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International Framework Agreements for Sustainable Development: a critical assessment

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Abstract

Globalization has generated a mismatch between the scope of the activities of international economic actors such as Multinational Enterprises (MNEs), which is increasingly trans-national, and the scope of action of social actors (trade unions, NGOs, consumers' organizations), which remains largely embedded at the national level. This mismatch leads to a systemic disequilibrium between, on the one hand, the power of the private profit-driven actors, and on the other hand, the action of civil society aimed at an equitable distribution of the benefits of globalization.

As a response to the above-mentioned mismatch between the "global" and the "national" levels (and in the absence of international top-down regulatory action) numerous private initiatives have aimed at the creation of "soft" accountability mechanisms for MNEs. Most of them build on the notion of Corporate Social Responsibility (CSR) which focuses on self-regulation for the promotion of sustainable development objectives. Among these mechanisms, a small number of cross-border instruments referred to as "International Framework Agreements" (IFAs) or "Global Framework Agreements" (GFAs), have emerged since the late 1980s. IFAs present a particular interest from a "global governance" perspective because in addition to being self-regulatory initiatives, they constitute the outcome of trans-national negotiations between individual MNEs and Global Union Federations (GUFs), i.e., international workers' organizations usually operating at the sectoral level. They are aimed to establish "a formal ongoing relationship between the multinational enterprise and the global union federation which can solve problems and work in the interests of both parties". IFAs are meant to promote a number of sustainable development principles by organising a common labour relations framework across the worldwide operations of the MNE, covering not only the operations of the MNE subsidiaries but also its subcontractors and suppliers.

IFAs are increasingly the subject of analysis in policy and research circles, including under the impetus of international public institutions such as the International Labour Organisation (ILO) and the European Union (EU). This interest stems by the fact that these instruments are seen as introducing an important industrial relations dimension to the voluntary social practices of private for-profit actors. Contrary to earlier practices (e.g., CSR codes of conduct), IFAs' monitoring is joint; IFAs make explicit reference not only to the protection of environment and local communities, but also to international labour standards, including fundamental ILO Conventions on freedom of association and collective bargaining. Better, some of them go beyond the mere objective of creating a "space to organize", in order to address issues usually addressed in the context of "collective bargaining", i.e., terms and conditions of employment of the global labour force employed in the supply chain of an MNE.

In short, IFAs possess certain revolutionary features, being themselves a response to a challenging development like globalization, which often puts into questioning traditional conceptions of notions such as collective bargaining, industrial relations, international/ labour law and legal obligations. The paper examines various innovative features of IFAs, and makes a first attempt to provide answers, from an ILO perspective, to two interrelated questions often raised with regard to IFAs: can they be described as collective bargaining outcomes? And what is their value in the process of building a transnational industrial relations framework? Answers to these two questions might be key in assessing the potential of IFAs in promoting global governance for sustainable development, and addressing the need for policy coherence and new partnerships.

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International Framework Agreements for Sustainable Development: a critical assessment[1]

Konstantinos Papadakis,[2] Giuseppe Casale, [3] and Katerina Tsotroudi[4]

One of the asymmetries generated by globalization resides in the fact that while the scope of action of multinational enterprises (MNEs) is increasingly global, workers' terms and conditions of employment continue to be determined primarily at the national level and to vary widely from one country to the other. As noted by the World Commission on the Social Dimension of Globalization, in the absence of a balanced multilateral framework for investment, there is a risk that countries may be pushed by competitive bidding for investments to offer concessions that go too far in reducing the overall benefits and impede the fair distribution of these benefits (WCSDG, 2004: 86 para. 389). One may add that under such conditions, workers and their trade unions may not be in a position to bargain effectively, if at all. This paper examines international framework agreements (IFAs) as one possible way to overcome this asymmetry.

IFAs are understood as the outcome of negotiations between individual multinational enterprises (MNEs) and Global Union Federations (GUFs), i.e., international workers' organizations usually operating at the sectoral level. IFAs aim to establish "a formal ongoing relationship between the multinational enterprise and the global union federation which can solve problems and work in the interests of both parties".[5] They are meant to promote a number of principles of labour relations and conditions of work –notably including freedom of association principles– and to organize a common labour relations framework at the cross-border level, i.e., across the worldwide operations of the MNE, often covering not only the operations of the MNE's subsidiaries but also those of its subcontractors and suppliers.

Being a response to globalization, IFAs constitute an innovation in relation to traditional notions of industrial relations, collective bargaining, international/labour law and legal obligations. This paper attempts to compare IFAs to traditional collective bargaining instruments as these have been described in the Collective Agreements Recommendation, 1951 (No. 91) of the International Labour Organization (ILO). Through this comparison we seek to provide an answer, from an ILO perspective, to a question often raised with regard to IFAs: can they be described as industrial relations instruments akin to collective agreements? And if so, what could be their potential contribution to the process of building a transnational industrial relations framework? Answers to these two questions might be key in assessing the potential of IFAs in promoting global governance for sustainable development, and addressing the need for policy coherence and new partnerships.

IFAs as industrial relations instruments from an ILO perspective

IFAs have generated much enthusiasm within the research and policy community, not least because their negotiation, content and implementation process are reminiscent of collective bargaining processes, adding an important industrial relations dimension to previous corporate social responsibility (CSR) practices (see, for example, Gallin, 2008; Hammer, 2008; ICFTU, 2004: 95;[6]

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[5] According to the ICFTU, http://www.icftu.org/displaydocument.asp?Index=991216332&Language=EN, accessed 18 October 2007.

[6] "[A]greements between international trade union organisations and multinational enterprises on basic shared principles - can be seen as the start of international collective bargaining" (ICFTU, 2004: 95).

European Union (EU), 2005; and Laulom, 2007). Analyses of IFAs from a legal/institutional viewpoint are provided in Sobczack (2008) and Drouin (2008) who examine this question primarily from the point of view of the resemblance of these instruments to "collective agreements" as these are defined in national contexts.[7]

In this section, we explore IFAs and their relationship to collective bargaining and agreements from the viewpoint of ILO instruments, and in particular, the Collective Agreements Recommendation, 1951 (No. 91) (ILO, 1996a: 656; hereinafter Recommendation No. 91). This instrument was prepared, like all ILO standards, on the basis of a comparative analysis of law and practice of ILO member States with regard to collective bargaining; it constitutes the outcome of tripartite discussions under the auspices of the ILO, and was adopted through a tripartite two-thirds majority vote at the ILO Conference. It thus provides a synthesis of the essential elements of collective bargaining from a comparative perspective endorsed by a tripartite discussion and vote.

While this instrument is primarily addressed to governments, nothing prevents private actors from taking account of the *principles* contained in it in their voluntary practices, especially as it has been prepared with the active participation of employers' and workers' organizations from all ILO member States.

Definition/parties

In para 2(1) of Recommendation No. 91, collective agreements are defined as: "all agreements in writing regarding working conditions and terms of employment concluded between an employer […] or one or more employers' organisations, on the one hand, and one or more representative workers' organizations […] on the other."

At first sight, IFAs satisfy this enumeration of the essential constitutive elements of a collective agreement. IFAs are undoubtedly "agreements" as implied by their name and they are jointly negotiated and concluded through signature of a written text by an employer and a workers' organisation.

The parties to IFA negotiations are usually the MNE management at headquarters (holding company) and GUFs. This seems to correspond to the reference in Recommendation No. 91 to negotiations between an employer and one or more workers' organizations.[8] However, certain unresolved questions arise as to the representativeness of the parties to such negotiations. Recommendation No. 91 refers to "representative" workers' organizations. Moreover, a relevant ILO instrument, i.e., the Promotion of Collective Bargaining Recommendation, 1981 (No. 163) (ILO, 1996b: 97), indicates in para. 6 that "Parties to collective bargaining should provide their respective negotiators with the necessary mandate to conduct and conclude negotiations, subject to any provisions for consultations with their respective organisations."

In general, one may observe an asymmetry between the scope of authority or representativeness of the two sides to negotiations and the scope of coverage of the IFAs. The latter are meant to cover all MNE subsidiaries, as well as the corresponding unions.[9] However, as negotiations take place at headquarters level, there is limited involvement, if any, of the management and unions present in local production units who, moreover, are not signatories of the agreement. On the union side, GUFs traditionally play the predominant role in the negotiation and signature of the agreements given that involving all

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7 For a study of the recognition of the binding nature of unilateral/moral commitments by national courts in France, see Trébulle, 2007.

8 A relevant question in this context concerns the appropriateness of coupling the negotiation of these transnational instruments with the possibility of organizing *transnational* collective action undertaken in different countries at the same time. Bercusson (2008) sheds light on this issue by examining the European Court of Justice decision in *Laval* and *Viking*. Warneck (2007) provides an overview of ad hoc solidarity action undertaken at the EU level. However, as it stands today, Article 137(5) of the Treaty Establishing the European Community seems to exclude any regulatory competence regarding the right to strike. Empirical research on transnational collective negotiations and collective action (e.g., Da Costa and Rehfeld, 2007) has demonstrated that with few exceptions (such as the highly unionized automobile industry), in the absence of a clear regulatory framework and roles for the different actors, effective collective action is unlikely to develop further in Europe.

9 Electricité de France (EDF) (in 2005) and Arcelor (in 2005) are examples.

national and local unions concerned by the operations of the enterprise would be practically impossible.[10] Furthermore, the negotiations *never* include the management of national operations (although anecdotal evidence shows some informal consultations).

The issue becomes more complicated in cases where IFAs aim to cover third parties, including suppliers, contractors, subcontractors, and joint ventures that have only an indirect connection to the IFA and no participation whatsoever in its negotiation. In most cases, enterprises commit themselves to informing and encouraging subcontractors or suppliers to respect the provisions of the agreement. Provisions used include phrases such as “the group will end the relationship with suppliers who fail to comply” or “business partners will be encouraged to respect the principles laid down in the IFA”.[11]

Sobzack (2008), studies ways to address the question of mandate and overcome the problems that might be raised with regard to the issue of representativeness.

Content

As noted above, para 2(1) of Recommendation No. 91, defines the content of collective agreements as focusing on : *“working conditions and terms of employment […].”*

IFAs usually contain a commitment by the company to respect a number of principles of labour relations and conditions of work. Hammer (2008) provides a detailed table on the substantive provisions of IFAs and various references made in IFAs to international instruments, in particular, ILO Conventions. In particular, provisions in IFAs typically contain clauses focusing on two broad categories of standards: (a) fundamental principles and rights at work (freedom of association[12], collective bargaining, non-discrimination, abolition of forced labour, elimination of child labour) and minimum terms and conditions of employment (working time, wages, occupational safety and health); and (b) other conditions of work: mobility and related issues (e.g., transfer of pension entitlements), training, job security, subcontracting, and restructuring.[13] It would appear that while the former category responds to concerns by workers’ representatives, the latter addresses MNE’s concerns.

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, for instance, a specific time schedule or salary. 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. In the first place, by reaffirming the MNEs commitment to fundamental principles on freedom of association and collective bargaining, IFAs encourage the establishment and development of trade unions in local MNE subsidiaries. In the second place, they set the organizational basis governing the relations not only between central

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10 In almost half of the IFAs reached by the third trimester of 2007 national unions had some (not comprehensive) involvement in negotiations. In addition, many IFAs are initiated by EU federations and European works councils (EWCs). The most comprehensive “stakeholder” participation can be found in the 2005 EDF agreement, which involved four GUFs and 20 national unions.

11 In the chemical, mining and energy sectors, roughly half of IFAs refer explicitly to “contractors and suppliers”. The IFA of the ENI group covers the whole group including its contractors. The same is the case for Telefonica and OTE whose IFA applies to “all activities, contractors and suppliers”. The Merloni (2001), Rhodia (2005), Arcelor (2005), and PSA Peugeot (2006) agreements explicitly refer to the consequences of non-respect by a supplier/subcontractor, including termination of contract.

12 However, it should be noted that provisions regarding the protection of workers’ representatives in the exercise of their functions in enterprises are less frequently mentioned. For example, reference to the key ILO Convention No. 135 on Workers’ Representatives is specifically mentioned in only half of IFAs.

13 Some IFAs contain a clause on the role of social dialogue in times of industrial change or anticipation of organizational change, with a view to mitigating the impact of these changes on employment benefits and working conditions. Ideally, these agreements encapsulate three principles: (a) the anticipation principle – taking into account the impact of changes on workers *before* strategic decisions are made (on, for example, investments, mergers and acquisitions, and restructurings); (b) the principle of information provision for guidance – dialogue on both economic and social stakes and possible ways to address them; and (c) the principle of mitigation of social consequences for local communities and the economic equilibrium of the region potentially affected by industrial change. Empirical research on *European* framework agreements shows that some of these agreements might have contributed to a smoother transition in times of industrial change (see, for example, da Costa and Rehfeldt, 2007; ICFTU, 2004). Such considerations might have even constituted an important incentive for the management of enterprises in reaching IFAs.

management and GUFs but also between management and unions throughout the MNE structure in different countries and at different levels.

As indicated by the ICFTU "[A core] feature of the agreements is that they establish frameworks of principle and are not detailed collective agreements. They are not intended to compete or conflict with collective bargaining agreements at national level. *Indeed, they are intended to help create the space for workers to organise and bargain*" (ICFTU, 2004: 95; emphasis added). Therefore, IFAs have a broad perspective that corresponds at best to an "attitudinal structuring" type of bargaining (see next section); they do not go as far as discussing specific benefits and conditions: this would require a more in-depth "distributional" type of bargaining, which usually takes place at other levels (national, sectoral, enterprise etc.).

In most cases, an IFA draws on pre-existing self-regulatory tools developed by the enterprise concerned, such as unilaterally adopted corporate codes of conduct aimed at ensuring an ethical, transparent and environmentally sound business conduct. It could therefore be argued that enterprises that have signed an IFA have in a way transformed their "unilateral" codes into "negotiated" instruments. If so, these instruments could be seen as bringing about a qualitative transformation of pre-existing codes in three interrelated respects: (a) being joint instruments, IFAs express *common* interests on both sides of the enterprise, and are therefore viewed as carrying more legitimacy than unilaterally adopted management-driven codes; (b) they promote commitments concerning fundamental principles and rights at work, in particular, freedom of association and collective bargaining[14], as well as terms and conditions of employment, contrary to codes that focus more on environmental or broad ethical corporate principles; (c) they draw on international instruments, contrary to codes of conduct, which usually reflect a commitment to respect the relevant national legislation in the countries where companies operate; (d) IFAs are much more detailed and comprehensive instruments than codes, in particular in terms of scope of application and follow-up; and (e) they are subject to joint monitoring (see following section).

Machinery for monitoring and dispute settlement

Para 1(1) of Recommendation No. 91 provides that "[m]achinery appropriate to the conditions existing in each country should be established, by means of agreement or laws or regulations as may be appropriate under national conditions, to negotiate, conclude, revise and renew collective agreements"; according to para. 1(2) "[t]he organisation, methods of operation and functions of such machinery should be determined by agreements between the parties or by national laws or regulations, as may be appropriate under national conditions." Paragraph 7 provides that "[t]he supervision of the application of collective agreements should be ensured by the employers' and workers' organisations parties to such agreements or by the bodies existing in each country for this purpose or by bodies established *ad hoc*." Another relevant provision is in Paragraph 6, which provides that "[d]isputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions."

It appears obvious that certain references in Paragraphs 1, 6 and 7(e.g., legislation for the negotiation of collective agreements, laws or regulations on dispute settlement as well as national bodies for the supervision of the implementation of collective agreements), cannot be transposed to the case of IFAs, which are instruments of their own kind, destined to apply across jurisdictions, to all the subsidiaries of an MNE and often to its subcontractors and suppliers. Nevertheless, the reference in Paragraph 1(1) of Recommendation No. 91 to the establishment of a machinery by agreement of the parties to "negotiate, conclude, revise and renew collective agreements" strikes at the heart of IFAs, all of which contain provisions on the establishment of such machinery.

Moreover, the reference in Paragraph 7 to joint supervision of the parties' agreement corresponds to a significant feature of IFAs (which also represents one of their main differences from other self-regulatory instruments, such as codes of conduct), namely the fact that IFAs attribute to the signatories

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[14] However, provisions regarding the protection of workers' representatives in the exercise of their functions in enterprises are less frequently mentioned. For example, reference to the key ILO Convention No. 135 on Workers' Representatives is specifically mentioned in merely half of IFAs.

the power of implementing and monitoring their agreement, and adopting corrective action in cases of violation.

Having said this, certain important differences exist between the mechanisms envisaged for the negotiation/renewal of IFAs and those relevant to collective agreements. Because as noted above, IFAs aim at setting a general framework for the harmonious development of industrial relations throughout the operations of an MNE, the mechanism envisaged for the negotiation and renewal of the agreement does not focus on the revision of the IFA in the same manner as the revision of a traditional collective agreement. The latter would focus on renegotiation of wages and other conditions of employment; the review of IFAs would appear to focus on remedying the shortcomings that might impede MNE-wide effective implementation of IFAs after a few years of monitoring. Thus, the question of renegotiating IFAs is inextricably bound up with that of monitoring their application.

The monitoring and internal dispute settlement procedures set up by each enterprise in view of promoting IFAs are key for the possible consolidation of this practice which has accelerated considerably in recent years (more than half existing IFAs were adopted since 2004) and its evolution in the future. IFAs generally introduce three important tools: (a) joint monitoring committees that are composed of management and workers' representatives and that are intended to meet at regular periods in order to assess progress or deal with conflicts;[15] (b) proactive strategies aimed at creating a managerial culture respectful of the IFAs[16]; and (c) the adoption of incentives for workers' representatives at local, national and cross-border levels to report violations.[17]

To our knowledge there has never been a case where such a provision was used. Perhaps because most IFAs are recent instruments, joint review meetings do not currently seem to be held regularly, possibly hindering regular follow-up.[18]

One may suggest that the principle of subsidiarity is relevant to the issue of monitoring and implementation and IFAs. According to this principle, which has been primarily relied upon in the context of the EU[19], the central authority has a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level.[20] A possible transposition of the subsidiarity principle to the implementation and monitoring of IFAs would be dictated by pragmatism and aim at the effective implementation of IFAs as management would otherwise find it difficult to monitor the application of its IFA in all its operations (the same would apply for GUFs.[21] In that case,

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15 Most of the IFAs contain this commitment. The 2005 EDF, which involved four GUFs and 20 national unions, set up a follow-up body (Consultation Committee on CSR) composed of 28 members, including delegation from China.

16 E.g., training for local managers regarding the IFA constitutes the best available *ex-ante* tool. Performance indicators through a reporting system are a good *ex-post* promotional instrument, and several recent IFAs have established such procedures. For example, PSA Peugeot in 2006 has created an IFA information kit for local managers, informing them about their duties and rights under the IFA, and has set 20 performance indicators on the basis of which local managers – with input from unions – report annually on progress. EDF's IFA of 2005 contains similar procedures.

17 E.g., Veidekke in 2005.

18 Empirical research conducted by the IILS on the Anglo-Gold agreement of 2002 shows that despite a provision for an annual follow-up meeting, no such meeting was convened until March 2007. Similarly, in the case of Merloni, which was the first agreement signed by the IMF in 2001, the first implementation meeting was held only in 2006. In addition, there has been no follow-up action, or only very patchy, in the case of Prym (2003) and Rheinmetall (2003) (see IMF, 2006).

19 "The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty." Article 5 of the Consolidated Version of the Treaty Establishing the European Community (EC Treaty), Official Journal C 325/41-42, 24 December 2002 (http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/htm/C_2002325EN.003301.html, accessed 10 December 2008).

20 According to the Shorter Oxford English Dictionary, Fifth Edition.

21 The EDF agreement refers explicitly to this principle: "the agreement is intended to be both proactive in its commitment to universal principles applicable group-wide, and pragmatic in its implementation of the principles adopted in full respect for cultural, social and economic differences. Based on such universal principles and commitments applicable throughout the entire EDF Group, each company shall have to define the conditions of their local application and implementation, in compliance with the principle of subsidiarity and in accordance with its economic, cultural, professional or regulatory characteristics "(EDF, 2007: preamble).

subsidiarity would entail that MNE management leaves the task of implementing the IFA to the MNE subsidiaries (or even subcontractors and suppliers), while maintaining its authority to intervene in cases of violation and non-respect of the principles embodied in IFAs.[22] 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. Further research would be needed to examine the possibility of transposing this principle from the (public) EU context to that of IFAs as well as the implications of this principle for the effective implementation of IFAs on the ground and the safeguards that might be necessary in order to ensure that the commitments of the parties at the central level are not undermined in any way.

A related issue is that of resources dedicated to the implementation of the agreements, in particular, their monitoring and active promotion among local managers and subcontractors and suppliers. The amount of resources allocated by the MNE to promoting an IFA could constitute a major indicator for assessing the intention of the employer to be bound in good faith by the agreement.[23] In the absence of such commitment, the burden of follow-up falls largely on the shoulders of GUFs (or even NGOs).[24] It would appear, however, that GUFs and their affiliates at the national, local and enterprise levels rarely have sufficient resources for this.[25] This issue is even more important if one takes into account that IFAs rely largely for their success on awareness-raising mechanisms and campaigns rather than legally binding and sanction-driven procedures.

Existing, well-resourced fora established for information and consultation purposes, such as the European Works Councils (EWCs), might well be useful as part of the machinery for monitoring and follow-up of IFAs as well as resolving interpretation or implementation disputes, if they are given an explicit mandate to this effect. For the time being however, EWCs can perform this function only ad hoc, as they lack such an explicit mandate.[26]

World works councils might offer a more appropriate platform because of their global scope, provided that the Councils are clearly authorized by the parties to monitor the IFA and are regularly convened[27] (some IFAs give them an explicit mandate for direct representation of an MNE's global labour force).

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[22] For example, the Veidekke IFA states that in the event of complaint or an infringement of the agreement, the complaint should be raised firstly with the local site management. If the complaint is not resolved, it should be referred to the appropriate national union, which will raise the issue with the company's regional president; and if still not resolved, the complaint will be referred to the IFBWW Geneva office, which will raise the matter with the company's corporate management. Similar procedures can be found also in the Norske Skog and SCA agreements.

[23] One of the most interesting IFAs in this respect is the one concluded at the Greek telecommunications company OTE (2001) which makes a clear and detailed provision for resource allocation in organizing the "joint annual meeting". The costs arising from implementing the agreement are borne by the enterprise and include travel and accommodation for GUF representatives (UNI). The EDF, Falck, and Club Méditerranée agreements have similar provisions. The texts of these agreements, however, rarely refer to the actual costs of monitoring, implementation and evaluation.

[24] As the Chiquita example demonstrates, collaboration between the union movement and NGOs can be very effective and a major incentive for the management of MNEs in striking IFAs (Riisgaard, 2004).

[25] As the International Metalworkers Federation (the GUF that has signed the greatest number of IFAs) admits: "Experience has shown that effective implementation requires significant resources to conduct meetings, maintain networks and coordinate activities. It is clear that the IMF does not have the resources to itself manage this level of implementation in all of the companies with which it has signed IFAs" (IMF, 2006).

[26] EWCs in principle perform an information and consultation function regarding the European operations of the MNEs concerned (EWC Directive 94/45/CE: 5.1, 5.2, and 61). Nevertheless, EWCs have co-signed approximately 13 IFAs (and approximately 75% of the all joint texts signed across Europe according to Pichot, 2006) and are regularly used as fora for assessing progress made in the implementation of IFAs (for example, Bourque, 2005). The negotiating and monitoring functions of EWCs clearly go beyond their original mandate attributed by the 1994 EWC Directive. The latter is currently in the process of being amended.

[27] The agreements of Hochftief (2000), Volkswagen (2002), Daimler Chrysler (2002) and Renault (2004) formally involved their world works councils in the signature of their IFAs. Conversely, the IFAs of Endesa (2002), Telefonica (2000), OTE (2001), Chiquita (2001) and Danone (1988) have been triggered by international trade union activism initially aimed at establishing world works councils (Schömann et al., 2007). On some occasions, MNEs have taken specific steps towards setting up a world works council in order to monitor and implement IFAs more effectively. This is notably the case of the Peugeot PSA agreement of 2006.

It might therefore be interesting to study in more detail the regularity of the meetings and the follow-up of recommendations taken in world works councils.[28]

Scope/binding character

Para 3(1) of Recommendation No. 91 provides that "Collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded".

Many authors emphasize that IFAs are not legally binding instruments from a national legal viewpoint, since they cannot be relied upon before national courts and lead to enforceable decisions or the adoption of legal sanctions in the case of non-implementation

However, the fact that IFAs are not intended to be relied upon by the parties in judicial proceedings does not mean that the parties do not have the intention to be bound in good faith by their commitments as reflected in these agreements. In some countries, including the UK, a collective agreement is not legally binding unless specifically requested by the parties (which they rarely do); if such request is not made, the enforcement of the "voluntary agreement" hinges on the goodwill or relative strength of the parties (Bamber and Sheldon, 2004: 514). According to Bruun (2004:39), "the distinguishing feature of [the collective agreement is] its binding effect on the parties to the agreement, irrespective of whether that binding effect [is] made effective and backed up by legal or extra-legal sanctions."

In order to assess whether IFAs are industrial instruments akin to collective agreements, one has therefore to assess the degree to which the parties feel bound by these agreements and take the steps necessary in practice to implement them in good faith.

According to the ILO, good faith cannot "be imposed by law" but rather, "[…] could only be achieved as a result of the *voluntary and persistent* efforts of both parties" (preparatory work of Convention 154 cited in Gernigon et al., 2000: 33 emphasis added). In this regard, the mere existence of an IFA could be an indication of the voluntary and persistent efforts of the parties to negotiate the content of such an instrument and of the parties' intention to work together for the IFA's promotion and application. This in and of itself might provide an indication that the element of "good faith" is present and, therefore, that such an agreement does indeed constitute a genuine commitment. However, despite such indications, there is little conclusive empirical evidence on whether IFAs are observed effectively by the parties and whether corrective action is in practice adopted in cases of violation. More research is necessary on this important point.

As a result of the lack of research on the effective implementation of IFAs, especially in countries with a weak record in terms of labour standards, there is very little information for the time being on the impact of these instruments on improving working conditions, or promoting the principles of freedom of association and collective bargaining. Some examples have been reported in the 2004 Global Report under the ILO Declaration on Fundamental Principles and Rights at Work (ILO, 2004), and show some positive impact, particularly in terms of promoting workers' organizations at companies such as Accor, Daimler-Chrysler, Fronterra, Statoil, Telefónica and Chiquita (ICFTU, 2004: 100; see also IMF, 2006; Lismoen and Loken, 2001; Riisgaard, 2004; and Wills, 2002). Miller (2008) documents the most recent example of positive impact on industrial relations during the negotiation of the first IFA in the textile sector.

In practical terms, for those involved in the negotiation and monitoring of IFAs, the best possible means of putting them to good use is raising awareness of violations within the local or central management of the MNE, so as to obtain progressive changes in the MNE management's conduct (and that of its subcontractors and suppliers). The possibility of having recourse to "name and shame" strategies in the last resort, remains key in obtaining compliance.

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[28] Although the non-binding character of IFAs allows no role for tribunals or (labour) courts, in at least two cases IFAs contain a reference to a competent tribunal. One, Arcelor, says that the IFA is governed by the laws of Luxembourg, and that the competent tribunals are in that country. The second, Falck, refers to Danish legislation, but not to the competence of the tribunals in that country. A question that remains is whether courts in a specific jurisdiction are truly competent in disputes arising out of the interpretation of IFAs, due to their voluntary nature, and above all whether these courts have jurisdiction to address issues that might relate to the situation of third parties, often in other parts of the world ("extraterritoriality"). See Sobczak (2008); on the legal implications of CSR commitments, see Trébulle, 2007.

Dissemination

Paragraph 8(a) of Recommendation No. 91 provides that national laws or regulations may, among other things, make provision for "(a) requiring employers bound by collective agreements to take appropriate steps to bring to the notice of the workers concerned the texts of the collective agreements applicable to their undertakings;".

Tanking into account that the reference in the above provision to national laws and regulations is not relevant to the case of IFAs, it should be noted that IFAs do not have yet a strong record in terms of information dissemination. Company websites reveal little visibility for IFAs. In addition, there is little evidence that IFAs are systematically translated into the languages of all the countries where companies operate, despite the existence of relevant provisions in many agreements.[29] This may adversely affect their dissemination among local managers and unions. The problem of outreach can become even more acute in respect of subcontractors and suppliers where the links with the headquarters of the MNE or the GUF (the usual custodians of IFAs) are weaker. Dissemination is key both for assessing the "voluntary and persistent efforts of both parties" to apply the agreement and, in many respects, the "good faith" of the parties to implement the IFAs.

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In the light of the foregoing it may be said that IFAs possess some, but not all, of the essential constitutive elements of industrial relations instruments akin to collective agreements. It should be emphasized that IFAs are by no means the most advanced industrial relations instrument at the cross-border level. So far, one sector, i.e., the maritime, has been endowed with a fully-fledged international collective agreement on seafarers' terms and conditions of employment. The latest negotiated collective agreement in this sector covers increases in wage levels as well as changes in contractual clauses to reflect the provisions of the ILO Maritime Labour Convention, 2006. The adoption and periodical renegotiation of a collective agreement in this sector since 2003 has taken place against the background of the institutional framework of the ILO serving to set seafarers' minimum wages and define other terms and conditions of employment for this sector through ILO conventions and recommendations.[30] Compared to such a fully-fledged collective agreement at the cross-border level, IFAs are still an imperfect industrial relations instrument and their effectiveness remains to be proved empirically.

The possible contribution of IFAs to the emergence of a cross-border industrial relations framework

A further question to be explored concerns the potential contribution of IFAs to developing and eventually institutionalizing an industrial relations framework at the cross-border level. In this section, we address this question from an interdisciplinary point of view based on three sociological theories of industrial relations (behavioural theory of labour negotiations by Walton and McKersie), politics (world polity/culture globalization theory by Boli and Thomas) and law (sociological objectivism by Scelle).

[29] E.g., Lukoil in 2004.

[30] In particular, the ILO Joint Maritime Commission periodically recommends the minimum wage for an able seafarer under the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187) (now consolidated within the Maritime Labour Convention, 2006). This recommendation, which is periodically updated based on negotiations among the tripartite ILO constituents within the Joint Maritime Commission's Subcommittee on Wages of Seafarers, has served as an important benchmark for wage negotiations around the world, not only at national but also international level (ILO, 2006: 40-41). Against this background, the 1990s witnessed the development of global collective bargaining in the maritime sector. In the early part of that decade, shipowners formed the International Maritime Employers' Committee (IMEC) for the purpose of negotiating a global industry pay agreement with the ITF for seafarers working on board "flag of convenience" ships. The first such agreement was negotiated in 2001 (ILO, 2006: 22). In the most recent negotiations of this agreement, under the auspices of what is now known as the "International Bargaining Forum" (London, 27 September 2007), the parties reached a collective agreement with effect as of 1 January 2008, covering some 70,000 seafarers of all nationalities serving on over 3,500 ships. http://www.itfglobal.org/press-area/index.cfm/pressdetail/1586 accessed 10 January 2008.

Industrial relations

From the point of view of industrial relations theory, the strategies in which the parties to IFA negotiations engage do not seem to correspond to traditional forms of collective bargaining – "redistributive" or "integrative"[31] – which aim essentially at the redistribution of wealth. As said earlier, the parties to IFAs aim by and large at setting up a general framework of harmonious relations between GUFs/unions and MNE management, in particular, by ensuring respect for fundamental principles on freedom of association and collective bargaining throughout the MNE structure. Thus, IFAs are agreements of principle intended primarily to help create the space in which workers can organize themselves and bargain. The parties to IFA negotiations are, in fact, engaged in strategies that might be termed "attitudinal structuring" (Walton and McKersie, 1965).

Attitudinal structuring encompasses all the actions and attitudes of the parties to a negotiation, which are either consciously or unconsciously aimed at shaping the opponent's behaviour, that is, building feelings of *trust* towards the other; beliefs about the other's *legitimacy*; feelings of *friendliness* towards the other; and *motivational* orientation. All these result in *tendencies* to adopt cooperative (instead of competitive or individualistic) actions towards each other (Walton and McKersie, 1965: 185). Negotiating IFAs resemble a process in which the parties learn from each other. Considering the increasing pace in the adoption of IFAs, this attitudinal interaction might already have served as fertile ground for confidence building between some GUFs and MNEs. However, as noted above, further research is needed to assess actual improvements on the ground.

In addition to bargaining *between* the parties to an IFA, each party also appears to engage in bargaining *within* its own ranks – "intra-organizational bargaining." This includes negotiations to resolve internal conflicts and to clarify positions over strategies, tactics, and in general the type of relationship that should be developed with the other side (Walton and McKersie, 1965: 281). Such internal bargaining may take place among MNE managers as well as among unions, in different countries and MNE subsidiaries. Such debates within the trade union movement relate to clarification of strategies, division of labour among different levels (enterprise, local, sectoral, national, regional, global), representation mandates and the usefulness of IFAs (see, for example, IMF, 2006; Miller, 2008). Similar debates take place within MNEs – central MNE management may be criticized by the "periphery" or competitor companies over the need to adopt an IFA.

Overall, what these two forms of bargaining – attitudinal structuring and intra-organisational bargaining - could generate is a change in attitudes and mentalities within and between GUFs/unions and MNEs. This is an essential step in consolidating an industrial relations framework at the cross-border level. In their present form, IFA negotiations seem to rely mainly on a behavioural understanding of negotiations aimed primarily at the emergence of cooperative attitudes and understandings between the parties. The two above-mentioned sub-processes of bargaining have the potential to pave the way towards more sophisticated (redistributive or integrative) forms of collective bargaining, similar to those experienced in certain national settings or the maritime sector at the cross-border level, once the context is mature enough. In that sense, IFAs can be said to constitute a key building block towards the consolidation of a global industrial relations system.

Law

The example of the collective agreement reached in the maritime sector demonstrates the importance of a legal/institutional framework in providing a platform for and buttressing negotiations. The significance of such a framework is demonstrated by the fact that IFAs make reference to numerous ILO instruments (Conventions, Recommendations, 1998 Declaration on Fundamental Principles and Rights at Work).

[31] Distributive bargaining implies a negotiation process over the distribution of a fixed sum, where a gain for one side marks a corresponding loss for the other. In the IFA context, this might be an MNE's global wage agreement that guarantees a salary increase if profits grow. Integrative bargaining implies a negotiation process where both sides search ways to "expand the pie", that is to say, develop solutions leading to benefits for both sides. In the case of IFAs, a good example would be the negotiation of a global agreement that creates a global social safety net for workers of an MNE experiencing industrial change.

Because IFAs do not have any institutional backup or attachment to a particular legal order, a classical legal perspective would have difficulty accommodating their legal dimension (see Sobczak, 2008). So far, only a sociological understanding of international law, known as sociological objectivism, allows us to grasp the legal dimension of IFAs because this theory sees law not so much as a form of top-down state regulation but rather as a means to address a need for social organization in the context of increased cross-border activity generated by the globalization of economic activity. According to George Scelle who is the main proponent of this approach, the aim of the law, including private agreements, is to satisfy the social needs of individuals and their groups, and in particular to organize social relations, including labour relations, in the context of a global society ("*société internationale globale ou oecuménique*") generated by the "interpenetration of peoples through international trade" ("*l'interpénétration des peuples par le commerce international*") in which individuals, rather than States, lie at the centre of the international legal order (Scelle, 1932, 1934).

The innovative function performed by IFAs as instruments serving the purposes of opening spaces for dialogue and organizing interaction between actors (such as global unions and MNEs) matches Scelle's vision in several respects. Indeed, Scelle would view IFAs as a "suprastate phenomenon" deriving from a social need to organize global interactions between the MNE management and its global work force in an era of globalization. IFAs would reflect the outcome of interaction between individuals (and groups of individuals) in need of organizing their own dealings and indeed, constructing their own "legal framework" at the cross-border level, following the dynamics created by international trade and investment. The "legal framework" created by this interaction could coexist along other legal orders, including that created by the social partners through collective bargaining at the national, sectoral and enterprise levels, or by each State through regulation, or further still, by States and international organizations at the international or regional levels. This vision allows us to envisage IFAs as part of mutually reinforcing initiatives that could eventually lead to the institutionalization of a global industrial relations framework. In this respect, it should be noted however, that certain important questions need to be addressed in the process of building such a framework, including the relationship between IFAs and collective agreements at various levels and the need to safeguard the autonomy of the parties vis-à-vis public bodies.

Politics

From the point of view of globalization theory, as said above, the parties negotiating IFAs can be seen as helping to disseminate and promote a certain set of common values, such as fundamental principles and rights at work at the cross-border level. The parties to IFAs may therefore be seen as performing a role that goes beyond that attributed to traditional social partners (bargaining) and that focuses, rather, on promoting a set of common values in general. This amounts to a wider role that is characteristic of actors in civil society. The world culture/polity theory of globalization would argue that in promoting this set of values, these actors actually contribute to the emergence of a cross-border industrial relations framework.

This theory describes the function of international civil society as an "enactor" of world cultural norms, shaping and channeling "culture" as a catalyst for subsequent change in state policies and laws (Boli and Thomas, 1997).[32] According to the theory, empirical data demonstrate that when cultural norms have been solidified through repeated civil society activity for a sufficiently long time, States end up stepping in to endorse this development, including through the adoption of legally binding regulatory frameworks.

[32] The theory defines globalization as an increasingly global interdependence and intensification of contacts, the main end product of which would be a "common consciousness" of the world as a whole and consequently a common polity, or "world polity." It demonstrates that civil society activity has contributed in the past to the generation of a range of standardized principles, models, and methods for the organization of society as well as the further development of modern-day international law through the crystallization of cultural values. For instance, civil society activity has shaped a basic model of the nation-state, providing that the state was to be responsible not only for internal order and external defence, but also for building a modern society and promoting citizen welfare and civic engagement. The Red Cross in the area of the rules of war, or the *Association internationale pour la protection légale des travailleurs* in the area of labour rights – both founded well before the creation of the League of Nations, the ILO and the United Nations – were precursors to the Geneva Conventions and to the various ILO Conventions (Boli, 2001: 6262; Ghebali, 1984: 21-29).

This theory predicts that if the repeated activity of GUFs and MNEs in concluding IFAs is sufficiently solidified, this self-regulatory initiative might be eventually buttressed with an institutional framework set up through public action. However, despite certain initiatives in this direction in the context of the EU[33], for the time being, the question of what would constitute appropriate public action in this area has not given rise to consensus within and among the relevant actors (GUFs and their affiliates, employers' organisations and MNEs). A possible institutionalization might induce a move beyond the present attitudinal structuring and intra-organizational forms of bargaining, which are aimed precisely at building a common "culture", towards more redistributive forms of negotiations, which would be more akin to traditional collective bargaining processes.

Conclusion

This paper has attempted to assess the nature of IFAs as industrial relations instruments and their possible contribution to building a cross-border industrial relations framework. It has found that, first, IFAs possess some, but not all, of the essential constitutive elements of industrial relations instruments akin to collective agreements, as the latter are defined in ILO Recommendation No. 91. The actual record of implementation of IFAs on the ground would constitute important information in making a more exact assessment of the relationship of IFAs to collective agreements. Empirical research is necessary in order to provide concrete evidence of the parties' will (or lack thereof) to be bound by the provisions of IFAs and implement them in good faith. In addition to this, unresolved issues remain with regard to the representation mandate of the parties to IFA negotiations, while the monitoring and dissemination practices appear to be so far rather rudimentary.

Furthermore, as has been shown above, IFAs differ from traditional collective agreements in that they are not the outcome of classical forms of collective bargaining addressing for instance, wages and other terms and conditions of employment. For the time being, the only example of a fully-fledged collective agreement addressing wages and other key conditions of employment at the global level, is the one reached in the maritime sector. IFAs on the contrary, are agreements of principle intended primarily to set up a general framework of harmonious relations between GUFs/unions and MNE management, in particular, by ensuring respect for fundamental principles on freedom of association and collective bargaining throughout the MNE structure. The parties to IFA negotiations are, in fact, engaged in "attitudinal structuring" strategies aimed at building feelings of trust towards the other party, beliefs about the other's legitimacy and feelings of friendliness towards the other. Parallel negotiations, known as "intra-organisational bargaining", help clarify strategies within each group (i.e., the MNE and unions).

What these two forms of bargaining – attitudinal structuring and intra-organisational bargaining - could generate is a change in attitudes and mentalities within and between GUFs/unions and MNEs. This is an essential step in consolidating an industrial relations framework at the cross-border level. One might say that MNEs and trade unions function in this context not so much as classical bargaining parties but rather as civil society actors shaping and channelling "culture" as a catalyst for change in mentalities and later on, for the formulation of relevant public policies and laws. If the repeated activity of GUFs and MNEs in concluding IFAs is sufficiently solidified, self-regulation might be eventually buttressed with an institutional framework set up through public action. At that stage, it might be possible to move beyond the present attitudinal structuring and intra-organizational forms of bargaining, which are aimed precisely at building a common "culture", towards more redistributive forms of negotiations. This consolidation of dialogue and trust might constitute key elements for the promotion of a fair globalization, based on an equitable and democratic world polity, and ultimately, global citizenship. Dialogue and trust building might also be key for promoting global governance for sustainable development, and addressing the need for policy coherence and new partnerships.

[33] The European Commission announced in its Social Agenda 2005-2010, that it would look at the possibility of an optional European framework for transnational agreements that would allow the social partners to formalise the nature and results of transnational negotiation. According to the Commission, "[P]roviding *an optional framework for transnational collective bargaining* at either enterprise level or sectoral level could support companies and sectors to handle challenges dealing with issues such as work organisation, employment, working conditions, training" (European Union, 2005: 24; emphasis added). See also Sobczak (2008) and Bé (2008).

Thus, at this stage, IFAs can be described as imperfect forms of industrial relations instruments, reflecting the outcome of interaction between individuals (and groups of individuals) in need of organizing their own dealings at the cross-border level, following the dynamics created by globalization. These instruments may eventually play their part in paving the way for a fully fledged industrial relations framework at the cross-border level. Related questions that need to be addressed in this process include the relationship between IFAs and collective agreements at various (national, sectoral, enterprise etc.) levels and the role of institutionalized public action in providing appropriate support without affecting the autonomy of the parties which lies at the heart of voluntary instruments such as IFAs.

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