BIRGIT KUNRATH

BARGAINING FOR SOCIAL JUSTICE
THE ROLE OF INTERNATIONAL FRAMEWORK AGREEMENTS FOR FAIR GLOBALISATION
Thanks to:

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My grandparents, Loisi and Karl Elbner, who could not see the end of my works. Without them, this amazing year would not have been possible.
Birgit Kunrath

BWI Building and Woodworkers’ International
CEEP European Public Sector Employers’ Association
CEDAW Convention on the Elimination
of All Forms of Discrimination against Women
CEDAW Convention on the Elimination of All Forms
of Racial Discrimination
COLSIBA Latin American Coordination of Banana Workers’ Unions
CSR Corporate Social Responsibility
EFA European Framework Agreement
EI Education International
EIF European Industry Federation
ETUC European Trade Union Confederation
EU European Union
EWC European Works Council
FDI Foreign Direct Investment
GC Global Compact
GDP Gross Domestic Product
GUF Global Union Federation
ICEM International Federation of Chemical, Energy, Mine
and General Workers’ Unions
ICFTU International Confederation of Free Trade Unions
IFA International Framework Agreement
IFBWW International Federation of Building and Wood Workers
IFJ International Federation of Journalists
ILO International Labour Organisation
IMF International Metalworkers’ Federation
IOE International Organisation of Employers
ITF International Transport Workers’ Federation
ITGLWF International Textile, Garment and Leather Workers’
Federation
ITUC International Trade Union Confederation
IUF International Union of Food, Farm and Hotel Workers
MNC Multinational Corporation
MNE Multinational Enterprise
NGO Non-Governmental Organisation
OECD Organisation for Economic Cooperation and Development
BARGAINING FOR SOCIAL JUSTICE

PSI       Public Services International
SA8000    Social Accountability 8000
TNC       Transnational Corporation
TUAC      Trade Union Advisory Committee (OECD)
UN        United Nations
UNI       Union Network International
WCL       World Council of Labour
WFTU      World Federation of Trade Unions
WTO       World Trade Organisation
WWC       World Works Council
## Introduction

### Methodology

## The context: economic globalisation and labour

### Globalisation and MNEs: the problem of regulation

#### Corporate social responsibility and labour standards

#### Corporate self-regulation and trade unions: a difficult relationship

## Transnational collective bargaining and the co-regulation of business

### Collective bargaining: a Unions' strategy

#### Labour transnationalism and transnational collective bargaining

## International framework agreements, transnational industrial relations, and labour standards: an analysis

### IFAs in Practice I: the case of international labour standards

### IFAs in Practice II: the case of transnational industrial relations

#### European social dialogue

#### International framework agreements: towards transnational industrial relations?

## Obstacles to overcome

## Conclusion

## Bibliography

## Annex

### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Page</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>103</td>
<td>1. Introduction</td>
</tr>
<tr>
<td>106</td>
<td>1.1. Methodology</td>
</tr>
<tr>
<td>109</td>
<td>2. The context: economic globalisation and labour</td>
</tr>
<tr>
<td>113</td>
<td>2.1. Globalisation and MNEs: the problem of regulation</td>
</tr>
<tr>
<td>114</td>
<td>2.1.1. Corporate social responsibility and labour standards</td>
</tr>
<tr>
<td>119</td>
<td>2.1.2. Corporate self-regulation and trade unions: a difficult relationship</td>
</tr>
<tr>
<td>125</td>
<td>3. Transnational collective bargaining and the co-regulation of business</td>
</tr>
<tr>
<td>125</td>
<td>3.1. Collective bargaining: a Unions’ strategy</td>
</tr>
<tr>
<td>128</td>
<td>3.1.1. Labour transnationalism and transnational collective bargaining</td>
</tr>
<tr>
<td>135</td>
<td>3.2. Transnational collective bargaining applied: international framework agreements</td>
</tr>
<tr>
<td>141</td>
<td>3.2.1. International framework agreements - How?</td>
</tr>
<tr>
<td>148</td>
<td>3.2.2. International framework agreements: law and legitimacy</td>
</tr>
<tr>
<td>155</td>
<td>4. International framework agreements, transnational industrial relations, and labour standards: an analysis</td>
</tr>
<tr>
<td>155</td>
<td>4.1. IFAs in Practice I: the case of international labour standards</td>
</tr>
<tr>
<td>160</td>
<td>4.2. IFAs in Practice II: the case of transnational industrial relations</td>
</tr>
<tr>
<td>160</td>
<td>4.2.1. European social dialogue</td>
</tr>
<tr>
<td>168</td>
<td>4.2.2. International framework agreements: towards transnational industrial relations?</td>
</tr>
<tr>
<td>175</td>
<td>4.3. Obstacles to overcome</td>
</tr>
<tr>
<td>179</td>
<td>5. Conclusion</td>
</tr>
<tr>
<td>185</td>
<td>Bibliography</td>
</tr>
<tr>
<td>195</td>
<td>Annex</td>
</tr>
</tbody>
</table>
International framework agreements (IFAs) are at present a widely discussed subject in the discourse about the social dimensions of globalisation. An international framework agreement « [...] » is an agreement negotiated between a [...] multinational corporation and a global union federation (GUF) concerning the international activities of that company in all of its workplaces.» The outcomes of international framework agreements between GUFs and multinational enterprises (MNEs) should contribute to fairer globalisation through better corporate behaviour, especially with regard to international labour standards.

«Multinational enterprises,» also known as transnational corporations (TNCs) or multinational corporations (MNCs) is a very wide term. The International Labour Organisation’s (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy defines it as follows:

Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned.

1 Rudikoff, 2005, pp. 6-7. Other terms for IFAs are global framework agreements, agreements on code of conduct, etc. However, the term «international framework agreement» is the one which is used most frequently. See Papadakis, 2008b, pp. 2-3.

The term is deliberately left vague, as it is difficult to define precisely what constitutes an MNE. A too narrow definition might be counterproductive, as it could exclude relevant players. The author of this paper will therefore refer to the ILO’s description of the term.

A GUF, on the other hand, is a federation of national sectoral unions operating on global level. Their mandate is primarily economic and industrial. GUFs are autonomous and self-governing among each other. Currently, there are ten Global Union Federations worldwide, which are composed of different labour sectors, for instance metal workers, building and wood workers, farmers and hotel and food workers, etc.

IFAs are the result of transnational collective bargaining between an MNE and a GUF and usually contain provisions on labour standards, such as freedom of association and collective bargaining, health and safety at work, and non-discrimination, which the MNE must respect. The main purposes of an IFA are to empower national trade unions, to assist them in gaining recognition, and to start social dialogue with the respective company, which «[...] should lead [...] to improved working conditions and better wages.»

IFAs pursue a contractual approach to social dialogue across national borders and support the emergence of a system of transnational industrial relations. Their concept of co-regulation through collective bargaining goes beyond voluntary corporate self-regulation and fills the gaps left by traditional state regulation.

The aim of this paper is to highlight the important part that trade unions play in promoting compliance with international labour standards through IFAs. An analysis of the relatively young strategy of transnational collective bargaining will demonstrate how trade unions fulfil their old role as social partners in new ways. In this context, the author will also discuss the development of transnational industrial relations and the value of IFAs for the improvement of international labour standards.

International labour standards are closely related to the protection of fundamental human rights. The most influential player in the field is the ILO, which designates standards in the form of conventions or recommendations. Its standards only bind states, although the ILO
tries to extend a core set of labour standards into a wider circle\textsuperscript{8}. These core labour rights, defined in the 1998 Declaration on Fundamental Principles and Rights at Work, underline the human rights dimension of labour. They are considered universal, applicable even if a state has not ratified the conventions requested by the ILO. Eight labour conventions encompass four core labour rights: freedom of association and collective bargaining (Conventions no. 87 and 95), non-discrimination (Conventions no. 100 and 111), and the elimination of child labour (Conventions no. 138 and 182) and forced labour (Conventions no. 29 and 105)\textsuperscript{9}. The ILO stresses that «[...] these fundamental principles and rights provide benchmarks for responsible business conduct [...]»\textsuperscript{10}, but there is no mechanism to force private factions to abide by the declaration. Herein lies the main problem: many states do not implement these conventions, and the key players of globalisation – multinational enterprises – are not held accountable for labour rights under international public law.

Globalisation through MNEs has created a dynamic, which seems out-of-control and endangers basic workers’ and human rights. International framework agreements can help remedy the situation. All IFAs contain references to the eight ILO core conventions, emphasizing Conventions no. 87 and 98 on freedom of association and collective bargaining. The agreements are global in scope, meaning that they also apply to a company’s subcontractors and suppliers. This global reach is an additional value of IFAs, as they protect workers in countries with low labour standards\textsuperscript{11}. IFAs are a very recent phenomenon – of the currently 66 agreements, two thirds were signed after 2000. This indicates that the research in this field is still developing. Many questions remain open, some of which this paper aims to help answering. The following points will be discussed:

- In which legal and economic contexts do multinational enterprises operate? What regulatory strategies exist, especially with regard to international labour standards?

- A special focus will be given to the topic of trade unions. How do they react to the current concepts of MNE regulation, both public and

\textsuperscript{8} Steiner, Alston & Goodman, 2008, p. 1385.
\textsuperscript{11} Schömann \textit{et al.}, 2008, p. 25.
private? Why have they chosen international framework agreements as an alternative?

– Processes related to IFAs will also be addressed. Under which circumstances can IFAs succeed? What obstacles exist concerning transnational collective bargaining and the implementation, monitoring, and enforcement of IFAs? Do international framework agreements lead to a framework of transnational relations and a strengthening of national and global trade unions?

– Since trade unions can only be co-regulators, the role of the state will also be examined throughout the paper, and a potential task for the ILO in the context of IFAs will be presented.

1.1. METHODOLOGY

This thesis is built on an analysis of current literature in the field. As mentioned above, research on international framework agreements is evolving, and hard data on the impact of IFAs on labour standards are still not available. Presently, only three extensive case studies have been conducted:

1. In 2002, Jane Wills did a survey on the Accor-International Union of Food, Farm and Hotel Workers (IUF) agreement12.


3. In 2005, Lone Riisgaard performed a detailed analysis of the implementation of the Chiquita-IUF agreement14.

Apart from vivid discussions in scientific journals, it was not before 2008, that comprehensive works on IFAs were published15.

Due to the scant sources on the topic, the author of this paper conducted five semi-structured interviews with experts who partly were involved in the process of negotiation or implementation and monitoring of an IFA. Christy Hoffman, Official at Union Network International (UNI, the GUF representing commerce, electricity, finance, telecom, etc.) explained the union’s perspective on IFAs. Arvid Grindheim, CSR Compliance Manager at IKEA, brought in the employer’s point of view. Elizabeth Umlas, Independent Researcher, addressed the

15 Papadakis, 2008a; Schömann et al., 2008.
limits of corporate social responsibility. Lee Swepston, retired ILO Official, discussed a potential role of the ILO for a fair globalisation, also with regard to IFAs. Konstantinos Papadakis is a Research Officer at the International Labour Office and editor of the first comprehensive anthology on IFAs16. During the interview, he mainly focused on the meaning of IFAs for transnational industrial relations. The interviews with Ms. Hoffman, Ms. Umlas and Mr. Papadakis were conducted via phone. Every interview was transcribed and the quotes directly used for this paper. The interview questions, which were adjusted for each interview, are attached in the Appendix. The complete transcription of all interviews, including a detailed protocol of every discussion, is available from the author.

This thesis is structured by three main chapters and a conclusion:

– Chapter 2 outlines the context of the whole discussion about IFAs: economic globalisation and its impact on labour as well as the problem of MNE regulation and the limits of current regulatory strategies. This chapter discusses corporate liability under public international law and puts special emphasis on corporate social responsibility as a concept of voluntary corporate self-regulation. Trade unions’ criticism on this subject may explain why IFAs have become such an important issue during the last years.

– Chapter 3 gives a short overview on collective bargaining and labour transnationalism and then discusses IFAs as a concrete example for MNE co-regulation through these instruments. This chapter explains mainly procedural aspects, including how IFAs are negotiated, implemented, and monitored as well as what their content is.

– Chapter 4 offers an analysis of IFAs in practice: what is their actual impact on labour standards, and do they contribute to a system of transnational industrial relations? What are the obstacles they are facing? In this context, this chapter makes a short excursion to the European system of industrial relations and looks at its contribution to IFAs and transnational industrial relations.

– The conclusion contains a short overview on what has been discussed, answers the research questions, and provides an outlook on possible future developments.

16 Papadakis, 2008a.
Only against the background of globalisation does the relevance of IFAs become fully understandable. Globalisation means the effort to establish a global market through liberalisation and deregulation. It overcomes national boundaries and therefore stimulates a shift in focus from nation to transnational issues. In this regard, one talks about «deterritorialisation» or «denationalisation» of politics, markets, and laws\textsuperscript{17}. Globalisation has also given rise to new players in the international scene, the biggest and most important being multinational enterprises, with annual revenues larger than the respective gross domestic products (GDPs) of many countries. They are the driving force behind globalisation, turning it into a very complex process. Today, almost every major firm is part of a worldwide network of subsidiaries, partners, or suppliers. In 2006, the United Nations (UN) Special Representative of the Secretary General on Business and Human Rights, John Ruggie, reported more than 77,000 MNEs, with an estimated 770,000 subsidiaries and probably millions of suppliers\textsuperscript{18}. More countries than ever are participating in the world market. In fact, the World Trade Organisation currently has 152 member states from all parts of the world\textsuperscript{19}.

The process of globalisation is built on a neo-classical theory of economy. This theory states that any interference into economic dynamics would have adverse effects on their efficiency and disturb the
market’s balance, whether through minimum wage laws, trade union bargaining, or «artificially» working conditions. In the context of workers’ rights, this means that any regulation to improve labour standards would pose obstacles to full economic development.

Since the 1980s, market liberals, often corporate leaders, have constantly expressed their fears of too much public regulation, although government intervention has been declining during the last two decades. It is up to politics to decide in which legal framework economy shall operate, even though international obligations through WTO membership and regional economic agreements restrict national political decisions. Obligations which arise from ILO membership, like the implementation of core labour standards, can be in direct competition with international economic duties. Evidence reveals that many states see their roles more as facilitators of market expansion and competitiveness and not as regulators, in the case, of labour standards.

In particular, newly industrialising and developing countries refuse to improve their low standards in order to maintain their comparative advantage in the global economy. They believe that cheap labour at the expense of low labour standards guarantees the ability to compete with other states in attracting Foreign Direct Investment (FDI). This leads to the paradox situation that economy becomes internationalised, whereas labour is kept as a national issue. Even where sound labour laws exist, governments often fail to implement them, especially in developing countries. A good example is Jamaica, where in 2004, 45% of all firms disregarded government regulations related to health, safety, and minimum wages – without any consequences.

Labour laws differ from country to country, as does the level of unionisation – an advantage for MNEs, which can choose among the most profit-promising countries. It is, therefore, not only lack of public will that impedes the realisation of international labour standards. Poor states particularly can be forced to keep their standards low, bowing to the pressure of MNEs, which may threaten to leave the country if labour becomes more expensive. The following illustrates this situation.

The importance of remaining internationally competitive has narrowed the options for national policy makers. In the world of work, the need to reduce...
labour costs in order for enterprises to stay in the market has led to a significant reduction of employment benefits. It has been argued that states must inevitably deregulate the labour market to allow for more flexibility. A possible «race to the bottom» as far as labour standards are concerned is therefore seen as one of the major threats of globalisation26.

The «race to the bottom» puts workers’ rights and their advocates under great pressure. The nature of labour subsequently undergoes a big change in the globalising world, both in industrialised and in developing countries. Industrialised countries experience a large shift in the composition of the labour force. Increases in the service sector and in the number of knowledge workers go hand in hand with the decrease and outsourcing of manufacturing labour, the decline of traditional industry, and the growth of technology-based industry. Work becomes more «flexible,» which is mostly associated with job and social insecurity27.

In developing and newly industrialising countries, agriculture still plays an important role, but one can also find an increasing industrialisation through FDI by «outsourcing» MNEs from North America and Europe (especially in Asia and Latin America) and through the emergence of domestic industries. The demand of low-skilled labour steadily grows28. At the same time the demand of low-skilled work steadily grows. The informal sector also expands, as a result of the fragmentation and relocation of production processes and the deregulation of labour markets. Non-standardised work questions the value of labour rights, leading to even lower standards and wages29.

As for trade unions, one can find the opposite transformations in industrialised and developing countries. Since the mid-1970s, trade unions in industrialised countries have been faced with considerable decline regarding membership, political influence, and bargaining power. One talks about the breakdown of the Fordist model, which used to combine mass production, consumption, social security, and above all, balanced industrial relations between strong unions and their employers30. In contrast, union density especially in newly industrialising countries has slightly increased, although one must have to bear in mind that in many states labour movements have only just started31. On an international scale the weakening of unions in the North has hurt

28 Kelly, 2006, p. 31.
29 Kaufmann, 2007, p. 4; Servais, 2006, p. 3.
31 Gordon & Turner, 2000, p. 4.
global trade unions to a larger extent compared to the benefits gained from the union rise in the South. As a consequence, the labour movement is far from being as globalised as the economy. Its bargaining power is weak for both political and economic reasons, including unemployment and the limited mobility of workforce. Demanding workers can be dismissed, and demanding countries can be abandoned.

According to Stiglitz, there are remedies to help workers correct the imbalance between capital and labour, but they need a certain framework: freedom of association and trade union rights combined with collective bargaining in a transnational dimension — something for which global unions are currently fighting. Still, trade union rights and transnational bargaining might not be enough, and workers would still be in a disadvantageous negotiation position, especially when unemployment rates are high. It is, therefore, up to governments to return to their role as the regulative authority that protects labour standards. This role is disputed, and not only with regard to a libertarian view of the state. The 1990s witnessed a fierce debate, the so-called «social clause debate,» about an incorporation of labour standards into international trade agreements. Opponents of a social clause in WTO agreements, mostly governments from developing countries, feared that such a provision would be abused for protective measures in the industrialised markets. According to Gray, these fears were highly justified. He insists that labour standards need a certain level of economic development. A lack of economic advancement can be detrimental to the country, as it loses its only competitive advantage. The behaviour of industrialised states with high labour standards proves that the reproach of protectionism is reasonable. Their refusal to accept free trade with low-standard countries is hardly driven by moral considerations. Their aim is rather to protect the own markets.

Although many industrialised countries, above all the United States, tried to use their influence to introduce a social clause into trade agreements, the resistance within the WTO was too great. Not even the intensive campaign led by the International Confederation of Free Trade Unions (ICFTU) and some non-governmental organisations (NGOs) had any success. Currently, the additional of labour standards into the sphere of trade is not an issue in the WTO.

The focus of this work, however, lies not on inter-state trade

\[\text{References:}\]

Ibidem, p. 413.
An extensive discussion on the trade-labour debate can be found in Kaufmann, 2007, pp. 155-241.
agreements, but on private business conduct in the global economy. At present, no international framework exists that urges MNEs to respect international labour standards. The question of MNE regulation can be answered in different ways, which will be outlined in the next section.

2.1. GLOBALISATION AND MNES: THE PROBLEM OF REGULATION

Economic globalisation has opened the international stage for a wide range of new participants: international organisations like the WTO, the World Bank Group, the International Monetary Fund, and NGOs have become important players in the global economic scene. In particular the emergence of MNEs as private, powerful factions introduces many questions concerning international law, which traditionally only binds states:

The centrality of the state is one of the defining features of international law and the human rights system builds upon this by seeking to bind states through a network of treaty obligations to which, in the vast majority of cases, only states can become parties.

MNEs are «placed at the margins of the resulting legal regime,» which still insists on the idea of sovereign states as chief actors. Under the traditional view of international law, MNEs are only bound to national law. As a consequence, they can hardly be held accountable for abuses of international human and labour rights abroad – as long as states do not adopt laws which regulate extra-territorial corporate behaviour. Another problem is the fact that usually its suppliers abroad, not the MNE directly, violate labour standards. From a legal point of view, a company cannot be held liable for such violations, although it takes advantage of their results in the form of cheap products.

Many solutions have been discussed, such as individual criminal liability of MNE management, MNE accountability in their home states for abuses abroad, and responsibility of states to prevent MNEs from abusing human rights. All these suggestions are far from being realised. As a consequence, several recent attempts have been made to

\[\text{Ibidem}, \ p. 8.\]
\[\text{Steiner, Alston & Goodman, 2008, p. 1385.}\]
\[\text{Ibidem.}\]
\[\text{Kaufmann, 2007, p. 156.}\]
\[\text{Francioni, 2007, pp. 249-254.}\]
\[\text{Ibidem, pp. 261-262.}\]
\[\text{Mares, 2008, p. 5.}\]
hold MNEs accountable through the «back-door.» One example is arbitration in international trade law, which has begun expanding its scope from purely economic subjects to human rights issues and labour standards43. Another current often-cited example is tort law, most prominent being the Alien Tort Claims Act (ATCA) in the United States, which allows any person to go to a US court if his or her most fundamental rights have been violated, even if the violator is a company44. For the time being, however, there are no indicators that ATCA could become an effective means to regulate MNE behaviour.

As the present legal approaches of MNE regulation are strongly limited and often not accepted by corporate leaders, an alternative to the legal perspectives in the discourse about fair globalisation has emerged: Corporate Social Responsibility (CSR), a voluntary concept of corporate (self-) regulation and a business strategy to improve labour standards. The following section will examine the viability and limits of this concept, especially from a trade union’s point of view. Why is the view of trade unions, both national and global, so important? Trade unions are the primary representatives of workers’ interests. They are the most experienced advocates of high labour standards and decent work. Thus, it is remarkable that both global and national unions are mostly excluded from the discussion on MNE accountability. When given the opportunity, trade unions have the capability to influence corporate behaviour – meaning that they have freedom of association and the right to bargain collectively and hence the possibility to build sound industrial relations. It is, therefore, important to assess if CSR meets unions’ needs and ideas for a just labour society, or if the concept benefits companies rather than workers.

2.1.1. Corporate Social Responsibility and Labour Standards

The aim of CSR is to overcome the weakening of labour standards and to close the gap left by international law45. The term CSR is hard to specify, as it includes a wide range of concepts regarding corporate regulations. In its 2007 report The Promotion of Sustainable Enterprises, the ILO defines CSR as the following:

[...] [A] way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own

45 Béthoux, Didry & Mias, 2007, p. 77.
internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law\textsuperscript{46}.

CSR usually refers to environmental, labour, and human rights standards. Because all «stakeholders» must be included, it involves a great variety of actors, also civil societies and NGOs. This multi-stakeholder approach is considered highly participatory\textsuperscript{47}. However, as the subsequent paragraphs will demonstrate, many corporate initiatives do not keep their promise of participation, and trade unions are often not included in the elaboration and implementation of CSR strategies.

There are various motives for MNEs to take up CSR, such as more efficient, environment-friendly technologies, to attract talented employees, a higher employee moral, and better relations with investors and regulators. But above all, CSR helps avoiding bad publicity, as Béthoux, Didry & Mias pointedly remark: «[...] it supports the company’s reputation and constitutes an element that reinforces good public relations\textsuperscript{48}.»

The first steps in CSR were made in the 1970s with the establishment of the Organisation for Economic Cooperation and Development’s (OECD) Guidelines for Multinational Enterprises (1976) and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977), but it was not before the 1990s that CSR became a widely discussed subject. Amidst the backdrop of globalisation and corporate scandals in MNEs like Nike and Shell a great number of CSR organisations emerged mostly out of civil society activism, and 90% of them in North America and Europe\textsuperscript{49}. Today, almost all of the biggest companies in industrialised countries have taken up voluntary CSR initiatives, after being confronted with reputation damage or even social unrest. For example, all Fortune 500 enterprises in the United States have adopted codes of conduct\textsuperscript{50}.

CSR initiatives can be distinguished as either public or private. «Public» initiatives include governmental CSR strategies as well as initiatives from international organisations, such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and the

\textsuperscript{46} International Labour Organisation, 2007, p. 117.
\textsuperscript{47} Segerlund, 2007, p. 89.
\textsuperscript{48} Béthoux, Didry & Mias, 2007, p. 5.
\textsuperscript{49} Activism mostly targets the garment and sportswear sector, the hand-knotted carpets industry, agricultural industry, the retail sector in general, tourism and electronics. See Segerlund, 2007, p. 178.
\textsuperscript{50} McBarnet, 2007, p. 10. The Fortune 500 companies are the listed 500 biggest US companies.
ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. They have the status of international soft law.

Globally, the UN Global Compact (GC), adopted in 2000 is the most well-known CSR project. Companies are asked to «embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption.» The GC is purely voluntary and has no mechanism for accountability. As Aaronson & Reeves point out: «[...] companies are simply asked to demonstrate their adherence by taking some corporate action and publicizing this action through reports posted on the UN Web site [sic!] and in their annual reports.» Although four GUFs and many national trade unions are participating in the initiative, most unions think that the advantage of the GC is limited. The main problems are its voluntary nature and the fact that it does not give a prominent role to the ILO. In its final resolution of the 18th World Congress, the ICFTU (since 2006: International Trade Union Confederation - ITUC) expressed a critical view of the GC:

For the trade union movement, it can contribute to the realisation of global social dialogue. However, too many Global Compact activities promote unilateral management approaches and not enough activities result in genuine dialogue that solves problems and resolves disputes. Companies must not be allowed to benefit from the positive image that comes from identification with the Global Compact without also being required to engage the appropriate parties concerning their behaviour.

The GC has been accepted by unions as an instrument for better corporate behaviour, but not as a sustainable solution for the problems faced by workers’ organisations.

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The ILO Tripartite Declaration (1977, revised in 2000 and 2006\(^{57}\)) has faced similar criticism. The declaration provides a guide for MNE conduct and not only addresses governments, but also employers, workers, and MNEs, thus balancing the responsibilities among the different actors\(^{58}\). Although the declaration extensively elaborates on labour standards and trade union rights and may serve as framework for transnational bargaining\(^{59}\), trade unions and civil society groups consider the Tripartite Declaration’s scope as too limited, especially due to its voluntary nature. Lee Swepston also criticises its weak follow-up. Because of the fierce resistance of employers, the ILO missed the opportunities to strengthen the procedures when the declaration was amended in 2000 and 2006\(^{60}\).

The Tripartite Declaration is only one part of the ILO’s CSR initiatives. The initiatives mainly go through the Governing Body’s Subcommittee on Multinational Enterprise, which coordinates the ILO’s Multinational Enterprises programme (MULTI programme)\(^{61}\). This programme is responsible for the promotion and follow-up of the Tripartite Declaration, for the ILO’s participation in the UN Global Compact, and for the whole coordination of the ILO’s CSR policies\(^{62}\). The whole machinery is based on a voluntary approach towards CSR, since employers in particular refuse any attempts to establish a more binding approach.

The ILO Tripartite Declaration was inspired by the OECD’s Guidelines for Multinational Enterprises, adopted in 1976 (last amendment in 2000) as part of the Declaration on International Investment and Multinational Enterprises. The Guidelines are recommendations by OECD governments to MNEs. They cover the disclosure of information on MNEs’ activities and contain provisions on employment and industrial relations, environment, combating bribery, consumer interest, science and technology, competition, and taxation\(^{63}\).

\(^{57}\) International Labour Organisation, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, cit.
\(^{59}\) Ibidem, p. 19.
\(^{60}\) Interview with Lee Swepston, retired ILO Official, Lund, 24 April 2008.
The Guidelines also contain provisions on collective bargaining. They encourage management to «[...] provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements».

The OECD’s comment on the Guidelines points out that «[t]he Guidelines will not put obstacles in the way of recognition by management, in agreement with applicable laws and practices, of an International Trade Secretariat as a “bona fide representative of employees”».

It further underlines that the management should show a cooperative attitude towards international meetings with trade unions for consultation and discussion, opening a door for the acceptance of transnational collective bargaining.

The main problem of both the Guidelines and the Tripartite Declaration is not their content, but their use. ICFTU admits that the instruments «reflect the consensus and the legitimate expectations of the international community with respect to the social responsibilities of business.» Still, better means are necessary to ensure compliance and greater recognition of both instruments. Follow-up procedures are especially underdeveloped, which gives the well-elaborated content little influence.

Other CSR strategies, like the European Union (EU) Green Paper «Promoting a European framework for corporate social responsibility,» are even less ambitious than the GC, the Guidelines, or the Tripartite Declaration. Direct liability for MNEs is not an option in current EU policy.

Some governments have started including CSR into their policies. In 2000, the UK appointed a minister for CSR. In the same year, France introduced triple bottom line reporting on economic, social and environmental issues for publicly listed companies. Other countries have followed with similar initiatives. As an especially outstanding example, in 2002, Belgium approved a law that promotes socially accountable production by introducing a voluntary social label. Products manufactured in compliance with the ILO core conventions

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65 Ibidem, p. 21.
66 Ibidem, p. 22.
bear a distinct «social label». It is interesting how the Belgian trade union, the General Labour Federation, assesses this social label. Basically, the union supports the label, as long as it is recognised that mechanisms like it are no more than auxiliary. If CSR instruments get more meaning as they deserve, parts of social legislation would encounter the danger of becoming «privatised» – a concern which plays an important role in the argumentation of CSR sceptics (see next section). Concerning the social label, trade unions must play a more prominent role in the monitoring, as they are the only institutions which can guarantee balanced supervision:

[...] Who better to verify the decency of a production process than those who are directly involved in it? [...] such monitoring is conceivable only where there is respect for the freedom to organize an independent trade union, equipped with the basic means of trade union action.

In summary, trade unions have a positive attitude towards the content of international CSR soft law. But the voluntary nature, underdeveloped follow-up procedures, and the limited impact of these instruments fuel criticism that these initiatives are not enough to stimulate good corporate behaviour and to improve labour standards. Trade unions see the effectiveness of CSR always in the context of trade union rights. Ideally, trade unions should empower workers to actively participate in the CSR process. Public initiatives do not really lead to more participation and trade union activism. This brings up the question of private, corporate CSR initiatives. Do they give more freedom to trade union participation, and do they really produce good corporate behaviour?

2.1.2. Corporate Self-Regulation and Trade Unions: A Difficult Relationship

CSR is usually related to voluntary corporate self-regulation. The most popular forms of socially responsible corporate self-regulation are codes of conduct. Urminsky describes a code of conduct as a written policy or statement of principles which serves «as the basis for a commitment to particular enterprise conduct». MNEs have adopted a variety of such codes, all of which set goals for how corporations and...
their employees should behave. Codes of conduct aim at better labour standards in a company's supply chain. Certainly, there is no legal framework which guarantees such an improvement. Trade unions tend to have reservations about these codes, as many of them do not take trade unions' rights sufficiently into account and are not participatory enough. The development of IFAs is closely related to unions' dissatisfaction with codes of conduct, as IFAs provide a more reliable path to changing corporate behaviour regarding labour standards.

Urminsky, who conducted a survey on 298 codes of conduct and international framework agreements in 2001, affirmed trade union critique when he found that two thirds of the codes were established unilaterally by MNEs and 7% stated through NGOs. Workers' organisations are clearly outnumbered: they only set up 3.5% of all corporate codes. Concerning the content of codes, Urminsky found that it depends on the economic sector, if a code contains labour rights and if so, which specific rights. For example, codes in the textile and clothing sector tend to concentrate on child and forced labour. Health and safety is covered rather universally, with references in about 70% of the codes examined. The same applies to non-discrimination. The «classic» trade union rights of freedom of association and collective bargaining should have the same universal scope, but «[...] relatively few codes (33 per cent) addressed one or both of freedom of association and collective bargaining [sic!]» These results were replicated in a recent survey carried out by Béthoux, Didry & Mias, covering 178 codes and IFAs. The authors found that child labour is the most often cited labour right in codes, followed by discrimination and harassment. But regarding freedom of association and collective bargaining, the results were similar to Urminsky's research:

[...] [P]rinciples of freedom of association and right to collective bargaining are less often referred to, as we can see the lesser importance attached to words like «association,» «freedom,» «bargain» and «union,» even though such rights are explicitly cited in the 1998 Declaration of Fundamental Rights. In many codes, such as those of Wal-Mart and Verizon, they are not mentioned at all'. [Italics in original]

Obviously, corporate management is suspicious towards co-regu-

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72 Aaronson & Reeves, 2002, pp. 6-7.
74 Ibidem, p. 21.
75 Béthoux, Didry & Mias, 2007, p. 83.
lation through trade union activism. However, with some good will the problem of unsatisfactory content in codes of conduct could be solved. Already in 1997, ICFTU worked out a model code, which listed not only the ILO core labour standards, but also a living minimum wage, reasonable working hours, and proper contracting of employees. The code stipulated that contractors and subcontractors of the company would lose their contracts in cases of provision violation. But as has been demonstrated above, such a code is more wishful thinking than reality.

Another problem concerning codes of conduct is that the workers who should benefit from them often do not know about their existence. Bad information usually leads to poor implementation. As a consequence, codes frequently have been ineffective in the improvement of deplorable labour conditions and the fulfilment of fundamental rights. Difficulties may also arise in monitoring code compliance, with a lack of transparency and independence. Trade unions are convinced that it would be their responsibility to monitor how corporate codes are implemented, as they are the experts in the field and represent those who are directly affected (see the position of the Belgian trade union on the monitoring of the social label). Monitoring, however, is mostly conducted by private social auditing firms or NGOs. This is often not sufficient, as Wells shows. In a study about NGO monitoring of codes of conduct, he found that NGOs especially are «too weak for the job.» They lack expertise and a transnational action network for labour standards (which trade unions do have), and they have structural limits and capacity shortcomings when it comes to a complex supply chain, rendering them ineffective in monitoring. Private social auditing firms usually do a better job, but frequently fall victim to biases in order to benefit their «customer».

Monitoring requires good reporting, but as there are still no globally recognised standards, reporting often lacks quality. In a survey of the online magazine «Fortune,» which publishes an annual ranking of the world’s 500 largest corporations, it was observed that of the firms with codes of conduct in place, only about one third uses a third-party...
medium, like the Global Reporting Initiative or human rights impact assessments\(^80\). As a consequence, the introduction of codes has been accompanied by the rise of fraud and deception around the auditing process. As a consequence, serious labour violations persist in the global supply chains of many companies\(^81\). In the worst cases, companies use codes to replace unions.

It is no wonder that private CSR initiatives are harshly criticised. Aaronson and Reeves bring the substantive critique to the point: an enterprise is never legally bound to its own code. Mechanisms for accountability or follow-ups usually are inefficient or completely lacking\(^82\). Other scholars fear that corporate self-regulation might be seen as an alternative to public regulation and co-regulation through unions, a concern also expressed by ICFTU:

\[
[...]
\text{CSR must not be permitted to be used as a substitute for the proper role of government or for trade unions. Congress recalls that regulation is necessary because the business case for responsibility and paternalism are neither sufficient nor sustainable}\(^83\).
\]

In this context, the privatisation of labour standards through CSR is a big issue, not only among trade unionists. As Elizabeth Umlas points out, Concerning privatisation, I think there is definitely something true with regard to that criticism. [...] I don’t think privatising labour standards is the answer to preventing labour rights violations in the supply chain. A, because the role of the State is still paramount to protect human rights [...], and B, if it is completely privatised, we could reach a situation where only the companies that are able to afford it will have decent labour rights protection programmes\(^84\).

Is the fear of privatisation justified? According to Preuss, not really, as long as trade unions are recognised as stakeholders of central importance. Of central importance, therefore, because in the Anglo-American stakeholder model that stems from a national context with weak trade unions, workers’ organisations would be only one among
many others, which in the European context, could lead to the weakening of the traditionally strong unions\(^8\). To avoid privatisation, codes must never substitute direct collective bargaining between workers’ representatives and the management:

\[\ldots\] \(\text{T}\)he prerequisite for CSR is respect for collective bargaining and laws, which means companies must act to promote collective bargaining where it is insufficient or even nonexistent; enhance the involvement of trade unions, workers and their representatives as well as the respect for and defence of their rights. \(\ldots\) ETUC therefore affirms that one of the key components of CSR is the quality of industrial relations within a company\(^9\).

Certainly, the state must sustain its role as the main regulator of the labour regime, if privatisation of standards is to be avoided. Trade unions support CSR as long as their core rights, like collective bargaining, are not threatened. As they are the primary voice of workers, they must be involved in the formation of CSR initiatives and strategies, and they must play a distinct role when these initiatives are implemented and monitored. If this is not the case, \(\ldots\) there is considerable suspicion among trade unionists of the concept of CSR \(\ldots\). These findings seem to reflect a desire by trade unions to maintain traditional industrial relations patterns in the face of a rise of CSR in Europe\(^9\).\) If these conditions are met, trade unions are more receptive of CSR. The European Trade Union Confederation (ETUC), for example, sees CSR as a tool which could be used to transfer trade union demands, especially at the supranational level. CSR can also contribute to positive industrial relations, as long as trade unions can participate in corporate decisions. Lastly, CSR is a useful tool for public relations, of which trade unions can also take advantage of\(^8\).

Remembering the complex frame of globalisation and the problems of MNE accountability, one can conclude that public and private CSR initiatives do not significantly contribute to a sustainable improvement in international labour standards by promoting better corporate behaviour. Furthermore, voluntary corporate self-regulation, especially through codes of conduct, tends to exclude trade unions instead of

\(^8\) Preuss, 2008, p. 152.
empower them. As a consequence, trade unions have begun developing a new concept, which on one hand is revolutionary, but on the other hand builds upon traditional ideas of industrial relations, namely transnational collective bargaining.
After having discussed the limitations of MNE self-regulation, this chapter will explore the meaning of co-regulation for good corporate behaviour. The focus will be on collective bargaining, which will be discussed as an alternative to the current regulative strategies and then examined regarding its contribution to the improvement of labour standards. The analysis begins on the national level and continues with the transnational dimension, where collective bargaining leads to the conclusion of international framework agreements. Important terms in this chapter are social dialogue and industrial relations. Social dialogue is a broad expression, including every kind of exchange of opinion or information, both formal and informal, between employer and employee. Industrial relations, on the other hand, require some formalisation. The term is narrower than social dialogue, as industrial relations always consist of social dialogue, but social dialogue is not necessarily a form of industrial relations. The importance of transnational industrial relations for fair globalisation lies in the fact that they facilitate transnational collective bargaining and therefore the co-regulation of MNEs. As the ICFTU points out, «[a]n international framework for social justice should logically include a framework for industrial relations».

3.1. COLLECTIVE BARGAINING: A UNIONS’ STRATEGY

Collective bargaining is a form of social dialogue and an important part of industrial relations. Instead of voluntary self-regulation, as this
is the case in CSR, its objectives are collective agreements, built on a contractual basis and thus binding to the parties. Burchill describes collective bargaining as the process of agreeing to terms and conditions of employment through representatives for the employers and the employees. Collective bargaining aims to alleviate the uneven balance in bargaining power between the employer and the individual employee. Burchill points out that when «properly conducted, collective bargaining is the most efficient means of giving workers the right to representation in decisions affecting their working lives, a right which is or should be the prerogative of every worker in a democratic society.» Collective bargaining is inseparable from freedom of association, «the most significant source» of labour power. Where workers are not organised, they cannot effectively demand their rights.

Bamber & Sheldon describe three levels of collective bargaining, the national, industry, and company levels. On the national level, trade unions and employers’ organisations usually conduct the bargaining process. The same goes for the industry level, where sectoral workers’ organisations negotiate. On the company level, employers often conduct negotiations directly with trade unions, without the support of an employers’ association. Beginning a decade ago, a fourth, transnational level has been on the cusp of development that combines with enterprise bargaining. IFAs are a direct expression of this new bargaining form.

The state usually acts as a neutral observer during the collective bargaining process, but plays the important role of creator and interpreter of the legal framework for industrial relations. The way how the role of the state is understood – active versus passive, regulative versus laissez-faire state – significantly shapes the relationship between workers and employers.

Collective bargaining usually covers pay and workplace conditions, such as health and safety, employee participation, equal opportunities, and working hours. As one of the ILO’s core labour rights, it is of significant importance. In its 2004 Global Report Organising Social Justice, the ILO underscores the following:

Burchill, 2008, p. 77.
Saini, 2005, p. 129.
Bamber & Sheldon, 2007, p. 599.
Saini, 2005, p. 129. Examples are the US and the UK with a liberal notion of the role of the state. There, collective bargaining is much less institutionalised than e.g. in Scandinavian countries which have a more active understanding of state regulation.
BARGAINING FOR SOCIAL JUSTICE

[...][T]he right to collective bargaining is a reflection on human dignity. It guarantees the ability of workers and employers to join and act together to defend not only their economic interests but also civil liberties such as the right to life, security, integrity and personal and collective freedom95.

Collective bargaining is an expression of pluralism. It supports transparency of business conduct, as a sound bargaining process requires sound information. Involving wide participation, it is an important component of a socially responsible corporation. Not only workers secure advantages through collective bargaining, but employers also reap the benefits of increased employee commitment to their work and important feedback on corporate conduct96. Yet, employers tend to avoid collective bargaining whenever possible, as «[m]anagement’s relative power depends in large parts on its ability to minimise the extent of union representation and collective bargaining across its global operations [...]»97.

The economic globalisation and the rise of MNEs have put traditional industrial relations under pressure. National employers’ and workers’ organisations, usually the ones who conduct collective bargaining, are both losing representational legitimacy, as they cannot embody the interests of the workforce in a multinational undertaking. Due to their size and reach, MNEs are less dependent on national or even international associations. They increasingly tend to present their interests independently and directly, thereby leaving the traditional social partner track98. Unions lose bargaining power since they mostly remain national, while enterprise policy becomes increasingly international:

Today’s national unions face a mismatch between the scale of globalizing labour markets and their own national organization. While managements

97 Cooke, 2005, p. 287. There are several cases where MNEs which accept collective bargaining in their home states as part of the national industrial relations system try to get rid of it as soon as they start operating in a country without a comparable legal framework. One example is the behaviour of Japanese MNEs operating in the US. These companies accept collective bargaining at home, but try to avoid it in the US, where unions are less protected. The same goes for German subsidiaries in the UK, which «were markedly resistant to recognising unions in their operations.» See Cooke, 2005, p. 288.
98 Schneider & Grote, 2006, pp. 8-12.
within the same transnational cooperation coordinate their industrial relations strategies, workers in most industries remain tied to local labour markets\textsuperscript{99}.

The result is a power shift in industrial relations, biased in favour of business\textsuperscript{100}. But pressure not only arises from the international quality of economy. Another challenge for collective bargaining is the «shift from law to rules»\textsuperscript{101}. The increase of voluntary self-regulation on the corporate level, especially in the field of CSR, gives companies an excuse to avoid the binding commitments produced through collective bargaining.

To summarise, one can say that collective bargaining is in crisis. Nevertheless, during the last decade, trade unions have been working on different strategies to solve these problems. One of these strategies is the transnationalisation of collective bargaining: if economy and especially MNEs go global, bargaining must do the same.

3.1.1. Labour Transnationalism and Transnational Collective Bargaining

Transnational collective bargaining is a relatively new method used by workers to take action, and it is hotly contested. Scholars cannot even come to a consensus on the issue of whether transnational collective bargaining really exists. Cooke, for example, deplores the fact that although the interest exists and companies have become truly multinational, unions «have not likewise reconfigured their collective bargaining structures beyond national boundaries»\textsuperscript{102}.

On the other hand, there are significant signs that transnational bargaining has indeed become a relevant feature in industrial relations. The emergence of international framework agreements is one clear indicator.

Transnational bargaining requires national unions to cooperate with each other. Greer & Hauptmeier define labour transnationalism «as the spatial extension of trade unionism through the intensification of cooperation between trade unionists across countries using transnational tools and structures\textsuperscript{103}.» First attempts at international union cooperation were already made before World War I. After World War II, international labour confederations emerged: the International Confederation of Free Trade Unions (Western unions from democratic

\textsuperscript{99} Anner et al., 2006, p. 9.  
\textsuperscript{100} Windmüller, Pursey & Baker, 2007, p. 90.  
\textsuperscript{101} Széll, 2005, p. 71.  
\textsuperscript{102} Cooke, 2005, p. 284.  
\textsuperscript{103} Greer & Hauptmeier, 2008, p. 77.

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countries), the World Council of Labour (WCL, Christian unions), and the World Federation of Trade Unions (WFTU, unions from communist countries). These confederations united national trade union centres. The ICFTU and the WCL, along with a number of national unions without international affiliation, merged to the International Trade Union Confederation in 2006. Today, the ITUC is the most representative of the global trade union movements. Like its predecessor the ICFTU, the ITUC sees itself as an advocate for decent labour standards. It cooperates closely with the ILO and other international organisations and usually takes on the political representation of international workers' concerns.

Although responsible for transnational labour cooperation, the ITUC is not involved in transnational collective bargaining. The leading players in this process are GUFs, who started pursuing the project of transnational bargaining only when it became clear that the challenges of globalisation could not be solved while isolated on the national level:

[...] [T]he expansion of multinational companies during the past few decades [...] helped open the door to the possibility for a greater international bargaining role for GUFs. [...] In fact, global social dialogue has exploded in recent years.

What the ITUC and GUFs are on international scale, so are the ETUC and European Industry Federations (EIFs) on the European level. Like the ITUC, ETUC is an independent body, built of national trade union centres. Its main task is lobbying in the European Union for workers’ interests. Founded in 1973, the ETUC represents 90% of European workers. It promotes transnational cooperation between European trade unions and is involved in the development of European (framework) agreements, which will be discussed further down. At present, there are twelve EIFs. In contrast with their global «colleagues,» EIFs are not involved in any transnational bargaining, although they play an important role for cross-border labour cooperation.

Especially in Europe, labour transnationalism has remarkably evolved during the last decade.

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Since the 1990s, European collective agreements have become quite common. A European collective agreement is not the same as an international framework agreement. IFAs are negotiated between a GUF and an MNE, although frequently within frameworks set up by the EU. In contrast, European collective agreements are arranged between European social partners, consisting of the ETUC, Business-Europe (the former Union of Industrial and Employers’ Organisations of Europe), and the European Public Sector Employers’ Association (CEEP). The most recent agreement between these European social partners was the Framework Agreement on Harassment and Violence at Work in 2006. The agreement applies to members of the signature parties but leaves an opening for the expansion into the national legal context and the addition of specific needs. Hammer refers to an «emerging grey zone» in the form of agreements that are not linked to IFAs but have a transnational character.

A remarkable step towards labour transnationalism in Europe was the introduction of European Works Councils (EWCs) in 1994 through the EC Directive 94/95/EC on the establishment of European Works Councils. It was the European Commission’s response to the fact that economies, but not labour, had increasingly become «Europeanised.» The directive regulates the establishment, by request or by management initiative, of a European Works Council or an information and consultation procedure in every multinational company that has at least 1000 workers in an EU member state and at least 150 workers in a second country. Currently there are 828 EWCs operating in approximately 34% of all companies that are covered by the directive. Since many of the companies with EWCs are large MNEs, the workforce is proportionally much higher: around 64% of European workers are employed in companies with EWCs.

EWCs require a minimum of three members and a maximum of 30, who all must be employees of the undertaking. There must also be a representative from each EU member state in which the company is operating. Every four years, the EWC undergoes evaluation, and at least once a year, an informational and consultation meeting with the

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111 Gold, 2007, p. 32.
central management is held. The costs are paid by the company, which has the obligation to provide information on the company’s structure, economic and the financial situation, probable development, production and sales, situation and trend of employment, and cutbacks or closures of sites.

Originally, EWCs were not conceived to be involved in any collective bargaining on the company level, although their structure would have such a capacity. As Engels & Salas stress:

It is important to note that the Directive cannot be the basis for anything more than the exchange of information and consultation on a decision which may affect employees. The Directive characterizes its respect and deference to managerial prerogative. Management must consult labour, but under this Directive there are no further obligations beyond that.

The directive does not even require the representation of trade unions within the council, which can decrease the effectiveness of the EWC. As the ETUC states, «[a]n active, representative trade union organisation is the first guarantee of a well-functioning EWC.» However, some EWCs have overcome this limitation, becoming actively involved in transnational collective bargaining and the signing of several IFAs. Moreover, the existence of an EWC might motivate an MNE to start a bargaining process for IFAs. As will become apparent, EWC activism fosters diverse debates about an emerging European framework for transnational industrial relations. One thing is for sure: European social dialogue has become a fixed institution in the overlapping spheres of businesses and labour.

The establishment of European Works Councils also spurred the introduction of World Works Councils (WWCs). Several MNEs, like NatWest, Volkswagen, and Renault have installed such councils, mostly after an incentive from International Trade Secretariats / GUFs. WWCs and EWCs are often closely related. If a company has established both, meetings are usually held at the same time. In these cases, the legal reference is the EU directive, as it provides a stronger framework. However, there is the danger that this may lead to a domination of European interests in a multinational company. Especially in the

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114 Ibidem, p. 481.
115 European Trade Union Confederation, European Works Council, cit.
116 In the eyes of Gallin GUFs introduced the old idea of WWCs, as EWCs appeared as a dead-end. See Gallin, 2008, p. 38.
context of IFAs, such dominance must be avoided, to guarantee the international dimension of the agreement.

After having discussed the current forms of labour transnationalism, transnational collective bargaining will now be examined. Transnational collective bargaining mainly focuses on labour standards, such as health and safety at work, employee participation and equal opportunities. It is not used to bargain for detailed provisions, like global salaries within an MNE, although the negotiation of wages is a fixed part of national collective bargaining. The reason for this is that employers are unwilling to determine a set pay for multiple countries with rather different wage standards. However, there is one remarkable exception: in the maritime shipping industry, global wage minima are not only negotiated, but also enforced by the International Transport Workers Federation (see Chapter 4.3). Therefore, collective bargaining in this sector is often regarded as the only «real» bargaining on transnational level.

What further distinguishes transnational from national collective bargaining is the fact that GUFs negotiate with individual MNEs, rather than trying to gain multi-employer collective agreements. It is, therefore, an international version of national company-level bargaining, where workers and employers negotiate directly. This means that in the process of transnational bargaining, international employers’ associations, like the International Organisation of Employers, hardly play a role, whereas on the national level, employers’ organisations are key players in collective bargaining.

Transnational collective bargaining is still not very common and faces several obstacles. First, there is currently no legal framework of industrial relations for any form of transnational bargaining, despite a global economy. Even the ILO remains silent on this issue. Other problems are caused by national unions themselves. Many of them fear loss of autonomy, high costs, or cultural and ideological differences through the internationalisation of collective bargaining. It is true enough that the demands and interests which are appropriate to one country might be inappropriate to another, and the gap between the needs of industrialised and developing countries might seem at first too big to overcome. Haufler provides some examples: how can women be promoted in management when an enterprise is operating in Saudi-
Arabia? What can be done in places like China, where national laws do not allow freedom of association? These questions are very important, especially with regard to IFAs. To what extent can freedom of association and collective bargaining be realised in countries where national laws are explicitly against trade union rights? How can an IFA be implemented and enforced in such circumstances?

Another challenge is the fact that legal frameworks of industrial relations vary from one country to another. There are differences in union structure, collective bargaining practices, and national industrial relations systems. For example, the right to strike might be recognised in one country but strictly forbidden in another. Herein lies the difficulty of coming to a consensus on how transnational industrial relations should be organised and which methods should be used. The issue becomes more complicated, as even national unions are often divided in reference to ideologies, priorities, and needs (see the example of France with four major trade unions).

Transnational bargaining also raises questions of legitimacy. Do GUFs really represent all of the workers concerned? This particularly addresses workers from developing countries, where trade unions are frequently nonexistent. How can these workers be included in transnational bargaining? This is another hindrance to negotiations of IFAs.

The last point of this non-exhaustive list is a limited amount of financial and human resources. Lack of money and staff creates a serious obstacle for international union cooperation, also in terms of collective bargaining. Beyond these union-centred problems, transnational bargaining still fights for wide-spread acceptance among MNEs:

Perhaps the most important barrier to transnational collaboration is the opposition of MNCs themselves. By withholding information, causing workforces in different countries to compete with each other, and other tactics, MNCs have demonstrated their determination to prevent collaborative bargaining efforts and other expressions of solidarity among their various national workforces. [...] the intransigence of MNCs is the key obstacle to transnational union collaboration.

Despite all of these difficulties, globalisation may provide a chance for transnational collective bargaining and transnational industrial

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123 Servais, 2000, p. 50.
126 Gordon & Turner, 2000, p. 23.
relations, as it offers new information and communication technologies. Cooke has identified the key conditions necessary to make transnational bargaining a success: (1) all relevant unions must be brought into the transnational partnership; (2) all non-union operations must be organised, or their advantages will be minimised; (3) partnerships should have a certain influence, especially over the restructuring of a cooperation; (4) each union partner must gain more than it would when acting alone; and (5) added gains are equally shared among members. However, each member must be granted its autonomy to negotiate in its home country the local conditions for MNEs. Naturally, a profound understanding of and respect for the differences in each others’ national union structures and industrial relations is essential. When the readiness of unions to be part of a transnational labour network increases, the resource problems might be mitigated\textsuperscript{127}.

These conditions seem to be realistic, feasible goals, given that unions want to fulfil them. Nevertheless, one must bear in mind that transnational collective bargaining should complete, but not replace, national collective bargaining. The fight for unionisation where it does not yet exist must not end with the argument that there are global agreements, not only for the sake of subsidiarity, but also for the respect of freedom of association. The more of the above listed conditions that are met, the less labour transnationalism will backfire on unions themselves, such as through one dominating trade union, the loss of autonomy, the lack of results, or the subsequent reluctance of other unions to cooperate. Autonomy and subsidiarity are of crucial importance, as every country has its own set of needs, priorities, and practices. One must bear in mind that transnational collective bargaining is only one form of labour transnationalism. For example, coordinated local actions during the process of a company’s restructuring or transnational pressure on an MNE to allow unionisation in suppliers are also forms of cross-border cooperation\textsuperscript{128}.

After this rather theoretical approach, the practice of transnational collective bargaining and the negotiations of international framework agreements will be addressed in the next section.

\textsuperscript{127} Cooke, 2005, p. 298.
\textsuperscript{128} Anner \textit{et al.} cite the automobile industry, where workers coordinate their responses to management plans of closing plants. Another example they mention are international campaigns in the textile sector to foster unionisation in non-unionised camps (which have been a failure). See Anner \textit{et al.}, 2006, p. 11.
3.2. TRANSNATIONAL COLLECTIVE BARGAINING APPLIED: INTERNATIONAL FRAMEWORK AGREEMENTS

International framework agreements are the result of applied transnational collective enterprise bargaining. Chapter 2.2. discusses the dissatisfaction of trade unions with current CSR strategies. IFAs can be viewed as a resulting from the failure of codes of conduct and public CSR initiatives to alter MNE behaviour. As they are not unilateral initiatives but instead negotiated instruments, IFAs are immune to the reproach of the «privatisation of labour standards»\(^\text{129}\). IFAs are the strategy of unions\(^\text{themselves}\), aiming to increase unions’ influence on multinationals, but they are also a joint expression of workers and employers and therefore cover the interests and needs of both parties\(^\text{130}\). Instead of voluntary self-regulation, IFAs are an expression of co-regulation, which gives them a much stronger standing than CSR:

IFAs go beyond voluntary CSR commitments such as codes of conduct by providing a contractual basis for TNCs and trade unions to define standards of employment and procedures for securing comprehensive coverage for them\(^\text{131}\).

To further understand what unions find attractive about IFAs, please refer to the following Table 1 published on the International Metal-workers’ Federation’s (IMF) webpage, which outlines the differences between codes of conduct and IFAs.

It clearly shows that IFAs meet workers’ needs to a greater extent than codes of conduct do, especially with regard to their participation and how the agreements are implemented. IFAs also have an enforcement mechanism, something which codes usually lack. However, an IFA does not necessarily replace a code of conduct. In the case of IKEA, the agreement and the corporate code exist side by side and are complementary\(^\text{132}\).

\(^\text{129}\) Interview with Konstantinos Papadakis, Research Officer at the International Labour Office, Lund, 5 June 2008.
\(^\text{130}\) Papadakis, Casale & Tsotroudi, 2008, p. 68.
\(^\text{131}\) Fichter, Sydow & Volynets, 2007, p. 16.
Beyond the desire to overcome CSR, IFAs have been emerging within diverse contexts. Papadakis identifies four major factors that have contributed to the growing number and significance of framework agreements. First, the international labour movement has re-organised itself to meet the challenges of globalisation. Several International Trade Secretariats merged during the 1990s, and in 2002, they became Global Union Federations. These changes have significantly enhanced their capability to organise global action.

Second, regional economic integration has produced the first signs of transnational industrial relation patterns, especially in the context of the EWCs and European social dialogue:

The relevance of these councils to IFAs is that, arguably, they established in Europe a background of collaborative partnership building and information sharing that provided the foundation upon which IFAs were first concluded. The fact that, in Europe, the formation of these councils is legally required rather than merely voluntary, suggests that strong theoretical underpinnings for the development of IFAs in Europe pre-existed the agreements themselves.

Papadakis’ third point refers to a 1990s shift from multi-employer bargaining to single-employer bargaining, which favoured the development of IFAs as enterprise bargaining.

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Table 1. Codes of Conduct versus International Framework Agreements

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<th>Codes of Conduct</th>
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<td>Unilateral initiatives</td>
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<td>Do not necessarily recognise all core labour standards</td>
<td>Recognise all core labour standards</td>
</tr>
<tr>
<td>Rarely cover suppliers</td>
<td>Usually cover suppliers</td>
</tr>
<tr>
<td>Monitoring, if any, controlled by management</td>
<td>Unions involved in implementation</td>
</tr>
<tr>
<td>Weak basis for labour-management dialogue</td>
<td>Strong basis for dialogue between trade unions and management</td>
</tr>
</tbody>
</table>


Papadakis, 2008b, p. 6.
Rudikoff, 2005, p. 10.
Fourth and last, the emergence of a new generation of managers and workers’ representatives, who take globalisation as an opportunity for a new dimension of social dialogue, helped GUFs put IFAs on the agenda135.

Individuals play an important role in the development process of IFAs. One example is the agreement between Danone and the International Union of Food, Farm and Hotel Workers, the first IFA ever, which was a special project of Antoine Riboud, the founder of the company. Riboud, a progressive Catholic with ties to the French Socialist Party, was heavily involved in setting up this agreement136.

Another noteworthy aspect is that the GUF determines how a transnational agreement is adopted and who is involved in the bargaining process. Hammer discovered certain recurring patterns: the Building and Woodworkers’ International (BWI) and the International Federation of Chemical, Energy, Mine and General Workers’ Union (ICEM) tend to involve national (home country) unions, whereas the International Metalworkers’ Federation’s (IMF) agreements frequently include EWCs and EIFs and in some cases even WWCs137. The involvement of EWCs and EIFs might be considered as less legitimate than that of WWCs, as European workers’ institutions certainly cannot speak for a global workforce138.

The conditions that Cooke enumerates for successful labour transnationalism (see Chapter 3.1.) seem to be realised in the context of the emergence of IFAs. GUFs represent all relevant unions and the partnership among unions has an influence through the actions of the GUF as it leads to an IFA. The partnership brings advantages for national unions (IFAs should not only improve labour standards, but also empower national trade unions), which are equally shared among all affiliates.

But what is the motivation for an employer to sign such an agreement? IFAs are ways for MNEs to control problems that arise through their internationalisation. Fichter, Sydow & Volynets identify two groups of MNE signatories – those with a history of good internal communication, and a well-developed culture of employee relations and social dialogue, and those whose brands are very sensitive to public pressure. The first group signs IFAs to institutionalise an already existing CSR policy, whereas the second group conforms to the pressure

135 Papadakis, 2008b, pp. 6-7.
138 Schömann et al., 2008, p. 51.
of union strength and a potential mobilisation or campaign. Fichter’s view is supported by Christy Hoffman who underlines the desire of MNEs to avoid reputation damage: «[...] the priority is to have a better image.» This view is challenged by Schömann et al., who point out that since non-brand companies are also signing such agreements, companies seem to expect more than just reputation gains. Most of the signing companies already have good industrial relations. Schömann et al. therefore assume that signing MNEs expect a further development of social dialogue on the transnational level, as a permanent discussion between workers and employers has many benefits. This agrees with Papadakis’ opinion that the main motivation for signing an IFA is avoiding social unrest within the global supply chain through collaboration with global unions. Whatever the impetus of an employer is, he or she expects advantages through the IFA. In the ideal case, the agreement creates a win-win situation for all parties involved.

The short history of IFAs starts with the already mentioned agreement between Danone and the International Union of Food, Farm and Hotel Workers in 1989. This first agreement contained provisions on economic and social improvement and gender equality. In 1992, an amendment on skills training was adopted, and in 1994, the agreement on trade union rights was completed (with a reference to ILO Conventions no. 87, 95, and 135). The fact that the agreement applied to all operations of the company worldwide was hugely innovative. Equally groundbreaking was the introduction of a follow-up procedure, which also included non-European unions. This agreement can be considered as the ‘mother’ of all following IFAs, and even today it is the most far-reaching IFA in practice. At the end of May 2008, 66 IFAs were in existence, compared to the mere 20 in place at the end of 2002.

140 Schömann et al., 2008, p. 36.
141 Interview with Konstantinos Papadakis, cit.
142 In the agreement on trade union rights of the Danone-IUF IFA, Danone commits itself to the application of ILO Conventions no. 87, 98 and 135 throughout all its subsidiaries and refers to the right of all employees to be free from «any acts of discrimination leading to the restriction of trade union rights.» See International Union of Food, Farm and Hotel Workers, IUF / Danone Agreements, at http://www.iuf.org/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=164&view_records=1&ww=1&en=1 (consulted 7 June 2008). This is a very far-reaching position and might pose problems in reality. Danone currently is operating in over 120 countries, including China and Saudi-Arabia. How far trade union rights can be exercised in Danone subsidiaries in such countries remains open. I will take this issue up further down.
2000. This number will continue to grow, as negotiations are currently being held for several new agreements, one example being between the Union Network International and an affiliate of the investment bank Goldman Sachs.

Neither the sectoral, nor the geographic distribution of IFAs is balanced. The greatest number of IFAs have been formed by the International Federation of Metalworkers (18), followed by the Union Network International (15), the International Federation of Chemical, Energy, Mine and General Workers’ Union (13), and the Building and Woodworkers’ International (12). The International Union of Food, Farm and Hotel Workers has thus far signed five agreements, whereas the International Textile, Garment and Leather Workers’ Federation (ITGLWF), Education International (EI), and the International Federation of Journalists (IFJ) have all signed one agreement. Public Services International (PSI) and the International Transport Workers’ Federation (ITF) are the only GUFs which have not signed any IFAs. However, as Section 4.3. will illustrate, the ITF...
is the only international union which has completed an international collective agreement on minimum wages, whereas PSI covers public employees and is therefore in a different situation.

By the end of May 2008, only seven of the 66 IFAs were signed by non-European companies: two from South Africa and one each from New Zealand, the Russian Federation, the United States, Canada and Australia. Within Europe 17 German companies have signed an IFA, but not a single British company has done so154. The reasons for the misbalance will later be discussed.

Naturally, IFAs differ from each other, but they share some necessary components: the four ILO core labour standards as laid down in the 1998 Declaration on Fundamental Principles and Rights at Work and minimum terms of employment conditions, like working hours and safety and health issues. Depending on the sector and the MNE, IFAs may also contain other provisions concerning employment, such as training, job security, and restructuring155. The majority of the agreements also call for the respect of internationally recognised human rights. References to the Universal Declaration of Human Rights, the UN Global Compact, and the OECD Guidelines are quite common. Some IFAs mention the Rio Declaration on Sustainable Development, UN human rights conventions such as CERD and CEDAW, the ILO Tripartite Declaration, or other ILO conventions. In other cases, IFAs use private CSR standards, like SA8000 or ISO 14001 – standards on social accountability or a company’s environmental record. Most of the IFAs also include references to national laws, especially when it comes to detailed provisions, like wages and working hours. Every enterprise is urged to respect national law156. IFAs differ in duration, with about two-thirds of the existing IFAs being open-ended, while the remaining have fixed terms of one to three years157.

Some GUFs, such as BWI and the IMF, have set up model framework agreements as a minimum basis for negotiations. BWI’s model commits the corporation to compliance with ILO core conventions, decent working conditions, health and safety, HIV / AIDS prevention, and housing and employment relationships. It also contains provisions on a process for monitoring and follow-up158. The IMF model agree-

158 Building and Woodworkers’ International, New BWI Model Framework Agreement, at
ment is similar, though less detailed. It contains definitions as well as provisions on implementation and selected workers’ rights that no IFA should omit. These models have the capacity to help harmonise the IFAs within one sector, without restricting the flexibility that every bargaining context requires.

IFAs only can set minimum standards that should not impede anyone to adopt further reaching arrangements. Therefore, the language of IFAs is very vague – it is the minimum consensus between a GUF and an MNE which can be applied on a global scale:

It is important to emphasize that IFAs address issues of conditions of work from the point of view of principle without entering into specific determinations of these issues – a specific time schedule or salary, for example. Thus IFAs do not define specific terms and conditions of employment, as traditional collective agreements do, but rather focus on the general framework within which management and unions can develop harmonious industrial relations.

Apparently consensus through vagueness makes IFAs not only realistically applicable on the global scale, but also contributes to a peaceful social dialogue – there are hardly any conflicts between the negotiating parties with regard to the content of an IFA, an assertion supported by two of the author’s interviewees, Christy Hoffman, GUF Representative, and Arvid Grindheim, Employer Representative.

3.2.1. International Framework Agreements - How?

The IFAs’ standing in the factory of social dialogue largely depends on the actors: who is negotiating, who is signing, and who is implementing and monitoring? The previous sections sort out the two main factions, GUFs and MNE representatives. The bargaining process is usually initiated by a global union but can sometimes be started by national trade unions from where the concerning company has its headquarters, or even by a EWC. In other cases, different GUFs
might cooperate to put an IFA on the agenda. Negotiations are conducted between the concerning GUF and the MNE’s headquarter management. Many IFAs also have co-signatories, usually other GUFs but also EWCs, national unions, or occasionally the ILO Director-General. Disputes arise with the co-signature of national trade unions and the involvement of EWCs. Critics argue that a national union does not have the authority to sign an agreement which is global in scope, although it can be pointed out that such a signature may contribute to the union’s formal involvement and therefore favour its future participation in the implementation and monitoring process. Legally speaking, the co-signature by a national union transforms the IFA into a national collective agreement.

Miller’s 2004 survey gives us an interesting insight into how negotiations between a GUF and an MNE are conducted, using the example of the ITGLWF and several companies in the textile sector. The bargaining process goes through different levels. In the case of ITGLWF, the first step was the adoption of a framework agreement policy in 2000 by the Union’s World Congress, which was inspired by the policies of other GUFs. The union then selected five MNEs deemed to be appropriate for bargaining. Common criteria for selection include the company’s global reach, brand sensitivity, manufacturing locations, and the existence of a trade union presence in the headquarter country. The existence of a EWC is an additional incentive to choose an MNE. Long-term targets are key; a mere «public relation» IFA should be avoided.

Certainly the selection criteria largely depend on the industrial sector. Christy Hoffman describes the way UNI chooses companies:

[...] we ask who are the big multinational employers in our sector. [...] We might look at the multinational players, but also to a couple of other factors. For example, US companies are very unlikely to sign a global agreement. Therefore it tends to be a European company. [...] And then you have to look where are the interest of the affiliates, and the company’s line-up. [...] And obviously it is companies, where there is a good relationship with the national unions. There are a lot of different factors.

After a company is selected and willing to bargain, the way negotiations are conducted varies. Flexibility is vital, even when comparing...
methods within the same sector, as every company and therefore every context of negotiations is unique. As Miller affirms, different types of framework agreements are necessary to take the different types of multinationals into account. Still, following certain framework, like the ILO core labour standards, is helpful in guiding composition and avoiding a watering-down of IFAs\textsuperscript{169}. Before the actual dialogue can begin, preparation, research, and conversations with local trade unions are necessary. Initiating a bargaining process does not automatically lead to success: none of the five companies that Miller discusses in his ITGLWF survey signed an agreement, for many different reasons, two of which were preference for the already existing code of conduct and foreign take-over of the firm. The first and so far only IFA in the textile sector only was signed in 2007, with Industria de Diseño Textil, a Mexican corporation\textsuperscript{170}.

National trade unions in the company's home country can be important participants in negotiations. The inclusion of all national unions and subcontractors into the bargaining process is hardly realistic, but there must be a basic consensus. Christy Hoffman points out that even if an IFA is negotiated by a relatively small number of persons, the support of various unions must be inalienable, as national trade unions are needed to make sure that the agreement is well implemented and monitored on the local level\textsuperscript{171}.

In some cases, the bargaining process might be launched by a company's EWC. Sobczak argues that negotiation with EWCs may be advantageous compared with negotiations with GUFs, as they avoid a certain asymmetry: the single-employer company is not confronted with a global organisation, but instead with its own employees. EWCs could probably take company-specific issues more into account than a GUF\textsuperscript{172}. What Sobczak fails to address is the question of legitimacy (see next section). EWCs cannot claim to represent workers in countries which are not covered by the EWC directive. Without powerful national unions or workers' organisations in the supply chain, the inclusion of EWCs will have a rather limited outcome, as they are bound to European borders. Therefore, EWCs should maximally co-sign IFAs, with GUFs as the primary signing party – which has thus far been the case\textsuperscript{173}.

\textsuperscript{169} Miller, 2004, p. 231.
\textsuperscript{171} Interview with Christy Hoffman, cit.
\textsuperscript{172} Sobczak, 2008, p. 121.
\textsuperscript{173} Schmidt, 2007, p. 20.
The extent to which NGOs should participate in the negotiation process is disputed. In instances of multi-stakeholder approaches, unions are increasingly confronted with a wide range of private factions, which they often see as competitors. Cooperation with NGOs and other groups might be advantageous, although the potential allies must recognise that it is the unions which are the experts in the world of work. Particularly in the field of CSR, this expertise has often been ignored, which has always proved a detriment to efficient implementation and monitoring of codes of conduct. The positive outcome of cooperation with NGOs should, therefore, be demonstrated in each individual case174.

After this in-depth look at the bargaining process, the following paragraphs will focus on the implementation and monitoring of IFAs. Almost all IFAs contain such provisions, the required structures and procedures set up directly by the agreement. In some cases, already existing structures, like EWCs, are extended175. The implementation of an IFA requires the involvement of the supply chain, which can become very complicated. For clarity, the scope of the IFA’s application and covered groups must be exactly defined. The relationship between the company and its subcontractor often determines how far the latter will feel obliged or motivated to respect the IFA. The closer the relationship, the more influence the MNE has over the subcontractor or supplier176. This is affirmed by Arvid Grindheim. He stresses that the more the supplier or subcontractor depends on the company, the more it will be willing to implement the IFA. In the case of IKEA, most of the suppliers and subcontractors work almost exclusively for the company, which is an advantage for a successful implementation process177.

In general, either the central services of a company or workers’ organisations are responsible for both implementation and monitoring178. To implement an IFA, the company must bring it to the awareness of its suppliers and subcontractors, and, above all, its employees. Thus, unions need information, making continuous dialogue with the MNE crucial. Training and seminars should also be part of the implementation process179. One must understand precisely

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174 Ibidem.
177 Interview with Arvid Grindheim, cit.
178 Observatoire sur la Responsabilité Sociétale des Entreprises, 2007, p. 41.
179 Hellmann, 2007, p. 27.
what «information» really means. As Sobczak points out, «IFA dissemination presupposes a pedagogical approach that cannot be limited to posters in the workplace, especially in countries where illiteracy rates are high»180. According to Hammer, there are different strategies that guarantee a sound implementation. The simplest and easiest one lays the focus on information: the MNE itself takes on the responsibility of informing its suppliers of the agreement. A second approach is more demanding: it takes the acceptance of the IFA as a precondition for the establishment of business relations. The third possibility is the strictest: it makes compliance with the IFA mandatory for all undertakings in the supply chain181. The implementation of an IFA is not necessarily restricted to the provision laid down in the agreement. For example, Danone has separately negotiated about 20 social indicators with the IUF to measure the social progress made through the IFA. Carrefour has introduced an extra European information and coordination committee to watch over implementation, which originally was not part of the IFA182.

To make IFAs credible instruments, the agreement’s implementation must be monitored. Every IFA sets up its own mechanism, with some similarities. Common tools for monitoring are (1) joint monitoring committees, consisting of management and workers’ representatives, which meet on regular basis to assess the progress made; (2) «proactive strategies» to encourage management to respect IFAs; and (3) the creation of incentives for workers’ representatives at all levels to report violations. The monitoring authority in place should only intervene, when the conflict cannot be solved on the local level183. Internal dispute settlement guidelines exist in more than three quarters of all IFAs184, but «[t]o our knowledge there has never been a case where internal dispute settlement procedures were used»185.

The most important figures in the monitoring process are national trade unions. In a global supply chain, it is inevitable to include trade unions in the monitoring process, in order to gain a real overview on what is happening. Local workers must be empowered to take over this task. Hellmann sees the proof that an IFA is actually implemented in the existence of an active union and a collective agreement on the local

182 Observatoire sur la Responsabilité Sociétale des Entreprises, 2007, p. 46.
183 Ibidem, p. 44.
184 Schömann et al., 2008, p. 70.
185 Papadakis, Casale & Tsotroudi, 2008, p. 75.
The key word is «subsidiarity,» not only for workers, but also for employers:

[...] [S]ubsidiarity would entail MNE management leaving the task of implementing the IFA to MNE subsidiaries (or even subcontractors and suppliers), while maintaining its authority to intervene in cases of violation and non-compliance with IFA principles. The same would apply in the case of the union side to an IFA, where GUFs would rely on their affiliates (sector-level unions) and enterprise unions.

However, there are also other views regarding the role trade unions actually should have, especially on the employers’ side. IKEA, for example, has set up its own internal monitoring mechanism with external auditors like PricewatershouseCopers verifying the results. Although a permanent discussion with BWI is guaranteed through a joint monitoring committee, national unions do not play any role in the process. The argument is that IKEA is operating in countries where no national trade unions exist and therefore must rely on monitoring without workers’ participation.

Usually IFAs allow that trade unions raise complaints. That does not mean that they are able to do so, due to lacking freedom of association or other trade union rights. Monitoring and reporting violations require resources which unions particularly in developing countries often do not have. As a consequence, many of the existing IFAs hold a monitoring role for their home country trade unions. Some of them also involve EWCs or WWCs, especially in the metalworker sector.

Another possibility is the inclusion of NGOs in the monitoring process, especially in places where no unions exist. Christy Hoffman remarks that NGOs can be important partners for both implementation and monitoring, where national trade unions are too weak or forbidden. However, Schömann et al. found out that only one IFA (the agreement between the French power company EDF and ICEM) explicitly invites NGOs to participate in the monitoring process.

Despite all of these auxiliaries – NGOs, external auditors (IKEA), etc. – the need for local union empowerment must not be forgotten as the means of ensuring a sustainable and participatory form of moni-

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186 Hellmann, 2007, p. 27.
187 Papadakis, Casale & Tsotroudi, 2008, p. 75.
188 Interview with Arvid Grindheim, cit.
190 Interview with Christy Hoffman, cit.
191 Schömann et al., 2008, p. 63.
toring. One example for such monitoring is the agreement between the Spanish power company Endesa and the ICEM. This IFA established the first global management-union council consisting of one union representative from each country where Endesa is operating, officials of the signatory unions and the company human resource director. The council discusses such issues as union rights, safety and health issues, and vocational training. Similarly, the 2006 agreement between Peugeot and IMF involves local social partners in monitoring: «[t]his reflects a principle of “subsidiarity,” which takes into account the need for an approach based on local realities [...].» However, these two examples are exceptions.

In case of violations, IFAs usually have provisions to handle the situation, but there is no consensus on how to enforce the agreement and ensure that suppliers stop committing the violation. As next section details, a legal framework that guarantees enforcement is a contentious issue. Solutions like sanctions may be problematic: in the worst case, they would lead to the closure of a plant, leaving workers unemployed. How an MNE should react depends on the type of violation. IKEA, for example, collects all reports of non-compliance in a database, and very serious violations are reported to the external communication department. The supplier or subcontractor has 90 days to correct violations. Continual follow-up makes sure that compliance is maintained. Only in the gravest cases of non-compliance IKEA will terminate business relations.

Enforcement not only concerns the supply chain, but also the MNE itself. If a company is not willing to enforce the agreement, there is not much a union can do, except to keep up dialogue and threaten industrial actions or campaigns. Other problems, like the already mentioned restriction of national trade unions, put further obstacles on the enforcement of an IFA. Chapter 4.3. continues the discourse on these obstacles.

Today, there is still very little empirical evidence for how effectively IFAs are implemented, monitored, and enforced. Part of the problem is that IFAs are still not very visible. Even GUFs themselves do not always promote their completed IFAs as might be expected. The webpages of EI, the IUF and the IFJ do not indicate that the organisations have

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192 International Labour Organisation, Organizing for Social Justice..., cit., p. 76.
193 Schömann et al., 2008, p. 65.
195 Interview with Arvid Grindheim, cit.
signed international framework agreements (or at least they hide it well). The UNI does not give public access to its IFAs.

Finally, one must not forget that both MNEs and suppliers act within a national legal framework, which shapes the final implementation of the IFA. There is no «one size fits all» approach, which makes it difficult to obtain an overview on how IFAs really are implemented, monitored, and enforced. The next section will concentrate on the legal questions concerning framework agreements.

3.2.2. International Framework Agreements: Law and Legitimacy

IFAs do not have a clear legal status. Many scholars consider them as soft law, not enforceable in court. If such is the case, the question naturally follows as to how IFAs can be enforced, for in a case of corporate non-compliance, it would seem that unions would not have any legal avenues. Urminsky challenges this view. In his opinion, framework agreements are built on a contractual basis, binding them to contractual law and obligations196. Sobczak also sees a legal dimension of IFAs beyond soft law. He sees IFAs highly inclusive, which gives them at least the same standing as other social norms:

Beyond the legal value, the social partners’ collective «ownership» of the norm should also be considered. The involvement of workers’ representatives in drawing up and monitoring IFAs may contribute to their – and workers’ – ownership. Consequently, IFAs may be no less effective than other social norms197.

Sobczak further argues in a similar vein as Urminsky: IFAs need to be included in other legally binding norms, such as the contracts between the MNE and the supplier. Courts may then recognise the value of IFAs as «customary rules,» which in many national labour laws play an important role. Sobczak is convinced that there is an emerging legal framework around IFAs, at least in Europe. Over-regulation should be avoided; the social partners must retain their autonomy. Still, the legal nature of IFAs poses problems. Sobczak believes that the best strategy to define this nature also beyond the MNE’s home country is to transpose the IFA into the legal texts of every country in which the company is operating198.

196 Urminsky, 2001, p. 18.
198 Ibidem, pp. 126-128.
The legal value of those texts would change according to national labour law, but this approach would avoid problems associated with determining which legislation to apply, because the text of the IFA would exist in each country and have a clear legal value under each country's law\textsuperscript{199}.

This sounds convincing, but leaves some questions open. How can IFAs be added to national laws, if it concerns a country where the most fundamental rights in the workplace, freedom of association and collective bargaining, are not recognised? How can an IFA be enforced under such circumstances? These are difficult questions to answer. Usually an MNE is required to respect national law, a provision which is integrated in most of the IFAs. But what is really accomplished by a progressive agreement like the Danone-IUF IFA, when the company is also operating in countries like China and Saudi-Arabia? Can the commitment to the right of all employees to be free from «any acts of discrimination leading to the restriction of trade union rights» be realistic in the context of such states\textsuperscript{200}?

Only one IFA has an explicit clause on restricted application, the Volkswagen-IMF agreement. It only covers countries that are represented in the company’s WWC, which does not include China\textsuperscript{201}. The majority of IFAs outline their global scope without clarifying how a subcontractor should respect the freedom of association and collective bargaining, if the laws of the state require him or her not to do so.

A first step to clarify the legal nature of IFAs would be a clear definition of their scope. In their survey, Schömann \textit{et al.} found that only about a quarter of all IFAs defined the group or groups that should be covered by the agreement\textsuperscript{202}. Generally IFAs stipulate that new partners must accept the IFA. When a supplier or subcontractor ends its business relationship with the company, the IFA would not be binding anymore. However, as Schömann \textit{et al.} point out:

\begin{quote}
On the other hand, corporate social responsibility implies that the management shall consider the social impact of all its decisions, not just in the short term, thus suggesting a certain responsibility for former subsidiaries. One may imagine that the new owner has to guarantee adherence to certain social norms, at least during a transition period\textsuperscript{203}.
\end{quote}

\textsuperscript{199} Ibidem, p. 128.
\textsuperscript{200} International Union of Food, Farm and Hotel Workers, \textit{IUF / Danone Agreements}, cit.
\textsuperscript{203} Ibidem, p. 28.
For the negotiators of IFAs, this is apparently not an important scenario to discuss, as there are currently only two agreements containing such provisions\textsuperscript{204}. Moreover, this does not solve the problem of restrictive national laws as mentioned above. The solution here must be political, as the legal path leads to a dead-end.

Beyond the discussion of IFAs’ legal nature, there is the even more fundamental question – the one of their legitimacy. Legitimacy is always related to legality. From a legal point of view, an MNE cannot sign an agreement and force suppliers to comply with it. Concerning legitimacy, the problem becomes even bigger, as suppliers often are not involved in the bargaining process\textsuperscript{205}. An MNE would need a mandate to conduct negotiations, which legally does not exist. Sobczak, therefore, suggests that subsidiaries and suppliers should merely be encouraged to respect the IFA through many different moral and economic incentives\textsuperscript{206}. However, there remains a gap which cannot be bridged, namely that legitimacy for suppliers lies not in their involvement in the process, but in their «freedom of choice» to support the agreement or not. Of course, this freedom is rather restricted, as the enterprise might face losing its contract with the MNE if it does not follow the agreement.

In addition to employers, unions also face a question of legitimacy. During the bargaining process, GUFs claim to represent national unions, since other strategies, such as workers of the holding company negotiating the text, would exclude workers of the supply chain (which is usually located in developing countries)\textsuperscript{207}. Designating GUFs as negotiating and signatory parties is consequently the most appropriate way to gain legitimacy. Yet, one has to keep in mind that there is a problem with the global representation of national trade unions. Some view the way GUFs lead negotiations as a top-down approach\textsuperscript{208}. Despite this critique, turning the GUF into the main workers’ representative seems to be the only feasible solution. As Christy Hoffman points out, «I think top-down, that sort of accusation is an excuse for not taking on big challenges. Because, of course, any time you do something that is global, there has to be a centralised coordination and centralised planning\textsuperscript{209}.» Furthermore, the role of GUFs is one of the defining features of an IFA. Without the involvement of the global unions, the
agreement is not an IFA, but something else. GUFs as the main actors avoid clashes between different national laws. A GUF operates on the same transnational level as the MNE; they share the same legal and political standing – an advantage for the bargaining situation that might facilitate an agreement\textsuperscript{210}.

Although one can conclude that GUFs can legitimately lead the bargaining process, the highest level of legitimacy would be achieved if union representatives from all countries would be involved in the whole process, from its beginning (bargaining) to its end (monitoring / enforcement):

This approach favours effective implementation of the IFA based on local social dialogue. It reflects the principle of subsidiarity: the IFA defines the fundamental social rights that apply to the whole group, and stimulates decentralized negotiations. This procedure seems to be particularly suitable for subcontracting networks because it creates a balance between harmonization among countries and consideration of different national contexts\textsuperscript{211}.

However, this has only happened twice: in the already mentioned EDF-ICEM agreement and in the Peugeot-IMF agreement:

In the case of the EDF Group, all these unions have been part of the negotiating body; whereas in the case of the PSA Peugeot Citroën Group, the national unions were merely informed about the negotiation process, which was centralised between the corporate management and the International and the European Metalworkers’ Federations\textsuperscript{212}.

Although in terms of legitimacy, this appears to be the ideal approach, there seem to be doubts that it will gain popularity. What about countries, where no unions exist? How will the workers be represented? Will the MNE organise the meetings, and above all, provide the necessary resources? One must not forget that multi-nationals are mostly operating in developing countries, where unions tend to have very little financial and possibly even knowledge resources. NGOs might act as substitutes, but this cannot be a long-term solution, as they do not have the mandate to represent workers.

Concerning the role of trade unions, employers might assume a different position than workers do. Arvid Grindheim asks how trade

\textsuperscript{210} Sobczak, 2008, p. 119.
\textsuperscript{211} Ibidem, p. 121.
\textsuperscript{212} Schömann et al., 2008, p. 50.
unions still can claim to represent workers when being confronted with massive membership declines, and on what grounds they claim the mandate to be involved in monitoring and enforcing IFAs. This is indeed a difficult question. Grindheim’s answer is quite controversial. He sees the solution in a socially responsible company that acts in a way which makes national unions less important and maybe even superfluous. Such a vision would hardly be shared by workers. On the contrary, trade unionists hope that IFAs will make unions stronger again and give them back the legitimacy they have lost.

In relation to legitimacy, subsidiarity deserves attention. IFAs only will gain sufficient legitimacy if they do not violate this principle. There is vast consensus among scholars, GUF representatives, and also the ILO that transnational bargaining must never replace, but only complement national bargaining. In other words transnational bargaining and IFAs should cover the issues which have been out of reach for national bargaining, not more and not less. As Dave Spooner remarks, "It would be senseless to take bargaining responsibility away from those with greatest local knowledge, and the most direct accountability to the membership."

To conclude the debate about legitimacy, it seems that negotiations between GUFs as the main workers’ representatives and MNE management as the employers’ representatives seem to be the most feasible option for establishing a transnational collective agreement, despite accompanying flaws. Negotiating parties should be open to allow national employers and employees to raise their voices, without making the bargaining process impossible to coordinate. Increasing legitimacy through a more inclusive approach would probably lead to better implementation and monitoring of the agreements and consequently to a real improvement in labour standards.

IFAs emerged in the context of a new labour transnationalism, as trade unions’ answer to the pressure of globalisation. After having discussed the background of IFAs, their legal underpinnings, and the processes of their formation, implementation, and monitoring, the next chapter analyses the practical impact of IFAs on the improvement of labour standards and on the emergence of transnational industrial relations. In this context, the special role of European industrial
relations structures, for both IFAs and global social dialogue, will be addressed. The last part of Chapter 4 will more closely examine the obstacles that IFAs still need to overcome to become effective instruments of business co-regulation.
4.1. IFAS IN PRACTICE I: THE CASE OF INTERNATIONAL LABOUR STANDARDS

How are IFAs applied in practice? What is their actual contribution to the improvement of labour standards? These questions do not have easy answers, as Papadakis, Casale & Tsotroudi state:

As a result of the lack of research on the effective implementation of IFAs, especially in countries with a weak record on labour standards, there is very little information on the impact of these instruments as regards their improving working conditions or promoting the principles of freedom of association and collective bargaining.217

Additionally, Schömann et al. criticise that almost none of the existing IFAs contain performance indicators for evaluating the results of implementation. If companies have installed information systems, they are usually in relation to other instruments, like the Global Compact.218 Nonetheless, some positive effects can be observed. Due to the lack of hard data, one must take a case-by-case approach.

IFAs always encourage an improvement of social dialogue, thanks to their follow-up procedures on the local level. The fact that bargaining takes place can be considered a success, as the establishment of a global social dialogue is one of the goals that IFAs pursue: «[...] negotiators will no longer have to make assumptions about what is in the best interests of workers, because increased dialogue and interaction will mean that those workers can better speak for themselves.»219

217 Papadakis, Casale & Tsotroudi, 2008, p. 78.
218 Schömann et al., 2008, p. 66.
in the ILO’s Global Report *Organizing Social Justice*, negotiations for IFAs can also contribute to overcoming geographical differences, since the agreement is a global project. The biggest impact can be observed on traditional trade union rights, like freedom of association and collective bargaining\(^{220}\).

One example is the IFA between the IUF and the Accor Group, which stipulates that Accor will not oppose any unionisation in its hotels. After unions encountered problems in Accor Hotels in the United States, the European central management intervened and made unionisation possible. The Norwegian oil company Statoil illustrates a similar case. After the adoption of the agreement and a complaint from the ICEM, the European management intervened in the US where a subcontractor pursued explicit anti-union policies.

The ILO points out that some agreements were conceived simply to solve an ongoing employer-employee conflict, like the agreement between IUF and Interbrew. In 2002, the new IFA helped end a strike in a Serbian plant that had been going on for a couple of months\(^{221}\). In another example of an IFA helping to solve a social conflict, there was a dispute about restructuring the biscuit sector of Danone in 2001, which would have led to the loss of 3,000 jobs. The IUF demanded an emergency meeting of the company’s EWC, beginning a chain of consultation meetings and discussions. During this period, workers and management negotiated a detailed agreement regarding restructuring, which avoided bigger social harms. A more recent case is the development of a collective agreement between a subsidiary of Carrefour, which signed an IFA with UNI, and the Korean commerce trade union in 2006. This was only possible through the engagement of Carrefour during the whole process, which was backed by the IFA\(^{222}\).

Schömann *et al.* also cite examples, which highlight the positive impact of IFAs on trade union rights. One is the successful unionisation of all Polish plants of Swedwood, an IKEA-owned company, within the context of the IFA. At DaimlerChrysler, the IFA helped trade unions gain their rights in the eyes of a Turkish supplier that previously had refused to accept unions. A letter to the supplier with reference to the IFA from the company’s WWC led to the recognition of the freedom of association and collective bargaining. This brings Schömann *et al.* to the conclusion that «[...] IFAs – through the activities of global union

\(^{220}\) International Labour Organisation, *Organizing for Social Justice*, cit., p. 76.

\(^{221}\) Ibidem, pp. 74-75.

One of the few extensive case-studies in the field was done by Lone Riisgaard on the 2001 agreement between Chiquita and IUF / COLSIBA. This agreement is an interesting example for both the successes and problems that IFAs bring. It demonstrates the empowerment of regional trade unions and the importance of subsidiarity, as COLSIBA played an important role throughout the bargaining process up to the follow-up procedures. The IFA is exceptional in many ways. It is one of the very few non-European framework agreements and is not backed by an institutionalised national industrial relations system. Chiquita decided to sign the agreement after a very damaging international campaign led by NGOs and trade unions, as the CSR strategies that Chiquita had adopted during the 1990s did not have the desired impact. The agreement affirms the freedom of association and collective bargaining and requires the whole supply chain to comply with it. A review committee, composed of delegates from the IUF, COLSIBA, and Chiquita meets regularly and discusses problems of implementation. The involvement of COLSIBA in particular has led to a significant improvement for banana workers in Latin America. Still, there are points of critique which will be raised in the last section of this chapter.

As demonstrated above, the biggest impact of IFAs is on the improvement of trade union rights. Currently, there are no reports on the improvement of other standards, such as health and safety and non-discrimination. This may be due to the lack of hard data and does not deny that IFAs have also been successful in this area.

In all of the cases outlined above, it was a national or global union, which reported the agreement violations and put pressure on the company to react. This underscores once more the fact that IFAs should primarily empower unions in order to achieve greater effectiveness, as the formation of an IFA does not automatically imply better corporate behaviour. These examples sharply contrast with Arvid Grindheim’s view. As mentioned above, Grindheim states that a corporation, encouraged by an IFA, should act in such a way that unions are no longer needed. This is hardly realistic. Unions will...
always be needed to regulate corporate behaviour, even or especially if an IFA is in place.

The introduction of the first IFAs has led to a spill-over of good corporate practices in the field of social dialogue. The Danone-IUF agreement was the first example, followed by many others. Spill-over might result in the IFA between an MNE and a GUF, affecting other companies which are formally not bound to the agreement. The IFA between the IUF, the New Zealand Dairy Workers Union, and the New Zealand diary company Fonterra specifies that the company has to inform its venture partners of its obligations. When Fonterra established an alliance with Nestlé in 2002, it was clear that Nestlé had to respect the IFA when doing business with Fonterra.228 Such spill-overs are important for the promotion of IFAs, but they are not frequent enough to be considered as a regular pattern.

IFAs require permanent social dialogue, not only in the phase of negotiations, but also during implementation and monitoring. To make IFAs a success, the social partners need to change attitudes and mentalities. Papadakis, Casale & Tsotroudi speak of «attitudinal structuring,» resulting from the emergence of cooperative approaches, and the opening of «spaces of dialogue.» As a consequence, IFAs bring unions «back into the game,» which is one of their main aims. As has already been described, GUFs started pursuing IFAs to regain some of the ground that unions have lost during the last two decades, to shift the balance of power once more in favour of workers.230

Despite these examples of success, one must not forget that IFAs currently cover only 66 global companies out of thousands. Additionally, not all IFAs are equally successful. Their effectiveness depends on different factors. One of these factors is the sector in which the agreement is negotiated. The textile sector provides a good example of failures when it comes to the adoption of framework agreements. Although a labour-intensive industry should be ideal for the adoption of an IFA, only one agreement has currently been signed. Why is it so difficult for the textile sector to come to an agreement, compared with the metalwork or the food sector? It is the very complex supply chain, the often explicit anti-union attitude of corporations in this sector, and the large number of codes of conduct, which are often attractive substitutes for IFAs in the eyes of employers, that amount the textile sector

228 International Labour Organisation, Organizing for Social Justice..., cit., p. 75.
229 Papadakis, Casale & Tsotroudi, 2008, p. 81.
230 Interview with Christy Hoffman, cit.
to one of the most difficult for successful transnational bargaining. The very low union density gives the ITGLWF a weaker standing than other GUFs have. This becomes evident in the fact that MNEs dealing with textiles, like IKEA and Carrefour, have signed their IFAs with other GUFs (BWI and IUF, respectively) but not with the ITGLWF\textsuperscript{231}. As the next section will show, the textile sector has set up hardly any other industrial relations bodies, like EWCs, which makes the situation for IFAs even more difficult.

In contrast, the metalwork sector has produced the highest number of IFAs. The reason lies not only in strong unions, which are typical for this sector, but also in the fact that this sector has a long experience with transnational social dialogue. The car industry witnessed the first world company council in the 1960s and harbours successful EWCs and WWCs today. The industrial sector is also distinctive when it comes to the content of IFAs. While the IUF agreements, for example, are based on general rights-based statements, the ICEM and the IMF negotiate more collective agreement-type documents\textsuperscript{232}.

A good relationship between local unions and an MNE is another important factor for an IFA’s effectiveness. As Rudikoff points out, unions need to be accustomed to working with management and be capable of engaging in negotiations to push for significant changes under an IFA. This requires a certain quality of union organisation, which is often lacking in developing countries\textsuperscript{233}. The empowerment of trade unions should be the most crucial objective of IFAs. Only when the enabling rights of freedom of association and collective bargaining are guaranteed on the local level, labour standards will see sustainable improvements.

After this discussion on the impact of IFAs on labour standards, the next section will cover how IFAs are linked with transnational industrial relations. The reasons why the first steps towards transnational industrial relations favour IFAs, especially in Europe, will be outlined. It will also be examined if IFAs, once in place, support these steps and lead to a consolidation of transnational industrial relations on global level.

\textsuperscript{231} Miller, 2004, p. 217.
\textsuperscript{232} Fairbrother & Hammer, 2005, p. 416.
\textsuperscript{233} Rudikoff, 2005, p. 23.
Industrial relations need a political, economic, and legal framework for sustainable development. Only then can regular and stable collective bargaining be realised. At the same time, collective bargaining is one of the conditions for transnational industrial relations. On a transnational level, the requiring framework is currently «under construction.» The first attempts at institutionalising transnational industrial relations date back to the 1960s, when International Trade Secretariats initiated the establishment of World Company Councils. These were networks for trade unionists for somewhat regular meetings. However, very few lasted long\footnote{Rüb & Müller, 2005, p. 393.}. Company councils today, in the form of EWCs and WWCs, have become important bodies for transnational social dialogue. Chapter 3 outlines the important role these groups play for international framework agreements. Will their activities lead to European transnational industrial relations and the facilitation of fair global structures?

4.2.1. European Social Dialogue

The European Union shows signs of an emergence of transnational (European) industrial relations, according to Sadowski, Ludewig & Turk, «[...] because the homogeneity of actor preferences inside the EU is higher both along country lines and along class lines, and the market integration in Europe is more highly developed than in other regions [...]»\footnote{Sadowski, Ludewig & Turk, 2003, p. 492.}. Yet, many factors speak against this assumption, especially with regard to the role of EWCs. First, the possibility of excluding unions from EWCs limits the development of European-wide industrial relations significantly and certainly does not meet the idea of MNE regulation through trade union activism. In the case that trade unions are represented in the council, transnational workers' cooperation on a European level is confronted with the same obstacles discussed in Chapter 3.1. The main difficulty is to reconcile the varying interests of different unions in different countries. Local trade unions still have problems forging networks throughout Europe. They mostly preserve their domestic sphere and autonomy in regulating labour issues.
Coordination problems due to language barriers and different national frameworks are quite common. What makes the situation even more difficult is that the idea of EWCs is not equally appreciated by the different national unions. One example is the reluctance of Italian unions towards EWCs, the reason being that Italian workers have a very powerful position within a company, especially in terms of collective bargaining. The EWC would give workers less influence. Some Italian companies, therefore, were careful to ensure that the EWC did not develop a collective bargaining role. In contrast, in Germany company works councils play an important role in industrial relations and for unions, making German unions and employers much more receptive to EWCs.

There is also the tendency for national unions to focus on national EWCs, which, in terms of transnational information exchange, is not a great progress. In many cases, EWCs do not take full advantage of their rights. Their behaviour is more passive than active, mostly due to the lack of internal cohesion stemming from different national backgrounds. As a result, EWCs are frequently underutilised, not consulted by the management, and leave workers uninformed. There are concerns that EWCs could even become tools to consolidate management strategies of control over labour, rather than effective instruments for trade unions to influence the employment relations for more positive outcomes, if unions are not able to use the councils as tools for European social dialogue.

Not only unions, also the management might impede EWCs from becoming productive bodies of transnational labour cooperation. The most negative examples are cases, where a EWC was set up but never used. In many other cases, management adopts a rather minimalist strategy towards EWCs, keeping its operations very restricted. Sometimes, management even attempts to manipulate and control a EWC for its own objectives. This inhibits any development towards collective bargaining on a transnational level but is allowable under the EWC directive. Management, however, is not automatically hostile towards the councils. Many MNEs accept the idea of Europe-wide industrial relations. EWCs guarantee employee participation and therefore lead

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236 Pulignano, 2007, p. 76.
239 Telljohann, 2005, pp. 386-387.
240 Pulignano, 2007, p. 76.
241 Martin & Ross, 2000, p. 122.
to better productivity, the prevention of social dumping, and union and political pressure for workers’ rights\textsuperscript{242}.

WWCs are confronted with similar obstacles as EWCs. Rüb & Müller warn of a «premature optimism» that WWCs could become a widespread institution, as currently no respective legal basis is in sight. Furthermore, like EWCs, WWCs are part of the company and not of trade union constructs. There is no guarantee that trade unions really can take advantage of the councils; they even might lose control over developments within their spheres. For example, «[t]he experience of the essentially management-driven EWCs at Vodafone, Global One and Coca Cola Company demonstrates that this danger is particularly real in companies in which trade unions are not on a strong footing\textsuperscript{243}.»

Although many encouraging steps, especially with regard to IFAs, have been made, the collective bargaining function still is an exception for works councils. In 2006, Carley & Hall estimated about 4\% of all EWCs to be involved in transnational collective bargaining\textsuperscript{244}. Greer & Hauptmeier point out that beyond the car industry, EWCs have not been involved in any transnational collective bargaining\textsuperscript{245}. If collective bargaining takes place, this is not necessarily a mark progress if it lacks a certain balance. Arrowsmith & Marginson state that in companies with a significant European presence, integrated international operations and well-organised, internationally-networked trade unions, the introduction of EWCs with bargaining function might complicate the corporate fabric\textsuperscript{246}.

Cooke expresses reservations towards the effects of EWCs. Although transnational cooperation has been facilitated through EWCs, it does not appear that unions have started taking all the opportunities offered by EWCs. Interestingly, Cooke identifies one of the reasons being the fact that European trade unions have been too «busy» on the international level, where they have been pursuing broader social and political goals within transnational union organisations. The emergence of WWCs in this context is not characterised as significant progress by Cooke, as they have not yet «[...] evolved into inter-union partnerships expressly formed for the purpose of transnational collective bargaining with MNCs\textsuperscript{247}.» Cooke does not seem to take IFAs into account, or he

\begin{footnotes}
\footnotetext[242]{Gold, 2007, p. 24.}
\footnotetext[243]{Rüb & Müller, 2005, p. 400.}
\footnotetext[244]{Carley & Hall, 2006, p. 35.}
\footnotetext[245]{Greer & Hauptmeier, 2008, pp. 77-78.}
\footnotetext[246]{Arrowsmith & Marginson, 2006, p. 263.}
\footnotetext[247]{Cooke, 2005, p. 285.}
\end{footnotes}
considers them as too marginal to cite them as an example for trans-
national bargaining. However, one must not forget that IFAs are not a
product of EWCs, but of GUFs. EWCs are only partners and occa-
sional facilitators in the process, not the main actors\textsuperscript{248}.

These are rather pessimistic assessments. If EWCs do not develop a
bargaining function, they will not become bodies of European
industrial relations. Still, EWCs and WWCs can be very important
participants in transnational social dialogue. In their survey on trans-
national collective bargaining in the European car industry, Greer and
Hauptmeier found that EWCs play a significant role in the regulation
of corporate restructuring through transnational collective bargaining,
transnational mobilisation (solidarity strikes\textsuperscript{249}), and cross-border
coordination. That EWCs do contribute in the restructuring processes
is also pointed out by Carley & Hall. The consultation of workers in
such a process will render a peaceful and successful restructuring much
more likely, as it will occur with a compromise of managerial and
workers’ needs\textsuperscript{250}. The fact that management has to provide information
and justify decisions, which it normally would not have to justify, is a
big step forward for building up a framework for transnational
industrial relations and could help lead to formalised European-level
company bargaining\textsuperscript{251}. However, there are certain conditions that must
be fulfilled.

The most important one is that trade unions must play an appropi-
ate role. Not only national trade unions, but also European federations
must be taken into account. Despite the critical assessment above, in
general, it can be stated that the relationship between EWCs and trade
unions is good and judged as useful, as trade unionists usually offer
more experience and expertise. For unions, EWCs can be a source of
information and a place of coordination. They can help in organising
European-wide union actions\textsuperscript{252}.

It also depends on the industrial sector, whether EWCs explore all
of their possibilities. Bargaining in EWCs is not equally spread
throughout the different industrial sectors but tends to concentrate
especially in the metalworking industries. It is, therefore, no accident

\textsuperscript{248} Gallin, 2008, p. 38.
\textsuperscript{249} One example for such a solidarity action is the strike of Spanish unions in the car sector
to demonstrate solidarity with their Portuguese colleagues, whose plant was before closure.
This is even more remarkable, as the Spanish plant would have been the main profliteer of the
\textsuperscript{250} Carley & Hall, 2006, p. 23.
\textsuperscript{251} Martin & Ross, 2000, p. 122.
\textsuperscript{252} Telljohann, 2005, pp. 377-378.
that most surveys on EWCs and their bargaining activities focus on the automobile industry. General Motors and Ford/Visteon have strong EWCs, which have been involved in collective bargaining. Volkswagen and DaimlerChrysler have set up a WWC. The negotiations at the two German MNEs have led to international framework agreements with the International Metalworkers' Federation. At BMW, the EWC was involved in the conclusion of an IFA between the company and the IMF. This clearly indicates the relationship between strong EWCs and IFAs and goes hand in hand with the observations the previous section makes. The success of IFAs depends on the industry sector, as does the success of EWCs. The International Metalworkers' Federation has signed the greatest number of IFAs with companies that have the most active EWCs. Furthermore, metalworkers, specifically in the automobile industry, have strong unions. Works councils have a long tradition in the industry and are recognised by management as an important tool for social dialogue.

The same observation can be made in the chemical sector. Like the IMF, the ICEM has signed a great number of IFAs, having strongly affiliated unions and building on experiences with world company councils in earlier decades and EWGs or WWCs today. In contrast, the textile sector has had only problems in putting together an IFA (see previous section) and in setting up a form of European social dialogue: «[...] EWCs in the clothing industry are either poorly organized [...] or are removed from the interests of workers involved directly in production, because only marketing, design and distribution functions tend to remain in Europe.» These examples lead to the conclusion that European social dialogue structures are an important precondition for the formation of international framework agreements. Additionally, EWCs play an important role in the implementation and monitoring of IFAs, sometimes together with trade unions.

In cases where EWCs deal with collective bargaining issues, core concerns, like working time and wages are omitted. This runs against
the traditional notion of collective bargaining, but as has been seen before, in a transnational context, this makes sense. The autonomy and subsidiarity of national trade unions to set certain objectives themselves must always be respected. Transnational bargaining should give a transnational framework but not end up in transnational over-regulation. A unification of wages would not take into account the different national contexts and thus could even be counter-productive. Moreover, there might also be legal limits, for example, if minimum wages in certain sectors differ between countries. This is also important with regard to IFAs. With their global scope, the agreements cannot be very detailed. As a consequence, the success of transnational collective bargaining and the emergence of transnational industrial relations should not be measured according to the inclusion of wages and other detailed provisions in agreements.

Unions, the industrial sector, the company and the willingness of the management, the national culture of industrial relations, and home-country influences are among the factors that influence the way how EWCs function. The political and economic framework for transnational industrial relations therefore fluctuates frequently, but transnational collective bargaining, at least on a company level, has a feasible chance of evolving. The legal framework may, however, cause problems. Currently, only the EWC directive exists as a sort of legal guarantee for transnational industrial relations. Beyond the European level, there is, bluntly speaking, nothing. As this paper has shown the directive does not ensure that trade unions have the possibility to participate, although this is a fundamental requirement for transnational industrial relations. The omission of unions is a great flaw in the directive.

The European Commission is currently conducting a revision of the directive to address many open questions, including the exclusion of unions, the high complexity between the different levels of information and consulting, and uncertainties regarding the fate of EWCs in the case of mergers or other serious changes in company structure. The revision should lead to the harmonisation of the EWC directive with two other directives, the first on supplementing the «statute for a European company with regard to the involvement of employees» (Directive 2001/86/EC), and the second on the establishment of a general framework for informing and consulting employees in the European context.

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Community (Directive 2002/14/EC). Naturally, the ETUC is lobbying for a permanent role for unions in EWCs. The revised directive should also include a clearer definition of information and consulting, a wider scope in lowering the threshold on the size of companies to include those with less than 1,000 workers, the right to training for EWC members, the right to hold preparatory work and follow-up meetings, the right for EWC members to enter company sites and better access to experts. In addition, the ETUC is asking for clear rules and even legal procedures concerning the adoption of collective agreements within EWCs. Under the current directive, there are no effective sanctions in case of a violation of such an agreement. The ETUC has also invoked Article 27 of the EU Charter of Fundamental Rights, which includes the workers’ right to information in a company. This would bring a new human rights dimension into European industrial relations, and it appears that the commission will take up this demand.

Not surprisingly, BusinessEurope rejected ETUC’s proposals for the revision. Interestingly, due to BusinessEurope’s reluctance, the ETUC proposed to the commission to set up the directive unilaterally without European social dialogue. However, BusinessEurope has now affirmed its readiness to continue negotiations. This returns to the question of the role of public authorities, which are discussed in Chapter 2. In the case that social dialogue fails, no matter on which level, it is up to the legislator to find a solution. On a global level, this might pose additional problems, as no legislator exists.

After intensely focusing on EWCs, one cannot ignore that this is not the only European initiative for transnational industrial relations. With its Social Agenda 2005-2010, the European Commission tried to set up a framework for transnational collective bargaining and deepen European social dialogue – a big challenge, as ETUC has no means to force employers into such a dialogue. The report, which was done in the
course of the Agenda’s follow-up, proposes a new directive that builds on the experience of EWCs to «[...] develop an optional framework for an EU transnational collective bargaining system within which transnational collective agreements with legally binding effect could be concluded.» But the response of BusinessEurope to such a framework, even if optional, has been negative. The project of the Social Agenda has subsequently been abandoned. In 2006, the European Commission issued a Green Paper on labour law, which does not even mention transnational collective bargaining.

Summarising all the facts, is it possible to talk about an emerging framework of European industrial relations? The way EWCs evolve speaks partly in favour of this assumption. Still, one has to remember that they are limited in scope and might even exclude trade unions. The development of transnational industrial relations without unions is questionable, as unions provide the independent and critical voice – probably more so than a company council. It is a difficult phase for the development of transnational industrial relations on the European level. According to da Costa & Rehfeldt, EWCs have the potential to become real institutions of transnational collective bargaining and therefore of transnational industrial relations, as they bring together not only management and workers, but representatives from all involved countries. Furthermore, EWCs have fundamentally contributed to the evolution of IFAs:

IFAs have been achieved thanks to a reinvigorated international union strategy supported by renewed union actors and structures, in which Europe has played an important role. [...] the foundations of transnational collective bargaining may be found in Europe and are strongly related to the issue of workers’ representation, notably through EWCs and WWCs. There have been important developments in both the form of transnational collective bargaining and the process of adoption of EFAs and IFAs.

The collective bargaining function of EWCs could lead Europe to transnational industrial relations, although slowly and not necessarily supported by a legal framework (it is questionable if the revised directive will assign EWCs such a function officially). One must bear in mind that as long as the legal dimension is missing, industrial relations...
will lack stability and continuity. The same goes for the exclusion of trade unions from industrial relations structures. The cautious development of a European industrial relations system may only be used as the springboard to global relations if legal issues are sufficiently taken into account. In this regard, IFAs can play a decisive role. Favoured by European structures, they can turn collective bargaining and subsequently industrial relations into a truly global project.

4.2.2. International Framework Agreements: Towards Transnational Industrial Relations?

In its Global Report Organizing Social Justice, the ILO finds that transnational collective bargaining does not fit «[...] nearly into any single category of labour relations [...]». However, international framework agreements «can be viewed as a form of international social dialogue». This revives the question discussed throughout this paper: namely are IFAs a step towards transnational industrial relations, or are they just a manifestation of international social dialogue? As Chapter 3 mentions, there is indeed a difference: social dialogue is a wide and soft term. Any exchange of opinion between employer and employee can be called social dialogue. Industrial relations, on the other hand, need a stable political, legal, and economic framework. The outcomes of a dialogue within such a framework usually are binding for the involved parties. For IFAs leading to transnational industrial relations, several factors need to be fulfilled. The most important one is probably the willingness of MNE management to build such relations. The current wave of economic globalisation might impede the development of such associations, as it tends to preserve the power of employers. Transnational industrial relations, in contrast, would limit this power:

The situation of the labour movement is that it is confronted not only with the hostility of anti-union corporations and conservative governments here and there, but also with a worldwide political and social project, driven by transnational capital, which is fundamentally antidemocratic. It is about power in society.

Employers tend to avoid institutionalisation of any bargaining relation with their employees, especially when they have the opportun-

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ity to do so. Regarding international framework agreements, the International Organisation of Employers (IOE) states the following on its homepage:

These agreements are in their infancy, with a great many unanswered questions. However, many companies that have signed IFAs principally see them as a vehicle for deepening dialogue, first and foremost, and not as an industrial relations exercise. The difficulty however is that International Trade Unions see them as the latter, which might explain the growing trend of including dispute resolution mechanisms in the text of IFAs.

This statement makes it clear that the IOE is thus far not interested that IFAs further develop into an institutionalised form of transnational relations. But do IFAs really have the required potential?

The first step to understand the impact of IFAs on transnational industrial relation is to analyse to what extent IFAs can be thought of as collective agreements in the traditional sense. The frame of analysis that Papadakis, Casale & Tsotroudi use is the ILO Recommendation no. 91 on Collective Agreements. Although IFAs formally fulfil the requirements of the recommendation (a collective agreement is an agreement on conditions and terms of employment, concluded between one or more employers’ organisations and one or more of the most representative workers’ organisations; the parties must have a mandate to negotiate, etc.), there remain unanswered questions. IFAs are not signed by employers’ organisations, but by single employers. This creates asymmetries as the GUF is a sectorally organised workers’ association, whereas the MNE is not represented by any organisation. This may present an obstacle for the recognition of IFAs as collective agreements existing on a national level, as one is confronted with different actors. What poses even more difficulties is the question of legitimacy, as discussed in Chapter 3.2.2. It is clear that for the creation of a framework for transnational industrial relations, broadly recognised instruments are needed. Such recognition might be achieved through the fact that IFAs offer monitoring provisions and follow-up. They also deploy «legal» effects, although they are not embedded in a

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national legal system. Yet, IFAs lack a legal framework, in contrast to national collective agreements.

The strategy of Papadakis, Casale & Tsotroudi to use an ILO recommendation as a benchmark to measure how far IFAs can contribute to transnational industrial relations also poses some problems. The preconditions are too different: ILO instruments call for states to prepare a certain legal framework for collective bargaining. But IFAs exist, because states are too weak or simply not willing to enforce labour standards. This makes IFAs unique: they are not the result of traditional collective bargaining, but they go beyond it. If IFAs are a tool to make transnational industrial relations a reality, the understanding of the term «industrial relations» must be revisited. Transnational industrial relations will not look like national industrial relations. They would «apply across jurisdictions» and generate a completely new situation. They would have to deal with other challenges and therefore need other instruments besides ILO conventions, recommendations, and national laws, although these act as important guidelines.

Papadakis, Casale & Tsotroudi point out that compared with national agreements, IFAs still have shortcomings – including a lack of legal framework and monitoring at «good will» – that make them an «imperfect» instrument of transnational industrial relations. They are a kind of «hybrid» agreement, clearly a product of industrial action, resulting from a collective bargaining process between a global union and an employer. But they are spontaneous and not formalised. On the other hand, Gallin is convinced that IFAs can become real instruments of industrial democracy, especially through their ability to enforce what was agreed between the parties – although this might be the reason why still so few companies have signed an agreement with a GUF. In addition, IFAs are mutually reinforcing. They have global dimensions and therefore set common values on a global scale. If they became a wide-spread practice, it could indeed lead to a legal framework created by states. However, according to Papadakis, Casale & Tsotroudi, such a scenario cannot be expected for the near future.

278 Papadakis, Casale & Tsotroudi, 2008, p. 73.
279 Currently there are two IFAs which enhance the legal dimension in referring to national legislation – the Arcelor agreement and the Falck agreement. Therefore they allow a role for a court, which normally is not the case. See ibidem, p. 77.
280 Ibidem.
281 Ibidem, p. 80.
282 Interview with Konstantinos Papadakis, cit.
284 Papadakis, Casale & Tsotroudi, 2008, p. 84.
A formal framework for transnational industrial relations needs to be global in itself. Considering all the different national cultures of employer-employee relationship, this is an almost impossible task. As mentioned above, a re-definition of industrial relations would be necessary, including a re-characterisation of the players. IFAs are enterprise agreements, whereas the classic collective agreement is negotiated between social partners.

There is one example which demonstrates that formal transnational industrial relations on a global level are possible, although not in the context of an IFA. The maritime sector is the only industry sector where such relations have been set up, leading to sectoral collective agreements that even cover details like minimum wages – something which cannot be found in today’s IFAs. This was possible for several reasons. First, the maritime sector is particularly exposed to globalisation and social dumping. Ship-owners tend to choose «Flag of Convenience» states that offer cheap labour through low standards. As a consequence, the International Transport Workers’ Federation started creating a strategy for a global labour market in the industry. Its campaigns were relatively successful, not only due to an exceptional transnational solidarity among workers (extended to dockworkers, therefore putting considerable pressure on employers), but also thanks to a conciliatory faction in the ship-owner association. This is a crucial point, as Papadakis remarks, «[...] in the maritime sector you can identify a representative body of employers, of ship-owners. This is not the case in other sectors.» In contrast to other industries, the GUF is not confronted with a single employer, but with employers’ associations. This favours sectoral transnational collective bargaining. Under these circumstances, the ITF has seized a strong position in defining global shipping regulation:

ITF bargaining strategy takes wages out of competition by segmenting the global labour market into internationally competitive shipping [...], high-standard national flags (which are left to national unions), and developing country national flags. Global employers’ federations [...] now negotiate with the ITF in the International Bargaining Forum over pay scales for seafarers on FOC ships.

The International Bargaining Forum meets at least annually, al-

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286 Interview with Konstantinos Papadakis, cit.
though the negotiated agreements usually have a longer duration. A big
success for the ITF was the agreement on minimum wages for «Flag of

Additionally unique in the maritime sector is the role played by the
ILO, as the sectoral transnational bargaining takes place within its
structures. In 2006, the tripartite constituents adopted the ILO
Maritime Labour Convention288. This convention is not only an ILO
instrument, but also an expression of transnational industrial relations
beyond the organisation. It is revolutionary, as it allows ratifying states
to enforce its standards on ships of other states through so-called Port
State Control (PSC):

This involves a shift in the boundaries of state sovereignty in some respects,
because ships, in a legal sense, have been regarded as floating pieces of their
flag states’ territories. However, practically, PSC will also operate as an
incentive encouraging shipowners and flag states to adequately regulate their
own shipping289.

According to Lillie, this will lead directly from the traditional sover-
eign enforcement regime to a globally integrated network with various
levels of government authority290.

The case of the maritime sector shows that transnational industrial
relations are possible. It also shows that between traditional state regu-
lation and voluntary action, there is «something in the middle,» as
expressed by Papadakis: «It is in reality a collective agreement, which is
based on negotiations conducted in the ILO […] continued outside the
ILO on a voluntary basis291.» Could this approach be a scenario for
IFAs in the near future? A sectoral approach of IFAs as in the maritime
industry would not only enhance their scope but would also favour a
more formal industrial relations framework, instead of the spontaneous
one which currently prevails. Such a sectoral approach would also bring
the ILO into the game, as a potential platform for transnational sectoral
bargaining. The ILO, usually the global authority when it comes to
international labour standards, is remarkably absent in the discussion
about IFAs. This is interesting, as IFAs are mainly built on ILO
conventions and recommendations, but does have reasoning behind it.
The ILO is an international organisation that traditionally only

290 *Ibidem*, p. 196.
291 Interview with Konstantinos Papadakis, cit.
responds to the requests of the ILO constituents – governments, employers, and workers. As long as the tripartite members of the organisation do not give the ILO a mandate to get involved in the discourse about IFAs – either through promoting the agreements or through offering a platform for transnational collective bargaining – the organisation cannot take up this issue. According to Papadakis, employers in the organisation are reluctant to give such a mandate, and trade unions lack clear strategies in this field292. Lee Swepston emphasizes that the actors are also different: ILO constituents consist of national delegates from workers’ and employers’ organisations, whereas IFAs are negotiated between GUFs and MNE management293. The ILO’s contribution to IFAs is therefore restricted to research and a couple of co-signatures by the Director-General, to enhance the legitimacy of the IFA when asked by the negotiating parties294.

Still, the possibility of sectoral agreements within the ILO is extensively discussed by Renée-Claude Drouin, who sees a possible location for IFAs in the ILO’s Sectoral Activities Branch: «The interest of sectoral meetings in the development of IFAs is that they provide space for transnational dialogue295.» Drouin points out that the sectoral meetings within the ILO have led to positive developments regarding social dialogue and the dissemination and sharing of information about IFAs. Such meetings could therefore actively promote framework agreements. Instead of one MNE and a GUF, the social partners would take up the issue296. Drouin’s approach is confronted with several objections. Stevis & Boswell indicate that there are no strong industry associations on the global level, «[...] partly because there are serious disagreements among corporations, partly because of different traditions of industrial relations, and partly a result of strategic calculations297.» In addition, Papadakis is convinced that organising employers on a global sectoral scale is almost impossible. As long as such an organisation does not emerge, a sectoral framework agreement will not be feasible. A scenario comparable to the maritime industry is therefore very unlikely298.

Furthermore, it is disputed if the ILO should even have a role

292 Ibidem.
293 Interview with Lee Swepston, cit.
294 E.g. the Fonterra-IUF agreement and the Chiquita-IUF agreement. See the interview with Konstantinos Papadakis, cit.
296 Ibidem, p. 250.
298 Interview with Konstantinos Papadakis, cit.
regarding IFAs. Christy Hoffman, as a GUF Representative, does not envision any real task for the organisation in relation to IFAs and underlines the independence of GUFs. In contrast, Drouin sees potential for ILO involvement in strategies, like offering a dispute settlement mechanism for IFA signatories or the elaboration of ILO conventions or recommendations which address the questions of transnational collective bargaining. Concerning conventions or recommendations on IFAs, such instruments depend on the willingness of the tripartite constituents to adopt them. Papadakis cannot see such a desire at the moment, especially among employers. But the ILO usually reacts to social movements, even if it takes its time. An IFA convention or recommendation could, therefore, be a potential scenario for the future.

Regarding the dispute settlement mechanism, one finds the same situation. It all depends on the ILO’s constituents whether such a mechanism will be set up. Currently, the ILO prepares the introduction of a helpdesk, which offers technical advice for MNEs to interpret «what is not subject to the ILO supervision.» The helpdesk will start its work at the end of 2008 and will streamline MNE requests which are related to CSR matters; however, it is not a body for arbitration or mediation. The reason for this is that the ILO cannot stay engaged in a continuing long-term activity, such as a certification process or the continuing supervision of IFAs, as it has neither the mandate nor the resources. Apparently IFAs will remain the exclusive projects of GUFs in the near future, meaning that formalised transnational industrial relations within the ILO are not a feasible option.

After this discourse on the contribution of IFAs to the improvement of labour standards and the emergence of transnational industrial relations, the final section addresses the obstacles that still must be overcome.

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299 Interview with Christy Hoffman, cit.
300 Drouin, 2008, p. 239.
301 Interview with Konstantinos Papadakis, cit.
302 Ibidem.
303 Interview with Lee Swepston, cit.
305 Interview with Lee Swepston, cit.
4.3. OBSTACLES TO OVERCOME

The previous sections demonstrate that IFAs need special circumstances to become successful and to contribute to stable transnational industrial relations. What are the obstacles confronting IFAs? The Chiquita agreement illustrates the problems IFAs face, despite its positive impact on trade union rights. First, the IFA has not changed corporate behaviour in general. A year after the agreement was signed, the dissemination of information was very poor and information only came from the unions. Riisgaard discovered that management tended to downplay reported violations. Although working conditions in Chiquita-owned plantations improved, supplier plantations remained unchanged or even got worse. The implementation also suffered from the lack of clear common policy among local unions and internal coordination in COSLIBA. This had negative impacts on the review committee. There were cases of local unions reporting violations but not receiving any reply for several months, due to the poor use of the committee. Initially, there was no strategic prioritisation of complaints, and preparation was very minimal. At present, the situation seems to have improved slightly.

What are the reasons for these problems? Riisgaard indicates the following factors:

[...] A general lack of tradition for unions and employers to cooperate among many of the more progressive unions [...]. This is linked to a lack of experience in functioning as a professional partner in an international agreement, illustrated for example in the inability to elaborate an effective communication structure and to oversee implementation.

These findings correlate with what is suggested in previous sections: existing patterns of industrial relations are favourable for the success of IFAs, as is the involvement of trade unions.

Since IFAs are still young instruments and not institutionalised, there might be obstacles which have not yet become apparent. According to Stevis & Boswell, both GUFs and MNEs must be careful that IFAs do not fall into the trap of becoming «nothing but a public-relations triumph for multinationals.» Even worse, IFAs might be abused by MNES to build a loyal workforce, siding with the company.

Riisgaard, 2005, p. 723.
308 Ibidem, p. 728.
against other workers, without the company changing its behaviour. The first scenario is not very likely, as many IFAs have a strong standing through EWCs and WWCs. Furthermore, IFAs are not a CSR exercise and therefore go beyond mere public relations interests. An MNE would not go through all the bargaining if it were not willing to put up a real transnational social dialogue. If public relations were the main goal, a unilateral code of conduct would be sufficient. The second scenario can be overcome if IFAs are really global in scope, giving influence to trade unions of the headquarter country as well as to other factions. A leading role of the GUF would also prevent such a development.

Stevis & Boswell express further concern that IFAs could be abused to avoid more extensive instruments which might evolve in the future – just as companies today use codes of conduct as an excuse to avoid IFAs. This scenario seems a bit too hypothetical. In the current discourse of MNE regulation and labour standard improvement, IFAs are the most advanced instruments. It might be possible that in the future, more far-reaching instruments will evolve, but this is not an issue for today’s problems. There is no evidence that IFAs have impeded the appearance of any other approaches.

A very real danger for IFAs is the problem of sufficient resources for GUFs, especially if the numbers of IFAs increase in the future. However, it is not impossible to develop strategies to overcome this obstacle. Another potential problem is the different perception of IFAs, which employers and employees entertain in the discourse, as can be seen in the IOE’s attitude towards IFAs above. A common and accurate understanding of what an IFA actually is and for what it stands is a precondition for its success. The IOE’s statement shows that dialogue and active promotion of IFAs are both still needed. Union campaigning might be useful, but this is only a limited solution, as GUFs must permanently deal with their scant resources. Trade unions will therefore need new global strategies to distribute information about IFAs to institutions and regions where they are not yet recognised.

This brings up another difficulty, namely the geographic bias of IFAs. This bias can create problems with legitimacy and contradict the ambition to make IFAs a universal answer to globalisation. As has been

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110 Interview with Konstantinos Papadakis, cit.
112 Ibidem.
113 Interview with Christy Hoffman, cit.
discussed, the reason for the dominance of European companies in the promotion of IFAs lies within national structures of industrial relations (strong industrial relations in Germany, very weak ones in the UK and the US) and the emerging framework of European industrial relations through EWCs. Stevis & Boswell fear that this bias might become a problem in the long-term, «[...] if unions from other countries see the agreements as self-serving European strategy or even as a good strategy implemented in a Eurocentric way314.»

How can the bias be overcome? Realistically this will take time, as it requires a development of global industrial relations and strong national industrial relations. Although they certainly can be a positive incentive for further developments, the emerging European structures must not lead to a dominance of European issues in global transnational bargaining. Stevis & Boswell therefore suggest more involvement of WWCs instead of EWCs and union participation throughout the world to guarantee a better balance during the negotiation of IFAs315.

GUFs are aware of the obstacles in the field, as shown by the emergence of several conferences and strategy papers on IFAs during the last years. The most active union in the field is the International Metalworkers’ Federation, not only concerning the number of signed agreements, but also when it comes to the promotion of IFAs. In May 2007 the IMF held a conference on IFAs which resulted in publishing a paper containing recommendations on how the content of IFAs could be improved, how to initiate and negotiate them, and how to organise implementation, monitoring, and enforcement. This paper also shows the growing self-confidence of GUFs in the field, as the IMF sets certain conditions which must be met for them to sign an IFA:

Every effort should be made to include the content of the IMF Model Framework Agreement as well as other relevant issues such as: [u]nion access to sites, [p]rovisions to forbid use of replacement workers, [i]mplementation processes316.

The IMF goes so far as to threaten withdrawal if the IFA is continuously violated. This again brings up the question of enforcement, raised in Chapter 3.2.2.
It is still not clear how systematic violations of the IFA due to the context of national law should be treated. As has been demonstrated, local trade union empowerment is a crucial ingredient for a sustainable improvement of labour standards, but this will not be possible if a country’s national laws deny freedom of association and collective bargaining. Interestingly, current research does not really address this problem. The GUFs also remain silent on this issue. It would be important for forthcoming agreements to clearly define their scope and what solutions a company could offer concerning freedom of association and collective bargaining, if operations take place in countries like China. Arvid Grindheim describes IKEA’s solution in such cases. IKEA encourages its suppliers to install at least a company health and safety committee which allows dialogue between workers and management, «to look at what can be improved, what can be done, what is the situation for the workers, what can be better» He admits that the lack of a national culture of industrial relations is a problem, which a company can only partly overcome.

Returning to the role of the state as a regulator, companies can only act within the framework set by national law. As long as there are countries that do not recognise trade union rights, even the best IFA in the world has only a limited impact. This explains why IFAs only can involve co-regulation, but never replace public regulation as such. Nevertheless, IFAs can be a decisive tool for introducing more social aspects into an anarchistic globalisation by ensuring the implementation of core labour standards through transnational industrial relations. They need time to develop, and in light of the fact that their number is continuously growing, there is reason enough to be optimistic.

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317 Interview with Arvid Grindheim, cit.
318 Fichter, Sydow & Volynets, 2007, p. 16.
This paper discusses international framework agreements as a union strategy for the co-regulation of multinational enterprises, aiming at better corporate behaviour regarding labour standards, the empowerment of trade unions, and transnational industrial relations.

Have IFAs met these goals?

The answer to this question starts with the context within which MNEs operate, namely a global economy that does not put any international legal obligations on private business. Because of weak state regulation and limited voluntary self-regulation through public and private CSR initiatives, IFAs offer an alternative through their co-regulative approach, adding at least some social features to a mixture dominated by anarchic globalisation. In the past, unions were frequently left out of the discourse on MNE accountability and fair globalisation. Today, IFAs stimulate social dialogue on a new level, opening a door for union participation and increasing union importance. As a consequence, trade unions have regained some of the ground they have lost through globalisation and have become relevant actors in a global economy through the tool of transnational collective bargaining. This is an important development, as trade unions are the primary voice of workers’ interests as well as the experts and advocates for labour standards and fair working conditions.

There are some critical points, however, which must be discussed in this assessment of IFAs. First, only 66 MNEs have currently formed IFAs, and these agreements are strongly biased in geographical and sectoral terms. Although their number is constantly growing, IFAs are still far away from becoming a true global project. The environment of every IFA – for example, the industry sector, national industrial relations, or strong EWCs or WWCs, etc. – is decisive in the success of the agreement. The strengthening of regional, national, or local industrial relations is therefore an important task on a global scale. Due
to the lack of hard data, the actual impact of IFAs on labour standards is difficult to evaluate. Although many examples exist of IFAs contributing to a better protection of trade union rights, not much is known about their impact on labour standards, such as health and safety and non-discrimination. Yet, since freedom of association and collective bargaining are enabling rights, their protection allows national or local trade unions to pursue higher standards in all matters.

The second point underscores the importance of the principle of subsidiarity when it comes to collective bargaining. International framework agreements are global minimum standards and act as instruments to empower national trade unions. Through their inclusion in the implementation and monitoring processes of IFAs, trade unions have the chance to fight for better working conditions on local level. National unions have a profound knowledge of the situation of workers and therefore should be given the opportunity to raise their voice within an IFA's scope. Leaving national unions out of the game thwarts the original intention behind framework agreements and might render effective implementation and monitoring more difficult. On the other hand, the participation of national unions faces problems. Although the general purpose of an IFA is to empower national trade unions, there is no guarantee that every agreement will accomplish this. As in the case of IKEA, national unions can be left out of all processes related to the IFA. This brings up not only the issue of effectiveness but also the question of legitimacy: to become legitimate instruments, IFAs must be as inclusive as possible during every phase, from the negotiation procedures to monitoring. Since bargaining at the global level also requires centralisation, a certain balance must be struck.

Third, there is still uncertainty regarding the enforcement of trade union rights in countries that do not legally recognise them. Every IFA urges the company to respect national law, but national law can run counter to the agreement – a dilemma. IFAs, therefore, should have a clearly defined scope of application, which often is not the case. Creative solutions, like IKEA's health and safety committees, help remedy the situation in countries where workers' participation is restricted, but only to a certain extent. Beside the restrictions that national law might impose, the enforcement of IFAs depends on the goodwill of employers, though the continuing social dialogue, which an agreement establishes, should ensure that management is indeed willing to enforce it. Still, unions should not rest with just the formation of an IFA; they must instead continuously explore new ways to enforce them. Lee Swepston points out:
The trade unions in the long run do have options they have not yet explored if companies were to deviate seriously. For instance: [...] if a multinational has been previously party to an agreement and says, “We don’t care [...]”, trade unions have means of actions they have not yet explored, whether it is public relations or actual physical economic pressure319.

The question of enforceability will remain unanswered until IFAs are embedded within a legal framework, not a likely development in the near future. After all, unions are still waiting for the first big test – a systematic and serious violation of an agreement by MNE management. Only then it will be possible to assess how much IFAs enable unions to lobby for better corporate behaviour.

The fourth point of criticism is that the lacking legal framework impedes not only clear enforcement methods, but also the emergence of transnational industrial relations. IFAs are, of course, the result of transnational collective bargaining and clearly aim at a system of transnational industrial relations. However, this «system» is currently unstructured with no indicators that it will soon become formalised. If formal transnational industrial relations evolved, it would probably happen within the structures of the European Union. There, labour transnationalism has developed remarkably since the mid-1990s, especially through the introduction of EWCs. A political and economic framework of cross-border social dialogue is more or less in place, but employers are reluctant to submit themselves to the legally binding structures of transnational collective bargaining. Within the ILO, this is even less likely. Nevertheless, there is one example where formalised transnational bargaining occurs, namely the international maritime industry. Success lies in its sectoral approach, which is possible through the special structure of the industry and the combination of public and private aspects. With regard to IFAs, similar developments are currently unlikely.

However, the value of IFAs for transnational industrial relations should not be underestimated. They cultivate collective bargaining on a global level and remind employers that social dialogue is an essential condition for responsible business. Indeed there are many problems that still need to be overcome, not only regarding the lack of legality, but also the reluctance of national unions to shift some of their divisions to a global level. In the transnational context, open-mindedness is necessary to go beyond the traditional notion of industrial relations.

319 Interview with Lee Swepston, cit.
IFAs offer something new, as they are individual and flexible transnational instruments. As Martin & Ross remark, national industrial relations have been shaped over decades⁴. A starting point for a co-regulative regime on a global level definitely exists. This calls for the avoidance of prematurely negative conclusions and the continuous observance of further developments.

The fifth point addresses the role of the state. Although IFAs close the gap left open by weak state regulation, they can never replace national regulations – they can only complement them. Even in a globalised world, it is still the state which has the final say. It sets the legal framework for collective bargaining; it is the addressee of ILO instruments designed to enforce labour standards. Thus, its role must not be diminished, as is the tendency of the neoliberal theory of economic globalisation. Keeping in mind the problem of restrictive national laws for the enforcement of IFAs, one understands the state’s crucial position even better. Certainly states should not interfere in a social-partner-driven bargaining process, but they could act as facilitators by providing the necessary legal tools and by stepping in when failure occurs. To improve the labour situation globally and not only in selected MNEs, global public rules for corporations and GUF-enabling policies are needed. This would also facilitate the emergence of stable transnational industrial relations. Leaving the state out would be a big mistake and present obstacles for the emergence of industrial relations on a transnational scale. To achieve sustainable improvements in working conditions worldwide, the vital precondition is a collaboration of all relevant players – trade unions, employers, and public authorities.

In summary, IFAs are on the path to become effective instruments in the discourse about fair globalisation, although they currently face many obstacles. This is partly due to the fact that they are still too young and too limited in scope to realise all of their possibilities. Case studies like the Chiquita agreement demonstrate the dilemma: although the IFA has had positive impacts, it has been far from solving all the problems workers face, especially in the supply chain. This brings up a last consideration, a short outlook on future developments.

IFAs are targeting the deplorable working conditions in an MNE’s supply chain, which are mostly located in developing or newly industrialising countries. Labour standards in MNE home countries, which are in industrialised states for 100% of IFAs, are less of an issue. Certainly labour standards in industrialised states cannot be compared

⁴ Martin & Ross, 2000, p. 149.
to those in developing countries, but there is a tendency of decreasing standards in almost all high-standard states. In fact, not only countries like China have problems with free trade unions. The United States, for example, offer enough legal space for employers to pursue explicit anti-union policies. This should be a reason enough to pursue further progress in the field of international framework agreements. One advancement could be the enhancement of their scope, to the benefit of both the supply chain and the retailers. As many IFAs lack clear definitions of their scope of application, it is often uncertain if also retailers are covered by the agreement. This is not the case, for example, in the IKEA-BWI agreement, whereas the PSA Peugeot Citroën-IMF agreement does also apply to vendors. Certainly it depends on the type of industry if retailers are even an issue.

National unions might at first be reluctant towards an enhancement of the scope of IFAs to retailers; they may consider it a threat to their own national holdings. Employers may also hesitate because of their general reluctance towards regulation. Nevertheless, this would be a good answer to the global competition, which every single worker faces today.

Time will tell if IFAs are capable of offering such a solution and how successfully they can protect workers’ rights in the turbulent process of globalisation.

131 Interview with Christy Hoffman, cit.
132 Interview with Arvid Grindheim, cit.
BARGAINING FOR SOCIAL JUSTICE

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BARGAINING FOR SOCIAL JUSTICE


International Labour Organisation, *Governing Body - Subcommittee on Multinational Enterprises, Update on the Programme to Give an Orientation on International Labour Standards, the Tripartite Declaration of Principles*.


BARGAINING FOR SOCIAL JUSTICE


INTERVIEWS

Interview with Arvid Grindheim, Compliance Manager of the IKEA Group, Helsingborg, 23 May 2008.
Interview with Konstantinos Papadakis, Research Officer at the International Labour Office, Lund, 5 June 2008.

E-MAILS

E-mail from Gabriel Craciun, International Transport Federation, 22 May 2008.
E-mail from Patrick Dalban-Moreynas, International Union of Food, Farm and Hotel Workers, 16 May 2008.
E-mail from Svend Robinson, Public Services International, 30 May 2008.
INTERVIEW: ARVID GRINDHEIM / IKEA COMPLIANCE MANAGER

Date: 23 May 2008
Time: 10:05-10:40
Location: Helsingborg, Södgatan 1 - IKEA headquarters

Interviewer: Birgit Kunrath

1. Can I quote you by name for my thesis?

2. What was the motivation for IKEA to sign an international framework agreement?
   2.1. What role does it play in the industrial relations of the company?

3. The IKEA-BWI agreement also applies to its suppliers.
   3.1. How is the IFA communicated throughout the company and its suppliers?
   3.2. To what extent are local managers informed and involved?
   3.3. How would you assess the impact of the IFA on labour standards, especially in the supply chain?
   3.4. What are the challenges of the implementation process of the IFA in the supply chain, but also in the home-country corporation?
   3.5. What are the challenges of the monitoring process in the supply chain, but also in the home-country corporation?
   3.6. How does IKEA react, if violations of labour standards are reported?

4. To what extent are national unions included in the process of monitoring?
   4.1. Has the relationship between IKEA and national unions changed through the IFA?
   4.2. Trade unions complain about lack of transparency in the implementation process of the IKEA IFA. How would you assess the situation?

5. What were the initial expectations of IKEA towards the IFA – and have these expectations been met?
   5.1. Do you see potential for improvements?
   5.2. What are the future challenges?

6. Do you know any person I could interview on this subject?

7. Is there anything you want to add?
Can I quote you by name for my thesis?

Since about a decade, international framework agreements have been emerging, usually initiated by trade unions.

1. How do multinational enterprises react, when they are confronted with such initiatives? Do you know any case, where an MNE rejected the elaboration of an IFA?

2. Do MNEs themselves come towards a global union federation for the negotiation of an IFA?

3. What is the motivation for an MNE to sign an IFA?

IFAs mostly apply also to subcontractors and suppliers.

1. How would you assess the impact of IFAs on labour standards, especially in the supply chain?

2. What are the problems with the implementation of IFAs in the supply chain, but also in the home-country corporation?

3. What are the problems with the monitoring of IFAs in the supply chain, but also in the home-country corporation?

4. Are you satisfied with the accountability mechanisms that IFAs offer?

There is the reproach that IFAs are a top-down approach, as they are negotiated on a transnational level.

1. What is the relationship between global unions and local unions which are affected by those agreements?

2. In the process of elaboration, to what extent are trade union representatives from developing countries involved?

3. To what extent are local unions involved in the implementation and the monitoring process?

What is the impact of IFAs on freedom of association and collective bargaining, especially in places where these rights still are not fully developed?

1. If in an affiliate no union exists, are there any other ways to involve workers in the process of monitoring of an IFA?

IFAs are almost exclusively a phenomenon in European corporations.

1. What can GUFs do to change the situation and make IFAs a global issue?

2. What are the advantages of IFAs compared with corporate codes of conduct?
7. IFAs are often cited as an example for the emergence of transnational industrial relations and transnational collective bargaining.

7.1. How can different national interests of trade unions be reconciled on transnational level?

7.2. If bargaining is happening on transnational level, how to make sure that local unions are sufficiently involved, especially from developing countries?

7.3. Can we really talk about transnational industrial relations and transnational collective bargaining in relation to IFAs?

7.4. What role does the national culture of industrial relations play in the elaboration of IFAs?

8. Is there any cooperation between GUFs and the ILO concerning IFAs (providing assistance, consulting, etc.)?

8.1. Do you see any special role for the ILO in the development of transnational industrial relations?

9. What were the initial expectations of GUFs towards IFAs, and have these expectations been met?

9.1. Where do you see potential for improvements?

9.2. What are the future challenges?

10. Do you know any person I could interview on this subject?

11. Is there anything you want to add?
3.4. Was the ILO ever involved in the negotiations for an IFA?
3.5. How can a possible role for the ILO be reconciled with the autonomy of global unions?

4. The ILO is already a platform for transnational social dialogue.
4.1. Could the ILO be a possible platform for IFA negotiations?
4.2. If yes, how such a platform could be organised?
4.3. Could the ILO offer a dispute resolution mechanism?
4.4. What do you think of the promotion of IFAs through ILO sectoral agreements?

5. Currently there is no framework for transnational collective bargaining. ILO instruments only take the national dimension of collective bargaining into account.
5.1. Can the ILO contribute to a transnational framework?
5.2. What are the obstacles to establish such a framework?
5.3. What about creating ILO instruments that take transnational dimension into account?

6. Your personal assessment: how could an ILO policy towards IFAs look like?
6.1. What are the obstacles to overcome for a more visible role for the ILO regarding IFAs?

7. Do you know any person I could interview on this subject?

8. Is there anything you want to add?

INTERVIEW: LEE SWEPSTON / RETIRED ILO OFFICIAL

Date: 24 April 2008
Time: 15:03-15:30
Location: Grupprum 161 / Juridiska Fakulteten Lund
Interviewer: Birgit Kunrath

1. Can I quote you by name for my thesis?

2. Currently we see first attempts of transnational bargaining. The ILO’s structure still represents the national idea of industrial relations.
2.1. Could the ILO serve as a discussion forum for transnational industrial relations?
2.2. If yes, how?

3. International framework agreements increasingly become part of the inter-
3.1. How does the ILO see its role regarding international framework agreements?
3.2. How do these agreements work in practice?

4. Within the ILO there is a discussion if the organisation could offer certification of MNE auditing.
4.1. Why does the ILO refuse to offer such certification, as it is quite probable that employers and workers would support it equally?
4.2. Could this be a task for the helpdesk which will be established?
4.3. Any further information on the helpdesk?

5. On the follow up of the Tripartite Declaration:
5.1. How satisfied are you with the follow-up of the Tripartite Declaration?
5.2. Compared with the follow-up of the OECD Guidelines: what are its strengths and weaknesses?
5.3. Are there any current discussions to revise the Declaration’s follow-up?

6. MNEs increasingly refuse to associate with national employers’ organisations, as they prefer direct lobbying. This would have an impact on the ILO’s tripartite structure, which represents national employers.
6.1. In your opinion, is this a current problem for the ILO? If yes:
6.2. What are the strategies of the ILO to meet this challenge?
6.3. Could the ILO’s tripartite structure offer a stage for private actors as well? Are there plans for seats for the largest MNEs or other actors?

7. What is the potential of voluntary corporate social responsibility approaches, also in a long-term perspective?
7.1. What could an organisation like the ILO do to close the gap between CSR theory and practice?

8. Do you know any person I could interview on this subject?
9. Is there anything you want to add?
2. On CSR and labour standards:
   2.1. How would you assess the impact of CSR strategies such as codes of conduct on corporate behaviour regarding labour standards?
   2.2. What are the limits of CSR initiatives regarding labour standards?
   2.3. What do you think about the criticism regarding the "privatisation" of labour standards through CSR?
   3. How would you describe the role of the ILO as a public international law organisation in the global CSR discourse?
   3.1. In your opinion: what could be improved in current ILO CSR strategies?
   4. How would you assess the impact of the ILO Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines for MNEs regarding
   4.1. – economy: corporate behaviour?
   4.2. – politics: legislation, implementation of appropriate laws?
   4.3. What are the strengths and weaknesses of these declarations?
   5. Freedom of association and collective bargaining are core labour standards, but only mentioned in about one third of corporate codes of conduct.
   5.1. How can private social auditing firms convince MNEs to respect freedom of association and collective bargaining?
   6. In your opinion: what is the potential of transnational bargaining between MNEs and Global Union Federations to influence corporate behaviour?
   6.1. Could it go beyond current CSR strategies?
   6.2. What role could transnational bargaining play for a fair globalisation?
   7. What needs to be done to close the gap between CSR theory and practice?
   7.1. How can CSR contribute to a fair globalisation?
   8. Do you know any person I could interview on this subject?
   9. Is there anything you want to add?