netherlands

In the Netherlands, major industrial action has helped encourage the development of a new Code of Practice (Code for Good Customers) for the cleaning sector. This work aims to overcome the increasing tendency for cleaning contracts to be awarded solely on price, and for contracts to be retendered at shorter and shorter intervals. A commission to work on the Code includes the employers’ organization OSB, the FNV and CNV trade union federations and government representatives, but significantly it also includes representatives of several key client companies. This approach taken by the Code is that client organizations, as customers, are indirectly responsible for the employment conditions of cleaning workers employed by contractors.⁴²

Involving other stakeholders in promoting responsible contracting

United States

The international initiative by UNI Global Union around its Responsible Contractors Policy draws heavily on pioneering work in the United States in the Justice for Janitors campaign led by the SEIU union. This initiative focused as much on the real estate property companies who own the big office developments in the business districts as on the companies occupying the space and the contracting firms themselves.

The Justice for Janitors campaign took off in 1990 in Los Angeles, following a decade in which outsourcing had grown significantly and wages and employment rights had fallen. SEIU stated that average hourly wages for Los Angeles janitors fell from more than \$7 in 1983 to \$4.50 in 1986: “Building owners were no longer hiring cleaners directly and employers were starting to hire Latino immigrants and becoming very resistant to janitors’ unionization efforts”.⁴³

The Justice for Janitors campaign was a broad-based one, which sought to mobilise community support as well as that from churches. The tactic used to combat under-cutting and a race to the bottom by contractors was to work for the establishment of city-wide agreements on wages and conditions for cleaners, which would apply to office buildings throughout a whole metropolitan area. Market-wide master contracts have been

⁴² Collective bargaining in the Netherlands, presentation by Norma van den Berg, Director Legal & HR, ISS Facility Services, Netherlands, Brussels Conference, 3 November 2010.

⁴³ <http://www.seiu.org/a/justice-for-janitors/justice-for-janitors-20-years-of-organizing.php>.

successfully introduced in around thirty cities in the United States and Canada, including New York, Chicago, Washington, DC, and Houston, after Los Angeles itself.

Because cleaning employers are typically contractors whose contracts can be cancelled by the property owners at 30 days' notice, these master contracts usually have so-called "trigger agreements", ensuring that improved wages and conditions are introduced only when enough companies in the market have signed up to them. The idea, as SEIU explains, is to ensure that no single contractor is put at a competitive disadvantage.

The Justice for Janitors campaign has also sought support from investment funds (primarily public sector employee retirement funds) who invest in commercial property. The largest United States public pension fund by assets, CalPERS (the California Public Employees' Retirement Scheme), has taken a particularly active stance.

CalPERS states that its policy on what it calls its Responsible Contractor Program (revised in early 2010) is consistent with the fiduciary duty on its trustees to produce a competitive risk-adjusted return for the pension fund members (see box).⁴⁴

**[Extract, Introduction to CalPERS Statement of Investment Policy for Neutrality
Trial Responsible Contractor Program]**

CalPERS has a deep interest in the condition of workers employed by CalPERS and its Managers and Delegates ... [CalPERS] supports and encourages fair wages and benefits for workers employed by its contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence ... CalPERS endorses small business development, market competition, and control of operating costs. CalPERS supports many of the ideals espoused by labor unions and encourages participation by labor unions and their signatory contractors in the development and management of CalPERS real estate and infrastructure investments. CalPERS believes that an adequately compensated and trained worker delivers a higher quality product and service.

CalPERS' policy defines a responsible contractor as "a business that pays workers a fair wage and a fair benefit". However, it makes it clear that what constitutes responsible contracting may differ from one geographical location to another, depending on market realities: "The definition of fair benefits generally includes, but is not limited to, employer-paid family health care coverage, pension benefits, and apprenticeship programs. What constitutes a fair wage and a fair benefit depends on the wages and benefits paid on comparable real estate or infrastructure projects. Fair wages and fair benefits are based upon local market factors, that include the nature of the project (e.g., residential or commercial, and public or private), comparable job or trade classifications, and the scope and complexity of services provided".

A similar policy has been adopted by another California public employees' retirement scheme, the teachers' scheme CalSTRS. CalSTRS asks both contractors and unions to participate in helping to ensure the use of responsible contracting companies (see box).⁴⁵

⁴⁴ California Public Employees' Retirement Scheme, Statement of Investment Policy for Neutrality Trial Responsible Contractor Program, 16 February 2010.

⁴⁵ California State Teachers' Retirement System, Responsible Contractor Policy.

[Extract from CalSTRS Responsible Contractor Policy]

Contractors will have the responsibility for the following:

- (a) Submit to the property manager a Responsible Contractor self-certification on a form approved by CalSTRS.
- (b) Communicate to subcontractors the Responsible Contractor Program Policy.
- (c) Provide to the property manager Responsible Contractor documentation.

Trade unions/service unions shall be asked to perform the following tasks:

- (a) Deliver to the property manager or advisor lists of names and phone numbers of Responsible Contractors.
- (b) Refer interested and qualified Responsible Contractors to the property manager.
- (c) Continually monitor the local labor markets to update the lists.
- (d) Provide technical input as appropriate.

The use of responsible contractor policies by pension schemes remains an exception. A more broad-based initiative for investment funds is the UN's Principles for Responsible Investment scheme,⁴⁶ which both asset owners and fund managers are invited to endorse. The PRI states that its aim is "to help investors integrate consideration of environmental, social and governance (ESG) issues into investment decision-making and ownership practices, and thereby improve long-term returns to beneficiaries". The PRI is a commendable initiative, which has been widely taken up in some countries. It should be noted, however, that it does not specify the way in which social issues in investment will be considered, or offer a direct link with the ILO's core labour standards.

Governments and public bodies as stakeholders

Governments have an indirect interest in the employment of workers working for property service contractors, if only because poor levels of pay and poor employment conditions may raise issues of social inclusion and public policy which may require governmental intervention.

Governments also have an increasingly *direct* interest in the issue, since public sector bodies have moved to embrace outsourcing in recent years as readily as private sector businesses. As with the private sector, the motivation has to a large extent been that of cost-saving; in some instances, this has been at the expense of any other consideration. In other words, governments do not necessarily have a better track record than business in seeking out the high road to contracting.

On a number of occasions, this has led to adverse media attention. The European Commission found itself on the receiving end of bad publicity in 2007 in relation to the allocation of its cleaning contracts⁴⁷ whilst *Der Spiegel* ran a story the same year quoting union sources which claimed that the Reichstag building in Berlin was being cleaned by staff paid below the national minimum wage for the industry.⁴⁸ More recently, in early

⁴⁶ <http://www.unpri.org/>.

⁴⁷ See, for example, "Brussels cleaning 'fraud' probed", BBC News, 4 June 2007: <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/europe/6720459.stm>.

⁴⁸ Bundestag speist Putzkräfte mit Dumpinglöhnen ab, 11 May 2007: <http://www.spiegel.de/wirtschaft/0,1518,482395,00.html>.

2011, the Maltese General Workers' Union criticised the public agency Heritage Malta, which it claimed was awarding security contracts at prices which prevented payment of the minimum wage.⁴⁹

There is, in theory at least, considerable opportunity for public sector contracts to promote responsible contracting practices, not least because of the importance of public contracts in relation to the overall economy (for example, 17 per cent of the EU's GDP comes from public spending).⁵⁰ However, public procurement policies in most countries have tended to be framed within the context of competition law, rather than engaging with broader social or environmental concerns. The assumption is that public contracts are to be awarded primarily on cost grounds; other considerations, where permitted, are generally deemed to be secondary.

In the United States, procedures for federal government procurement decisions were set out in a 2010 Federal Acquisition Circular. Interestingly this does include, in a section on "responsible prospective contractors", the following statement: "While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, where necessary, the responsibility of its proposed subcontractors".⁵¹

However, the circular makes clear that responsibility, in this context, is deemed to mean such things as financial strength, business integrity, organizational resources and performance record. It does not extend to social or environmental considerations.

In the EU, the current legal basis for public procurement rests on two 2004 Procurement Directives, as well as European Court of Justice case law. The key principles are that of value for money for taxpayers and equal access for all EU suppliers. Public agencies who wish to bring in social considerations are permitted to do so, but only as long as the key principles are respected.

The future shape of public procurement in the EU is currently under debate, with new rules anticipated for 2012. This work is being led by the Commission's Directorate-general for the internal market and services, DG MARKT. However, the European Commission's DG for Employment, Social Affairs and Equal Opportunities has identified its interest in the issue, and has recently issued a report *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*. This aims to encourage "socially responsible public procurement". As the report puts it, "Socially responsible public procurement (SRPP) is about setting an example and influencing the market-place. By promoting SRPP, public authorities can give companies real incentives to develop socially responsible management. By purchasing wisely, public authorities can promote employment opportunities, decent work, social inclusion, accessibility, design for all, ethical trade, and seek to achieve wider compliance with social standards."

The report includes examples of good SRPP practice in Europe. For example, it reports that Spain's Basque country government has issued an instruction on public procurement which obliges contractors to guarantee compliance with ILO core labour

⁴⁹ Cheap security tenders in Malta, 14 January 2011: <http://www.uniglobalunion.org>.

⁵⁰ *Buying Social, A Guide to Taking Account of Social Considerations in Public Procurement*, European Commission, 2010.

⁵¹ Federal Acquisition Circular FAC 2005-40, 22 April 2010.

standards during performance of a contract, in relation to workers along the supply chain.⁵²

The launch of Buying Social however received a rather negative response from twelve European trade unions and NGOs in a joint statement in January 2011, which argued that the European Commission was putting forward a restrictive interpretation of public authorities' legal powers in procurement matters: "Public authorities are advised by the EC to treat most social considerations as 'contract performance' issues, rather than use social considerations to distinguish between offers when deciding to whom to award a contract".⁵³

The role of government procurement as an exemplar of good practice and the issue of SRPP in relation specifically to cleaning services has been raised by the French Government, but in relation to environmental rather than social concerns. A 2008 circular issued by the Prime Minister identified office cleaning contracts as an area where environmental improvements could be achieved, including the usage of more sustainable cleaning products.⁵⁴

Elsewhere there are examples of governments where a general desire to contract responsibly in relation to the cleaning sector is not necessarily always borne out in practice. A 2006 New Zealand report into women's work in homecare, residential and cleaning services on behalf of the National Advisory Council on the Employment of Women reported that "consideration of the employment practices of provider organizations is referred to in one of the key government guidelines [on public procurement] but this is neither actively promoted nor monitored ... More could be done to positively influence the employment practices of the provider organisations."⁵⁵

The ILO has taken a direct interest in the employment conditions applying when public contracts are awarded through the Labour Clauses (Public Contracts) Convention 1949 (No. 94). This has been ratified by, and therefore applies to, 61 Member governments. (One government, that of the United Kingdom, denounced its adherence to the Convention in 1982.)

The most significant article of the Convention concerns pay and employment conditions for workers working for publicly awarded contracts (see box).

⁵² *Buying Social*, op. cit., p. 21.

⁵³ Press release, New European Commission's Buying Social guide: a giant step for the EC, a small step for sustainable procurement, 28 January 2011. Issued by EFBWW, EFFAT, EFTA, EPSU, FERN, GMB, NETWORKWEAR, Procure IT Fair, SETEM, SOLIDAR, UNI Europa, Unison.

⁵⁴ Circulaire du 3 décembre 2008 relative à l'exemplarité de l'Etat au regard du développement durable dans le fonctionnement de ses services et de ses établissements publics, <http://www.legifrance.gouv.fr>.

⁵⁵ Top Drawer Consultants.(2006). Improving the quality of work for women in the homecare, residential and cleaning sector. Attachment 2: <http://www.nacew.govt.nz/publications/quality/background/index.html>.

[ILO Convention No. 94, Article 2 (extract)]

1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on –

- (a) by collective agreement or other recognised machinery of negotiation between organizations of employers and workers representing respectively of substantial proportions of the employers and workers in the trade or industry concerned; or
- (b) by arbitration award; or
- (c) by national laws or regulations.

2. Where the conditions of labour referred to in the preceding paragraph are not regulated in a manner referred to therein in the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than –

- (a) those established by collective agreement or other recognised machinery of negotiation, by arbitration, or by national laws or regulations, for work of the same character in the trade or industry concerned in the nearest appropriate district; or
- (b) the general level observed in the trade or industry in which the contractor is engaged by employers whose general circumstances are similar.

The Convention also states that “Adequate sanctions shall be applied, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labour clauses in public contracts”.⁵⁶ It will be noted, however, that the wording of Article 2 does not necessarily offer much protection in the case of unregulated markets where wages and employment conditions have already been subject to a concerted race to the bottom.

Convention No. 94 is now more than 60 years old, and (although it does cover the supply of services) was drawn up long before the current trend by public bodies to contract out many services that were previously undertaken in-house. It is also regrettably the case that public knowledge of this convention is not as widespread as it might be; the provisions of the convention are not generally cited in the current debates about socially responsible public procurement.

Conclusions and recommendations for further action

Competitive contract arrangements for cleaning and security services are tending to lead to an increasingly frenetic “race to the bottom” in many countries. Some of the poorest paid and most vulnerable workers are directly affected.

Taking a “low road” approach to purchasing contracted services is not sustainable for either the clients or for the service providers, and should not be seen as acceptable. However, without pressure to maintain standards across the industry, there is a risk that those employers which do commit to providing decent work could lose market share and profits.

There are already examples of creative and effective initiatives to encourage responsible contracting practices. These have had some success in some countries and markets. However, they have so far failed to have more than a marginal effect elsewhere,

⁵⁶ Article 5.

and have not been able to do much to change the contracting and outsourcing culture of awarding contracts purely on the basis of low cost.

The shared understanding of the benefits of a “high road” approach which employers’ organizations and unions have together articulated, as reported in several parts of this study, gives hope that change is possible. So too do the examples of client companies which have demonstrated that they endorse such an approach, and that they are prepared to pay more for contracted service specifically to improve working conditions.

However, this is an area where proactive work by the ILO could be very valuable.

This report concludes with a number of recommendations for possible future initiatives.

Tripartite initiatives around public procurement

As we have seen, governments themselves participate in the procurement market, but – with honourable exceptions – tend to view contracting or outsourcing relationships in commercial terms, taking account of a variety of criteria (such as price, speed, proximity, quality, reliability, value for money), but often divorced from other public policy issues.

The current interest in socially responsible public procurement, particularly in relation to environmental factors and to sustainability, allows an opportunity for new work to be undertaken around labour issues as well. There is scope for much more attention to be focused on ILO Convention No. 94. There may also be a case for tripartite debate about a possible revision and modernisation of this Convention, particularly in the light of the recent considerable increase in public sector contracting of services and outsourcing.

Undertaking sectoral activity work for the property services sector

The cleaning, security and facilities management industry is changing rapidly, driven by changes in work organization in central and local government and in industries such as hotels and catering, and the growth of contracting and outsourcing arrangements. As we have seen, major global players are developing new business lines, growing at the national level and expanding into new countries and markets, whilst at the same time very large numbers of small enterprises continue to operate in their own domestic markets.

There would seem to be a strong case for the ILO’s Sectoral Activities Department to increase its focus on the property services sector, and social partners may wish to consider such a recommendation. The recent work by SECTOR on Private Employment Agencies and temporary agency work provides a pointer to the sort of initiatives which could be undertaken here.

Field research

One often-repeated comment by unions is that they are unable effectively to monitor the state of the property services markets in individual countries and cities. UNI Global Union, for example, mentioned the examples of the business districts in Jakarta and Bangkok, arguing that direct evidence from field research would enable it to advise companies with whom it has signed GFAs of possible breaches to agreed practice.

Given the potential role of GFAs in helping improving employment conditions in cleaning and security, field research undertaken independently of both employers and unions to monitor actual practice on the ground would appear to be valuable. The rapid growth of the economies in countries such as India, Brazil and Indonesia, as well as China makes such research timely.

Direct and indirect employment

The employment relationship is at the heart of employment law and of international labour standards. Contracting services for cleaning and security means that client companies do not have employment responsibilities for some workers on their premises, but they nevertheless have some direct (e.g. safety and health) and indirect responsibilities, continuing to influence pay and employment conditions through the contract price they pay.

Further work on the relationship between direct and indirect responsibilities of clients in the contracting relationship as regards cleaning and security staff on their premises, including possible legal definition of what is meant by such indirect responsibilities, could help to develop international good practice in relation to the responsibilities which clients should be expected to adhere to.

An international consensus on what represents a “responsible contractor”

The concept of the “responsible contractor” is a valuable one, but one which is currently less useful than it might be because of the lack of any standard definition of the term.

A more formalized approach here, to include a clear definition that responsible contractors meet ILO core labour standards as well as appropriate environmental standards and follow the norms outlined in Convention No. 94, would help considerably, as would some encouragement to clients of such contractors to ensure wider acceptance of these ideas. The example of the UN’s Principles for Responsible Investment initiative offers a possible parallel model to be followed. Tripartite discussions under the aegis of the ILO would be one way to try to achieve this.

Sectoral working papers ¹

	<i>Year</i>	<i>Reference</i>
The Warp and the Web Organized production and unorganized producers in the informal food-processing industry: Case studies of bakeries, savouries' establishments and fish processing in the city of Mumbai (Bombay) (Ritu Dewan)	2000	WP.156
Employment and poverty in Sri Lanka: Long-term perspectives (Vali Jamal)	2000	WP.157
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¹ Working Papers Nos 1–50 are not included on this list for reasons of space, but may be requested from the Sectoral Activities Department.

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A study of the tobacco sector in selected provinces of Cambodia and China (Yongqing He, Yuko Maeda, Yunling Zhang)	2002	WP.185

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Promoting good industrial relations in the oil and gas industries in Indonesia (Mengembangkan Hubungan Industrial yang Baik di Industri Minyak dan Gas Indonesia) (Ratih Pratiwi Anwar and Muyanja Ssenyonga)	2007	WP.254
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