

International framework agreements and management of global supply chain: Extra-judicial mechanisms to enforce international labour standards

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1. Introduction

Multinational enterprises (MNEs) have become global players in the current globalized labour market and their economic activities are no longer territorially limited, but they extend in different countries, thereby leading to the development of global supply chains. Against this background, companies' operations are increasingly conducted by foreign subsidiaries and they are being outsourced to business partners worldwide. In both cases, lower working conditions and production costs in foreign countries are one of the driving factors leading to this business choice.

Despite their transnational operations, the regulation of MNEs' activities is still predominantly governed by national law, which considers parent companies, subsidiaries and business partners as different legal entities, with different legal personalities.¹ The lack of international regulations governing the direct legal accountability of parent companies for the violation of labour standards by their subsidiaries and business partners can be added to the challenge of the territorial scope of application

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¹ International Labour Organization (ILO), *International Framework Agreements in the food retail, garment and chemical sectors – Lessons learners from three case studies* (International Labour Office, Sectoral Policies Department (SECTOR), Geneva, 2018) 15.



of labour law.² All of this has had severe social consequences.³ To that end, MNEs, global union federations (GUFs), European trade union federations and other workers' representative bodies have started negotiating and concluding transnational company agreements (TCAs) – a category including international (or global) framework agreements (IFAs) and European framework agreements (EFAs) – as of 1988.

The emergence of this form of transnational private labour regulation is one way to address this 'governance gap'.⁴ To that end, in a number of IFAs the signatory parties have extended the scope of application of the agreement not only to subsidiaries but also to suppliers and sub-contractors, with some of the texts referring to the entire supply chain. The positive contribution that TCAs may bring to the improvement of, and compliance with, labour standards in global supply chains is also evident in recent policy documents adopted by the International Labour Organization (ILO).⁵

In spite of these developments, how to ensure the enforcement of an IFA along the global supply chain is still contested. This paper therefore intends to explore which avenues – if any – the signatory GUF could use to enforce an IFA against the signatory MNE when a direct business partner (or another actor along the global supply chain – eg a second-tier supplier) violates a labour standard laid down in the agreement. Research

² In this respect, see the Revised Draft of the 'Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises (16 July 2019) <www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf>.

³ HF Cantú Rivera, 'Business & Human Rights: From a "Responsibility to Respect" to Legal Obligations and Enforcement' in J Letnar Černič, TL Van Ho (eds), *Human Rights and Business: Direct Corporate Accountability for Human Rights* (Wolf Legal Publishers 2015).

⁴ ILO, 'Decent Work in Global Supply Chains' (Report IV, International Labour Conference, 105th Session (Geneva 2016) International Labour Office) 2; R Krause, 'The Promotion of Labour Standards Through International Framework Agreements' in H Gött (ed), *Labour Standards in International Economic Law* (Springer International Publishing AG 2018) 330.

⁵ ILO, 'Decent Work in Global Supply Chains' (n 4) 66; ILO, Resolution concerning decent work in global supply chains adopted on 10 June 2016 para 23(c); ILO, Meeting of experts on cross-border social dialogue, Final Conclusions, Geneva 12-15 February 2019 conclusion no 8.



has been conducted on the legal enforcement⁶ of IFAs for violations committed by subsidiaries.⁷ Extra-judicial enforceability, especially in relation to infringements by business partners, is still uncharted territory, and therefore the focus of this contribution.

This paper contributes to furthering the academic and policy debate on IFAs and, more in general, on the regulation and enforcement of labour rights in MNEs' global supply chains. To that end, section 2 explores the development of global supply chains and how IFAs can be considered an attempt to address the challenges to labour rights' enforcement that stem from the transnational nature of MNEs' operations. Section 3 proposes five extra-judicial enforcement mechanisms that a number of IFAs already set out, albeit to different degrees, and that could be further used to ensure – or at least promote – the compliance with the labour standards laid down in the agreements throughout MNEs' global supply chains. In this respect, mediation is presented as an important avenue to settle transnational labour disputes while preserving the (future) working collaboration between the signatory parties. Section 4 sets out the conclusions and recommendations.

2. *Global supply chains and development of IFAs*

Over the last decades, companies have sought to expand their business activities in international markets either by relocating part of their business production in foreign countries (via establishing branch offices, subsidiaries or joint ventures) or by entering commercial relationships with third parties, eg suppliers and sub-contractors.⁸

The creation of corporate groups and the consequent offshoring of part of a company's activities to subsidiaries ('intra-enterprise

⁶ In this paper, legal enforcement refers to judicial enforcement before national courts.

⁷ Eg A Goldman, 'Enforcement of International Framework Agreements under U.S. Law' (2011-2012) 33 *Comparative Labour L & Policy J* 605.

⁸ A Rühmkorf, 'Global sourcing through foreign subsidiaries and suppliers: challenges for Corporate Social Responsibility' in A de Jong, R Tomasic (eds), *Research Handbook on Transnational Corporations* (Elgar 2017) 196.



relationship’) as well as the outsourcing of part of the production to business partners have led to the establishment of global supply chains.⁹

This fragmentation of activities and production in foreign developing countries has yielded positive results for the economy of these countries. Yet, it has also had social consequences on the labour conditions of workers.¹⁰ This phenomenon has drawn the attention of different stakeholders, such as States, international organizations like the United Nations and the Organisation for Economic Co-operation and Development, NGOs, and trade unions. The governance of global supply chains and its relation with international labour standards is now at the core of the debate at the ILO.¹¹

By the same token, more than ever, MNEs have displayed their willingness to become socially responsible actors in this ever-changing international landscape. To that end, different governance mechanisms have been used to promote labour standards along the global supply chain, with IFAs being one of them. Considered by some scholars as a new form of transnational collective bargaining at company level,¹² an example of transnational governance¹³ or transnational labour regulation,¹⁴ the conclusion of these agreements displays the current shift from public, state-based forms of social regulation to private, self-regulatory initiatives.

⁹ For the definition of global supply chain, see ILO, ‘Decent Work in Global Supply Chains’ (n 4) 1; G Gereffi, K Fernandez-Stark, *Global Value Chain Analysis: A Primer* (Center on Globalization, Governance & Competitiveness, Duke University, 2nd edn, 2016) 7.

¹⁰ ILO, ‘Decent Work in Global Supply Chains’ (n 4) 1-4.

¹¹ ILO, Resolution concerning decent work in global supply chains (n 5).

¹² R-C Drouin, ‘Freedom of Association in international framework agreements’ in A Blackett, A Trebilcock (eds), *Research Handbook on Transnational Labour Law* (Elgar 2015) 218.

¹³ I Schömann, ‘Transnational Company Agreements: Towards an Internationalization of Industrial Relations’ in I Schömann and others (eds), *Transnational Collective Bargaining at Company Level – A New Component of European Industrial Relations?* (ETUI aisbl 2012) 208.

¹⁴ A Blackett, A Trebilcock, ‘Conceptualizing Transnational Labour Law’ in A Blackett, A Trebilcock (eds), *Research Handbook on Transnational Labour Law* (Elgar 2015) 3 ff.



The first IFA was signed by Danone and the International Union of Food and Allied Workers (IUF) in 1988.¹⁵ Since then, the pace at which TCAs have been concluded and renewed has steadily increased. Specifically, to date 338 TCAs have been concluded,¹⁶ with about half of them being global framework agreements.¹⁷

The IFAs concluded (or renewed) as of 2009 belong to the second generation of IFAs.¹⁸ Unlike the previous ones,¹⁹ in these agreements the signatory parties have paid increasing attention to the advancement of labour rights outside the corporate group. In this regard, the degree of MNEs' commitment varies. Based on the current policy and academic debate on the topic,²⁰ the second generation of IFAs can be classified in four categories when it comes to the references made to companies operating in the global supply chain:²¹ a) IFAs that contain a stronger commitment, according to which the MNE *expects/requires* its business

¹⁵ D Gallin, 'International Framework Agreements: A Reassessment' in K Papadakis (ed), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Institute for Labour Studies 2008) 26.

¹⁶ The database of the European Commission lists 321 TCAs at June 2018: European Commission, Database on transnational company agreements <<https://ec.europa.eu/social/main.jsp?catId=978&langId=en>>. The author consulted the website of Planet Labor for the TCAs concluded between June 2018 and May 2020 <www.planetlabor.com>.

¹⁷ International Training Center of the International Labour Organization (ITC-ILO), *Transnational Company Agreements: Issues, Approaches and Practices – A guide for employers' organizations and companies* (International Training Centre of the International Labour Organization 2018) 1. This number of IFAs refers to 2018 when, according to this publication, 320 TCAs had been concluded. In the period June 2018 - May 2020, 13 new IFAs have been concluded and 4 have been renewed <www.planetlabor.com>.

¹⁸ F Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (Springer International Publishing 2018) 36.

¹⁹ *ibid* 152-153.

²⁰ *ibid* 147-154; ITC-ILO, *Transnational Company Agreements* (n 17) 28-30; R Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (2020) 17 Intl Organizations L Rev 178, 185-186.

²¹ It is worth noting that the boundaries between these categories are not clear cut as some IFAs fall in more than one category. See, eg Tchibo 'Global framework agreement over international labor standards throughout the textile supply chain' (2016).



partners to comply with the agreement²² or consider the compliance with (some of)²³ the labour standards as a *criterion to initiate and/or terminate the contractual relationship*;²⁴ b) IFAs in which the MNE undertakes to *inform, circulate and/or communicate* the text of the agreement to its suppliers and sub-contractors and *encourage* them to comply with it;²⁵ c) IFAs that refer to *the entire chain of production* (eg second-tier suppliers, joint ventures);²⁶ d) IFAs with no reference to business partners (or other actors along the global supply chain).

In the first three situations, the question that arises is then to what extent a signatory GUF could enforce the provisions of the IFA that contain these commitments against an MNE. The following section will explore this issue.

3. *Extra-judicial enforcement of IFAs along the global supply chain*

The legal enforcement of an IFA directly against the MNE for violations committed by its business partners is very unlikely. In this respect, legal literature has often associated TCAs with the concept of soft law, a category that 'is defined by a lack of legal enforceability' before courts.²⁷ Furthermore, piercing the corporate veil is not a viable option as suppliers and sub-contractors are separate legal entities and their link with the transnational corporation is 'merely' commercial, unlike for subsidiaries. Investigating the possible extra-judicial enforcement mechanisms available to a GUF to ensure IFAs' compliance along the global supply chain is thus relevant. This is still largely unexplored territory in legal literature,

²² Eg Solvay 'Global Framework Agreement on social responsibility and sustainable development between Solvay Group and IndustriALL Global Union' (2017) (Solvay IFA).

²³ For the breadth of the scope of application, see Hadwiger, *Contracting International Employee Participation* (n 18) 154.

²⁴ Eg Lafarge 'Global Agreement on Corporate Social Responsibility and International Industrial Relations' (2013).

²⁵ Eg Sodexo 'Global agreement over preventing sexual harassment at work' (2017).

²⁶ Eg Esprit 'Global Framework Agreement' (2018).

²⁷ A Sobczak, 'Ensuring the Effective Implementation of Transnational Company Agreements' (2012) 18 Eur J of Industrial Relations 139, 142; A Sobczak, 'Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility' in K Papadakis (n 15) 125.



if one excludes some attention paid to alternative dispute settlement procedures (e.g. arbitration and mediation)²⁸ and self-enforcing mechanisms, such as ceased cooperation, negative publicity with consequent reputational sanctions and industrial action.²⁹

That being the case, this paper proposes five extra-judicial enforcement avenues: a) social dialogue; b) mediation; c) stronger ‘compliance role’³⁰ of the ILO; d) clauses in IFAs referring to terminating MNE’s business contracts, should a business partner violate a labour standard; e) MNEs’ due diligence obligations and guidelines. Depending on the content of the agreement, the use of one mechanism does not exclude the other.

a. The social dialogue route

The 2019 Conclusions of the ILO Tripartite Meeting of Experts held that ‘the parties concerned [should]: consider developing dispute resolution mechanisms under TCAs (...) in order to enhance compliance’.³¹ To that end, social dialogue can be considered ‘a traditional form of dispute resolution’³² and the first important extra-judicial mechanism to ensure compliance with the content of IFAs not only by MNEs’ subsidiaries but also by business partners and, more in general, along the entire supply chain, if the IFA sets it out. Dialogue between different parties, for example, was decisive in solving a number of conflicts arisen in some of H&M’s suppliers in Myanmar and Pakistan.³³

A constructive social partnership between signatory parties as well as between local managers and local trade unions is key to monitor the

²⁸ F Hadwiger, ‘Looking to the Future: Mediation and Arbitration Procedures for Global Framework SAgreements’ (2017) 23 *Transfer* 409, 424; Drouin (n 12) 228.

²⁹ Hadwiger, *Contracting International Employee Participation* (n 18) 76-83.

³⁰ Term used by Hadwiger, ‘Looking to the Future’ (n 28) 411.

³¹ ILO, Meeting of Experts on cross-border social dialogue, Final Conclusions (n 5) conclusion no 13(f).

³² Hadwiger, ‘Looking to the Future’ (n 28) 415.

³³ ILO, *International Framework Agreements in the food retail, garment and chemical sectors* (n 1) 40-41. For another successful example, see page 53 of the same report in relation to the Solvay IFA (n 22).

deployment of the agreements locally, and to anticipate and eventually solve disputes that may arise on the interpretation and implementation of IFAs.³⁴

Concerning social dialogue as a tool to *monitor* the deployment of the agreement at local level, a considerable number of IFAs provides for the establishment of monitoring bodies – usually called monitoring committees – consisting of signatory parties’ representatives and sometimes local actors.³⁵ These bodies meet regularly (usually once a year) to take stock of the deployment of the agreement.³⁶ Compliance with IFAs by MNEs’ suppliers and sub-contractors can also be one of the topics that is discussed during these meetings.³⁷

In addition to monitoring committees, other tools can be useful for an effective implementation and monitoring of IFAs:³⁸ the dissemination of the text and content of the agreement to MNEs’ business partners and local trade unions operating in these companies,³⁹ a system of social auditing,⁴⁰ visits at the premises of suppliers and sub-contractors,⁴¹ and capacity building exercises provided to management and trade unions/workers’ representatives of MNEs’ business partners.⁴² These tools

³⁴ Hadwiger, ‘Looking to the Future’ (n 28) 411; ITC-ILO, *Transnational company agreements* (n 17) 12.

³⁵ Hadwiger, ‘Looking to the Future’ (n 28) 411.

³⁶ S Marassi (Roger Blanpain, ed), *Globalization and Transnational Collective Labour Relations: International and European Framework Agreements at Company Level* (Wolters Kluwer 2015) 168-169.

³⁷ Hadwiger, *Contracting International Employee Participation* (n 18) 83 and 88. For examples of IFAs, see: Lukoil ‘Agreement between International Federation of Chemical, Energy, Mine and General Workers’ Unions, Russian Oil and Gas Workers Union And Open Joint Stock Company “Oil Company LUKOIL”’ (2012); Solvay IFA (n 22).

³⁸ More in general on this, see also Zimmer, ‘International Framework Agreements – New Developments’ (n 20) 188-190.

³⁹ Eg H&M ‘Global framework agreement on fundamental rights along its supply chain’ (2015) (H&M IFA).

⁴⁰ F Hadwiger, *Global Framework Agreements: Achieving Decent Work in Global Supply Chains* (Background paper, International Labour Office 2016) 34.

⁴¹ OE Herrnstadt, ‘Are International Framework Agreement a Path to Corporate Social Accountability?’ (2007) 10 *J Business L* 187, 203-204; ITC-ILO, *Transnational company agreements* (n 17). For an example see Salini Impregilo ‘International Framework Agreement’ (2014).

⁴² Eg, H&M IFA (n 39). More in general, on the importance of training local actors see R Zimmer, ‘From International Framework Agreements to Transnational Collective



may also function as a way to *anticipate* disputes by bringing to light issues related to the application of IFAs.

Once a dispute arises, (informal) social dialogue between the signatory parties can play a decisive role as ‘an internal complaint mechanism for an autonomous resolution of disputes’.⁴³ It is against this background that a recent ILO Report also notes that ‘[r]ecent research on IFAs shows that in practice conflicts are generally resolved informally, often through phone calls between representatives of the signatories’ and that there is a ‘preference for consensual conflict resolution and the pursuit of ongoing dialogue’.⁴⁴ On-going communication, exchange of views, regular consultation between the relevant parties may allow to *anticipate* or *resolve* disputes at an early stage. On this account, a number of IFAs establishes a structured sequence of steps on how conflicts should be addressed: first, local actors need to try to settle the dispute, followed by attempts made at national/regional and then at central level (e.g. by the signatory parties, sometimes in the context of monitoring committees).⁴⁵ Mediation by a third neutral party can follow.⁴⁶ The non-confrontational and cooperative nature of this path has a number of advantages when compared to dispute resolution before courts. Amongst others, it enables the signatory parties to settle a dispute before it escalates, thereby not having a disruptive effect on their (future) relationship.⁴⁷

Bargaining’ in M Bungenberg and others (eds), *European Yearbook of International Economic Law 2019* (Springer International Publishing 2019) 172.

⁴³ European Trade Union Confederation (ETUC), ‘Concept Example of a Optional Legal Framework for Transnational Company Agreements’ (2016) <www.etuc.org/sites/default/files/publication/files/concept_example_of_a_possible_olf_for_tcas_en.pdf>.

⁴⁴ ILO, *Cross-border social dialogue*, Report for discussion at the Meeting of Experts on Cross-border Social Dialogue (Geneva, 12–15 February 2019) (International Labour Office, Governance and Tripartism Department, Geneva 2019) 37. ILO, Final report, Meeting of Experts on Cross-border Social Dialogue (Geneva, 12–15 February 2019) (International Labour Office, Governance and Tripartism Department, Geneva 2019) para 67. For some concrete examples see also: ETUC/BusinessEurope, ‘Building on Experiences – A win-win approach to transnational industrial relations in multinational companies’ (Final Report, 2018) 10-11.

⁴⁵ Eg Umicore ‘Global Framework Agreement on Sustainable Development’ (2019); Société Générale ‘Global Agreement on Fundamental Rights’ (2019) (Société Générale IFA).

⁴⁶ Hadwiger, ‘Looking to the Future’ (n 28) 412; Tchibo ‘Global Framework Agreement’ (2016).

⁴⁷ Hadwiger, ‘Looking to the Future’ (n 28) 412-415.



b. The mediation route

Resorting to (informal) social dialogue to solve disputes can be unsuccessful. That being the case, alternative dispute resolution (ADR) mechanisms may come into play as an additional tool to solve transnational labour disputes between MNEs and GUFs. Mediation will be the focus of this section.

In the context of a possible European Optional Legal Framework for Transnational Company, the 2014 Report 'Toward an Optional Legal Framework for TCAs' proposed mediation at European level to solve rights disputes over EFAs.⁴⁸ Concerning IFAs, some agreements already include mediation as the last resort mechanism for disputes that cannot be solved through social dialogue,⁴⁹ thus embracing the principle of subsidiarity in conflicts resolution.⁵⁰ Mediation, however, has never been used so far.⁵¹

Should an IFA include a mediation clause, the signatory parties could resort to this mechanism for settling conflicts related to an MNE's commitment in relation to the compliance with labour standards by its suppliers and sub-contractors, and other actors along the global supply chain. In this respect, the following observations can be made.

If an IFA contains a 'softer' MNE's commitment to inform/circulate/communicate the text to its business partners and/or to encourage them to apply it, mediation could be used as a last resort to address and solve a dispute arisen between the signatory parties concerning the alleged violation of the provision containing such commitment. In this situation, however, it may be difficult to identify when, for example, an

⁴⁸ ETUC, *Towards a Legal Framework for Transnational Company Agreements* (2014) 30-35. On this topic see also Antonio Garcia-Muñoz Alhambra, Beryl Ter Haar, Attila Kun, 'Harnessing Public Institutions for Labour Law Enforcement -Embedding a Transnational Labour Inspectorate within the ILO' (2020) 17 *Int Organization L Rev* 233, 243-244.

⁴⁹ See, eg GeoPost 'Global Agreement between GeoPost and UNI Global Union' (2017); Société Générale IFA (n 45).

⁵⁰ ETUC, 'Building an enabling environment for voluntary and autonomous negotiations at transnational level between trade unions and multinational companies (Final Report, 2016) 52; Hadwiger, *Contracting International Employee Participation* (n 18) 59.

⁵¹ ILO, *Cross-border social dialogue*, Report for discussion at the Meeting of Experts on Cross-border Social Dialogue (n 44) 36-37.



MNE has not undertaken enough actions to encourage its suppliers and sub-contractors to apply the IFA.⁵² In this regard, examining the degree of economic leverage the MNE has in relation to its direct business partners or how strong the tie between the MNE and the supplier is (e.g. is it the main supplier?)⁵³ may be useful to assess whether the MNE has adhered to the relevant IFA clause.

For IFAs that comprise a ‘stronger’ MNE’s commitment (e.g. termination of the commercial relationship in case of violation of a labour standard by a business partner), the success of the mediation procedure depends on the language used in the agreement. In the GeoPost IFA, for example, the words ‘endeavour’ and ‘will consider’ are used with respect to the MNE’s commitment to bring to an end a commercial relationship with a supplier or sub-contractor that has violated a labour standard laid down in the agreement. Enforcing this commitment may prove to be a challenge for the MNE is left with a rather wide discretion as to whether to stop its commercial relationship. In contrast, some IFAs contain stronger terms, for example ‘shall terminate’ and ‘will terminate’, thus making the agreement’s enforcement more likely to happen. In both situations, however, mediation will not automatically lead to the business partner ending the infringement of labour rights. Instead, mediation may lead to the MNE’s – debatable, as it will be explained later – decision to terminate the commercial relationship.

For the few IFAs that refer to the entire global supply chain, the language used by the signatory parties to do so is important too. For example, according to the renewed Inditex ‘Global Framework Agreement’, ‘Inditex *undertake to apply and insist on the enforcement* of the above-mentioned labour standards to all workers throughout its entire supply chain, regardless of whether they are directly employed by Inditex or by its manufacturers and suppliers.’⁵⁴ Quite differently, ENEL Global Framework Agreement states: ‘ENEL Group (...) will *promote* this

⁵² V Telljohann and others, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (European Foundation for the Improvement of Living and Working Conditions 2009) 32.

⁵³ S Scarponi, ‘Searching for Effectiveness in Transnational Corporate Agreements: Monitoring and Sanctions Procedures’ in F Guarriello, C Stanziani (eds), *Trade Union and Collective Bargaining in Multinationals – From International Legal Framework to Empirical Research* (Franco Angeli 2018) 106.

⁵⁴ Inditex ‘Global Framework Agreement’ (2019) (Inditex IFA) (emphasis added).

agreement towards the entire supply chain.⁵⁵ Should these IFAs include a mediation clause (it is currently not the case), the different language used – more stringent in the first agreement, vaguer in the latter – could play a crucial role in ensuring the IFA's compliance.

c. The ILO's route: a stronger 'compliance' role for this UN agency

The ILO's interest in the development of cross-border social dialogue initiatives such as IFAs is not new. Already back in 2001, the Director General of the ILO witnessed the signing ceremony of the IFA concluded by Chiquita, IUF and the Latin-American Coordination of Banana Workers Unions.⁵⁶ Further, different ILO departments have conducted research on IFAs, the most recent study being the one the Sectoral Policies Department (SECTOR) carried out about three IFAs in the food retail, garment and chemical sectors.⁵⁷ Recently, a Tripartite Meeting of Experts on Cross-Border Social Dialogue ('Tripartite Meeting of Experts') has examined the evolution of these agreements and their importance in the context of different cross-border social dialogue initiatives. Their work is based on the tripartite mandate given by the International Labour Conference in 2013 and further made clear in 2016 and 2018, when cross-border social dialogue – and the ILO's role to promote it – was put high in the agenda of this international organization.⁵⁸

The preparatory document for the Tripartite Meeting of Experts singles out five different roles that the ILO has already played or could play in relation to IFAs: the Director General witnessing the signature of an agreement; the ILO being the unofficial depository of some IFAs, at the request of the signatory parties;⁵⁹ developing training session and

⁵⁵ ENEL 'Global Framework Agreement' (2013) (ENEL IFA) (emphasis added).

⁵⁶ C Welz, 'A Qualitative Analysis of International Framework Agreements: Implementation and Impact' in Konstantinos Papadakis (ed), *Shaping Global Industrial Relations – The Impact of International Framework Agreements* (Palgrave Macmillan 2011) 45.

⁵⁷ ILO, *International Framework Agreements in the food retail, garment and chemical sectors* (n 1).

⁵⁸ K Papadakis, 'Lessons Learnt and On-going Debates on the Implementation of IFAs in Global Value Chains' in F Guarriello, C Stanziani (eds), *Trade Union and Collective Bargaining in Multinationals – From International Legal Framework to Empirical Research* (Franco Angeli 2018) 117-120.

⁵⁹ *ibid* 117.



materials on these agreements for its constituents; research; and ‘conflict resolution/mediation of disputes’.⁶⁰ These roles resonate what the report ‘Decent work in global supply chains’⁶¹ and the subsequent ILO ‘Resolution concerning decent work in global supply chains’ already stated in 2016. According to paragraph 23(c) of this Resolution:

‘When social partners decide to *negotiate* international framework agreements, the ILO *could support and facilitate the process, on joint request, and assist in the follow-up process*, including monitoring, mediation and dispute settlement where appropriate. Furthermore, the ILO should undertake research on the effectiveness and impact of cross-border social dialogue.’⁶²

A close reading of this paragraph does confirm that the ILO could play an important part in all the phases of the ‘life-cycle’ of an IFA (negotiation, implementation, monitoring and dispute resolution), provided that the initiative to negotiate the agreement stems from an MNE and a GFU and these parties also jointly agree to involve the ILO in the follow-up phases. This is not in contradiction with the statement made in 2016 by the ILO Workers’ Group, which opposed to the ILO having a role ‘in *developing* international framework agreements’.⁶³

The ILO’s role in ‘support[ing] and facilitat[ing] the [negotiation] process, on joint request, and assist[ing] in the follow-up process’ could take different forms. Also in line with the conclusions of the Tripartite Meeting of Experts, this UN agency could, for example, provide trainings and set up capacity building programmes or help the parties to do so,⁶⁴

⁶⁰ ILO, *Cross-border social dialogue*, Report for discussion at the Meeting of Experts on Cross-border Social Dialogue (n 44) 39.

⁶¹ ILO, ‘Decent Work in Global Supply Chains’ (n 4) 66.

⁶² ILO, Resolution concerning decent work in global supply chains (n 5) para 23(c) (emphasis added).

⁶³ ILO, Minutes of the 328th Session of the Governing Body of the International Labour Office, GB.328/PV, Geneva, 27 October – 10 November 2016 para 34. See also ILO, *International Framework Agreements in the food retail, garment and chemical sectors* (n 1) 20.

⁶⁴ ILO, Final report, Meeting of Experts on Cross-border Social Dialogue (n 43) para 44 (according to the Workers’ Group, ‘capacity-building and training by the ILO could help strengthen their effectiveness’); Papadakis (n 58) 121-122. The Inditex IFA (n 54) includes capacity building programs.

engage in ‘promotional campaigns and advocacy’,⁶⁵ provide expertise and neutral advice or facilitate dialogue between the relevant parties similarly to what the revised ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) already envisages.⁶⁶

Specifically, when the relevant parties are negotiating an IFA and they request so, the ILO could ‘provide [them with] guidance on minimum requirements for both content and follow-up mechanisms for such agreements’.⁶⁷ All in all, the ILO could assist the signatory parties with drafting more complex clauses, such as those related either to expanding the scope of application of the agreement to MNEs’ business partners or to the type of dispute resolution mechanism to put in place.

As to the follow-up process, the ILO could support the signatory parties, including local actors that operate along the MNE’s global supply chain, with the implementation and monitoring of IFAs as well as in the dispute resolution phase. As to the latter, the ILO could play an important role in providing expert advice to the signatory parties on how to solve a dispute, or even providing mediation services. This role is already envisaged – but it has not been yet used – in a number of IFAs, especially the most recent ones.⁶⁸ Legal scholars also corroborate this important task that the ILO could take up.⁶⁹

⁶⁵ ILO, Meeting of Experts on cross-border social dialogue, Final Conclusions (n 5) conclusion no 14(C)(i).

⁶⁶ Annex II – 2 of this document sets out that in the context of the MNE Declaration the ILO can provide dialogue facilities at company level, should the parties request that. On the topic see ILO, *Cross-border social dialogue*, Report for discussion at the Meeting of Experts on Cross-border Social Dialogue (n 44) 13-14; ILO, Final report, Meeting of Experts on Cross-border Social Dialogue (n 44) para 67; F Guarriello, ‘Transnational Collective Agreements’ in G Casale, T Treu (eds), *Transformations of Work – Challenges for the Institutions and Social Actors* (Bulletin of Comparative Labour Relation 105, Wolters Kluwer 2019) 222.

⁶⁷ ILO, ‘Decent Work in Global Supply Chains’ (n 4) 66.

⁶⁸ Eg, Siemens Gamesa ‘Global Framework Agreement on Social Responsibility’ (2019) (Siemens Gamesa IFA).

⁶⁹ Drouin (n 12) 228-229; Hadwiger, ‘Looking to the Future’ (n 28) 421; Zimmer, ‘From International Framework Agreements to Transnational Collective Bargaining’ (n 42) 172 and 187.



d. *The commercial relationship clause route*

The second generation of IFAs often include clauses according to which the MNE will – or will consider to – terminate the commercial relationship with a supplier or sub-contractor that has not respected the labour standards laid down in the agreement.⁷⁰ According to Sobczak, this possible sanction ‘increases the credibility the signatory parties attach to the relevant principles’.⁷¹

The inclusion of this type of clauses in IFAs should be promoted as it may enable MNEs to use their economic leverage to ensure labour standards be respected along the global supply chain.⁷² It is against this background that, for example, in connection with the Ashulia strikes in Bangladesh, H&M considered to put a halt to contracts with a number of suppliers if violations were not repaired.⁷³

However, two main challenges are worthy of mention. First, putting an end to a commercial contract is not always a result that either of the signatory parties can look for, especially considering the potential social consequences for the workers of the MNE’s business partner and the impact for an MNE in ‘losing’ one of its (main) suppliers.⁷⁴ The termination of the business relationship should then be considered as a last resort means and other remedies may be better suited to tackle a violation (e.g. damages and contractual penalties to procure compliance).⁷⁵

⁷⁰ Scarponi (n 53) 106.

⁷¹ A Sobczak, ‘Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility’ (2007) 62 *Relations Industrielles/Industrial Relations* 466, 472.

⁷² Another option is to include the principles set out in the GFA in the business contracts concluded by MNEs with suppliers and sub-contractors. According to Hadwiger, *Global Framework Agreements* (n 40) 36-37, ‘[t]his ensures that a violation of the GFA standards constitutes a valid reason to terminate the contract with the supplier or subcontractor’.

⁷³ ILO, *International Framework Agreements in the food retail, garment and chemical sectors* (n 1) 40.

⁷⁴ Hadwiger, *Contracting International Employee Participation* (n 18) 149; Scarponi (n 53) 106-107.

⁷⁵ L Pisarczyk, ‘Legitimization: Mandate and Signatory Parties – The Transnational Company Side’ in ETUC, *Enabling Environment for Voluntary and Autonomous Negotiations at Transnational Level between Trade Unions and Multinational Companies* (Final Report, 2015) 25; Scarponi (n 53) 107.

Secondly, this clause does not address the situation where a violation is committed even further down the global supply chain, namely by legal entities that do not have any contractual link with the MNE (2nd tier suppliers, suppliers' subcontractors, etc.). What can be said, though, is that some IFAs do include clauses referring to (some of) these companies. Nonetheless, the language used is often not clear-cut as to the degree of the MNEs' commitment and the consequences stemming from the violation of such provisions. By way of example, Clause 9.12 of the ENEL 'Global Framework Agreement' sets out that 'ENEL Group (...) will *promote* this agreement towards the entire supply chain'.⁷⁶ Given the 'softer' commitment and the ambiguity as to what 'promoting the agreement' can entail, it is difficult to foresee how a GUF could enforce this clause. In other words, which MNE's step or action could be considered as 'promoting the agreement'? Does it suffice for an MNE to send a copy of the IFA?

By the same token, ENI 'Global Framework Agreement on International Relations and Corporate Social Responsibility' prescribes that 'ENI requests its suppliers to ensure that, when activities are performed through subcontractors, these last meet the same requirements [principles and international standards on human and labour rights]'.⁷⁷ This IFA is silent as to the consequences that may stem from the violation of the labour standards by a sub-contractor. In this case, the signatory GUF could resort to the dispute resolution mechanism established in the IFA 'only' to demand the MNE to formulate such a request to its first-tier supplier. Their business contract may, of course, refer to a stringent sanction (e.g. the termination of the commercial relationship) for a supplier that selects a sub-contractor that violates the prescribed labour standards. This sanction is not linked to an infringement of a specific clause of the IFA, though.

e. MNEs' due diligence obligations and guidelines route

The emergence of public regulations governing MNEs' conduct beyond national borders displays an increased attention paid by States to

⁷⁶ ENEL IFA (n 55) (emphasis added).

⁷⁷ Another IFA that makes reference to second-tier suppliers is PSA 'Global Framework Agreement on the PSA Group's Social Responsibility' (2017).



labour – and environmental – compliance along global supply chains.⁷⁸ At national level, numerous examples can be made, ranging from the recent Dutch Child Labour Due Diligence Law to the UK Modern Slavery Act and the French Duty of Vigilance Law. At international level, both the OECD Guidelines for Multinational Enterprises (eg general policies A.10 to A.13) and the MNE Declaration (general policy 10.d.) request and encourage companies to carry out a due diligence risk assessment in their global supply chains.

Due diligence obligations and guidelines and IFAs complement and reinforce each other in two ways. First, due diligence obligations and guidelines could provide an additional incentive for MNEs to comply with the labour standards laid down in IFAs. Even further, they could be considered ‘an indirect form of enforceability of transnational framework agreements’.⁷⁹ Violations of the OECD Guidelines on issues that are also addressed in IFAs could be dealt with by National Contact Points.⁸⁰ On the same note, the national focus points set up in accordance with the revised MNE Declaration ‘could become a vehicle to provide support for the enforcement of TCAs’.⁸¹

Secondly, due diligence obligations may boost the conclusion of IFAs; depending on the content of – and the requirements set by – these public initiatives, MNEs could rely on the signed IFAs to corroborate the steps that they have taken in monitoring their activities and operations along the global supply chain. IFAs could then contribute to the due diligence exercise.⁸² Doctrine and recent policy documents at ILO level

⁷⁸ For some legislative initiatives see ILO, ‘Decent work in global supply chains’ (n 4) 42.

⁷⁹ Guarriello, ‘Transnational Collective Agreements’ (n 66) 204; Scarponi (n 53) 106; I Daugareilh, ‘French-style Due Diligence: An Opportunity for International Framework Agreements?’ in F Guarriello, C Stanziani (eds), *Trade Union and Collective Bargaining in multinationals – From International Legal Framework to Empirical Research* (Franco Angeli 2018) 84.

⁸⁰ On this point, more in general, see also Guarriello, ‘Transnational Collective Agreements’ (n 66) 221; F Guarriello, ‘Learning by Doing: Negotiating (without Rules) in the Global’ in F Guarriello, C Stanziani (n 50) 22 and 36.

⁸¹ ILO, Final report, Meeting of Experts on Cross-border Social Dialogue (n 44) para 78 – this according to the Workers’ Vice Chairperson.

⁸² ILO, Meeting of Experts on cross-border social dialogue, Final Conclusions (n 5) conclusion no 9; ILO, Final report, Meeting of Experts on Cross-border Social Dialogue (n 44) paras 13-14; Daughareil (n 79) 84 and 95.

seem to endorse this point.⁸³ The most recent IFAs show this trend too by referring to the 2017 French Due Diligence Vigilance Law,⁸⁴ the OECD Guidelines and the Due Diligence Guidelines by Sector.⁸⁵

4. *Conclusions and recommendations*

This paper set to explore which extra-judicial enforcement avenues a GUF may use to enforce an IFA against an MNE in order to ensure compliance with labour standards along the global supply chain. In doing so, it has shown that five closely connected mechanisms could be employed in this respect. This is provided that the text of the agreement sets them out.

Social dialogue, mediation and the strengthening of what Guarriello describes as already ‘a near institutional support structure to IFAs’⁸⁶ by the ILO are key for the IFAs’ enforcement. Their inclusion in the text of these agreements should therefore be promoted. The last two extra-judicial mechanisms – commercial relationship and due diligence obligations and guidelines routes – are no less important. However, they should complement the first three, not replacing them.

Having said that, social dialogue could be a viable option to anticipate and solve disputes between the signatory parties, for instance when an MNE has violated a clause in the IFA by not terminating the commercial relationship with a supplier that has not complied with the labour standards laid down in the IFA. Should social dialogue be unsuccessful, signatories parties could resort to mediation as an additional, last resort, mechanism for settling disputes cooperatively. Given its non-confrontational nature, mediation should be promoted, potentially with a further strengthening of the ILO’s role in that respect.

⁸³ F Guarriello, ‘Learning by Doing’ (n 80) 20-21 (referring to Daugareilh (2017); ILO, Meeting of Experts on cross-border social dialogue, Final Conclusions (n 5) conclusion no. 9).

⁸⁴ BNP Paribas ‘Agreement on Fundamental Rights and Global Social Framework’ (2018). Société Générale IFA (n 45). For an analysis on the relationship between the French Duty of Vigilance Law and IFAs, see Daugareilh (n 79).

⁸⁵ Umicore ‘Global Framework Agreement on Sustainable Development’ (2019) and Siemens Gamesa IFA (n 67).

⁸⁶ Guarriello, ‘Transnational Collective Agreements’ (n 66) 223.



Specifically, when a conflict arises, the ILO could play an important role as a forum for mediation and in providing expert advice to the signatory parties that want and request so. This UN agency could also ‘simply’ facilitate the dialogue process. This is in addition to the assistance that the ILO could provide to the relevant parties during the negotiation and other follow-up phases by, for example, organizing training and capacity building exercises. This support, of course, does not imply that IFAs, as an expression of a voluntary private self-regulatory initiative, will replace States (and their labour inspection system) in ensuring compliance with labour standards.⁸⁷

Furthermore, the inclusion in an IFA of a clause connecting the respect of labour standards by a MNE’s direct business partner with the continuation of the commercial relationship may be a possible solution to address the compliance with labour standards along the global supply chain. Yet, the enforcement of this clause depends on how the MNE’s level of commitment is phrased in the text of the agreement. Especially in situations in which an IFA contains a ‘softer’ commitment – eg by using the word ‘endeavour to terminate’ – the economic and dependency tie between the MNE and the business partner may affect the enforcement.⁸⁸

Finally, due diligence obligations and guidelines set out in public regulations could also contribute to the promotion of IFAs and their enforcement, even if indirectly. Indeed, compliance with the labour standards laid down in the IFA may be the result of the due diligence exercise that parent companies have to undertake to comply with national or international regulations.

⁸⁷ ILO, *International Framework Agreements in the food retail, garment and chemical sectors* (n 1) 14.

⁸⁸ Drouin (n 12) 225.