




International
Labour
Office
Geneva

INTERNATIONAL JOURNAL OF LABOUR RESEARCH

A stylized world map in a light blue color is centered on the page. It is overlaid on a background of repeating, semi-transparent text from the ILO's 'Decent Work Agenda' document.

Decent work in global supply chains

2015 / VOLUME 7 / ISSUE 1-2

International Journal of Labour Research

2015

Vol. 7

Issue 1–2

Decent work in global supply chains

INTERNATIONAL LABOUR OFFICE, GENEVA

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First published 2015

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International Journal of Labour Research
Geneva, International Labour Office, 2015

ISSN 2076-9806

ILO Cataloguing in Publication Data

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This publication was produced by the Document and Publications Production,
Printing and Distribution Branch (PRODOC) of the ILO.

*Graphic and typographic design, manuscript preparation, copy editing, layout
and composition, proofreading, printing, electronic publishing and distribution.*

PRODOC endeavours to use paper sourced from forests managed
in an environmentally sustainable and socially responsible manner.

Code: DTP-CORR-WEI-PCL

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This article examines the relationship between labour control regimes and patterns of worker resistance in apparel global supply chains. Concentration of the geographical locations of apparel production in the last decade has as much to do with labour control regimes as with wages and other economic factors. There are three main labour control regimes in the sector: state-party control; market despotism; and repressive employer control. The article then argues that these systems of labour control are conducive to three patterns of worker resistance: wildcat strikes, international accords and transnational corporate campaigns. The article explores these arguments by examining the struggles of apparel workers in Viet Nam, Bangladesh and Honduras.

KEYWORDS labour dispute / clothing worker / clothing industry / value chains / management attitude / workers control / strike / case study / Bangladesh / Honduras / Viet Nam

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Garrett D. Brown

Over the last 20 years, manufacturing of a wide variety of consumer goods in the global economy has shifted from relatively well-regulated, high-wage and often unionized factories in the developed world to basically unregulated, low-wage and rarely unionized factories in the developing world. The prevailing supply chain approach for occupational health and safety (OHS) protections for workers is to incorporate them into the

international brands' corporate social responsibility (CSR) programmes in the hope that there will be a "trickle-down" effect of corporate-level OHS protections to the factory floors of the brands' suppliers. This approach has resulted in only marginal improvements of working conditions in global supply chains. A different approach – exemplified by the work of the Maquiladora Health and Safety Support Network (MHSSN) – is a worker-centred approach where the goal is to create knowledgeable, informed and active workers in factories at all tiers of the global supply chains who are familiar with OHS concepts, hazards and controls, as well as their rights under the law. The article highlights case studies of OHS capacity-building activities by the MHSSN and partner organizations with workers in five countries: Mexico, Indonesia, China, the Dominican Republic and Bangladesh.

KEYWORDS occupational safety / occupational health / value chains / industrial worker / corporate social responsibility / workers empowerment / case study / Bangladesh / China / Dominican Republic / Indonesia / Mexico

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Kathrin Birner

The rapid growth of e-commerce in recent years has reshaped the distribution of goods to customers. It has also created new workplaces, many of which however operate under precarious working conditions. Attempts to organize workers have had mixed results, as can be witnessed in the case of the efforts by workers at Amazon in Germany to obtain a collective bargaining agreement. While public interest has been extraordinary compared to other labour struggles, this area of trade union activity has received relatively little scholarly attention. This article argues for the use a global value chain approach to explore the opportunities and limits for labour organizing of e-commerce workers, with the aim of better understanding their specific positions along global value chains and how their working conditions can be improved. E-commerce workers are a heterogeneous group over the globe: they include warehouse workers located at the distribution hubs of targeted markets as well as call centre agents, marketing experts and software engineers. The article examines the power resources of labour for organizing e-commerce workers at different stages of the value chain. Labour struggles in seven countries are compared on the basis of documentary evidence as well as of testimonies by trade unionists.

KEYWORDS working conditions / e-commerce / value chains / casual worker / workers rights / management attitude / trade union role / case study

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KEYWORDS collective agreement / decent work / value chains / multinational enterprise / globalization / social dialogue / good practices / trade union role / case study
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Jenny Holdcroft

Wages for garment workers continue to languish at levels often way below those of a living wage. Efforts by individual multinational corporations to improve conditions in their supply chains have failed to have any significant impact on the predominant model of low-wage manufacturing that drives garment production worldwide. Recognizing that nothing less than a fundamental change to the way that production is organized in garment supply chains will ever deliver sustained and enforceable improvement to wages and conditions, IndustriALL is working with major clothing brands in a process known as ACT to develop systems of industry-wide collective agreements that are linked to purchasing practices to ensure that a larger share of the value generated is passed on to workers. The ACT process is a significant step towards creating genuine supply chain industrial relations in the garment industry.

KEYWORDS labour relations / clothing worker / clothing industry / value chains / working conditions / workers rights / corporate social responsibility / case study / Bangladesh
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Anna Biondi

The globalization of supply chains and the need to secure decent working conditions along global production lines has for some years been gaining in importance for the ILO's Decent Work Agenda, and it is encouraging that the International Labour Conference will discuss the issue at its 105th Session in June 2016. While the ILO's classic means of action in relation to conditions of work in multinational enterprises has been to provide guidance through its supervisory mechanisms, more limited action has been devoted to promoting the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), adopted in 1977. This article argues that after a thorough review of both the text and the follow-up mechanism, the MNE Declaration should be included in the future "package" of initiatives established by the Organization to respond to the decent work challenges in global production systems.

KEYWORDS ILO Declaration / multinational enterprise / corporate social responsibility / promotion of employment / working conditions / value chains / role of ILO
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Jon Whitlow and Ruwan Subasinghe

The ILO Maritime Labour Convention, 2006 (MLC, 2006) is now seen as the fourth pillar of the international regulatory regime for shipping, complementing the key Conventions of the International Maritime Organization (IMO) dealing with safety and security of ships (SOLAS), training, certification and watch-keeping (STCW), and the protection of the marine environment (MARPOL). The structure of the MLC, 2006 and some of the key provisions, while being innovative within the ILO, mirror those found in the IMO Conventions, maintaining regulatory coherence between the four pillars and extending international minimum standards to the social and labour aspects. Central to the four pillars is a requirement for ships to be inspected and carry certificates attesting that they meet the international minimum requirements, that there are no more favourable treatment clauses and that the Conventions can be enforced by port State control. They also have simplified amendment procedures which enable them to be updated to reflect technological developments and changes in the industry. They all place obligations on the shipowners and require the flag State to enforce those obligations. The article examines the provisions of the MLC, 2006 and discusses whether the model could be applied to other industries and for consolidating other ILO Conventions.

KEYWORDS ILO standard setting / merchant marine / seafarer / ILO Convention / comment / application
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Conor Cradden

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KEYWORDS labour standards / workers rights / regulation / corporate social responsibility / trade union role / case study / IFC
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Behzad Azarhoushang, Alessandro Bramucci,
Hansjörg Herr and Bea Ruoff

Value chains are characterized by power asymmetries, with lead firms in the dominating position and dominated firms mainly in developing countries which compete worldwide to take over certain tasks in the production process of goods. The competitive pressure to produce at low cost in low value adding segments of global value chains (GVCs) increases the pressure for low wages and poor working conditions. Industrialization in the low-value segment can increase productivity and living standards to a certain extent in economically underdeveloped countries, but in the end the allocation of production in GVCs prevents any true catching up, leaving developing countries stuck in the so-called middle-income trap. Vertical GVCs based on subcontracting typically lead to very low value added, low technological spillover and the worst working conditions. Vertical GVCs based on FDI are on average more advantageous, but without government rules and interventions they are not a ladder to eventually joining the group of developed countries. There is no doubt that decent working conditions have to be established at all levels of value chains. In addition, unions should support and join efforts to create more democracy in multinational companies and push for an economically and socially fairer investment and subcontracting policy which strengthens training and technological transfer. Unions can play a significant role in industrial and other policies which are important for catching up, as well as supporting initiatives to devise global regulations and sanctions for multinational companies.

KEYWORDS economic and social development / trade / value chains / trade union role / South South / developing countries
03.02.3

Editorial

Back to fundamentals: Organizing, collective bargaining and promotion of a decent work framework in global supply chains

Enrico Cairola

Bureau for Workers' Activities (ACTRAV), ILO

The Rana Plaza tragedy in Bangladesh in April 2013 brought to the attention of the global community the appalling working conditions experienced by workers in global supply chains (GSCs). Taking place just a week before International Workers' Day – which on 1 May each year commemorates the Haymarket massacre of 1886 in Chicago – Rana Plaza, where more than 1,100 workers perished, put the question of the sustainability of supply chains at the top of the international agenda, as for instance when the German Presidency of the G7 in 2015 adopted it as a priority issue. It is therefore timely that a tripartite discussion of decent work in global supply chains is on the agenda of the ILO's 105th International Labour Conference in 2016.

Other recent tragedies in Bangladesh, Cambodia and Pakistan remind us that the audit-focused social responsibility model adopted by most companies is inadequate even for addressing highly visible issues of health and safety. Unilateral action by companies is insufficient; decent working conditions in global supply chains must be built on sound labour relations. A constitutive element of decent work is the freedom of workers to express their opinions, to organize and to engage in collective bargaining. These rights have to be guaranteed throughout all the stages of GSCs.

The role of the symposiums organized by the ILO's Bureau for Workers' Activities (ACTRAV) is to capture, analyse and anticipate major changes and challenges affecting the world of work, in most cases through analysing organizational and technological transformations that have had an impact on the distribution of labour, its quality and the consequent labour relations.

The upcoming symposium, Decent Work in Global Supply Chains, will also try to capture these challenges.

Well before the term “global value chains” came into use in the mid-1990s, the labour movement had already experienced a historic change at the end of the 1970s and even more intensively in the 1980s. It was a change of paradigm, where “paradigm” means a change in the way production is organized.

For the first time ever, technology made it possible to fragment the production cycle and disperse it through globally organized systems of production and in the interest of maximizing the profit of enterprises. Production systems moved to regions where cheap and non-unionized labour was available. Labour conditions were heavily affected, depriving workers of the high standards that had been previously achieved in industrialized countries.

The global production chains and networks that were developed in this context completely redefined the composition of the workforce and the employment relationship worldwide. The spread of technological innovation and the relative decline of costs in transportation, telecommunications, information technology and automation enabled multinational enterprises (MNEs) to fragment and relocate single units of the production cycle. The classic self-contained plant was broken up into sub-units spread amongst different locations and territories. Production was de-territorialized, with new, highly mobile plants that had few linkages to the local backyard and were mainly attracted by incentives offered by territories and local communities competing with each other.

This process has led to a “race to the bottom” where national and local governments create artificial and unsustainable comparative advantages by lowering labour standards, slashing welfare provisions and granting tax exemptions. Under this new pattern of production, flexible/mobile/global enterprises are able to modify their structures and functions rapidly through the relocation of production units and the extensive use of outsourcing and subcontracting in GSCs.

Already in the 1990s, ACTRAV was working along three main dimensions related to globalization: trade, production and finance, and the over-reaching challenge of governance on the labour side.

What has happened since then? The globalization of production has continued. MNEs monitor and scan the world in search of the most suitable sites to locate, outsource or buy semi-manufactured goods and services or the final product itself. For a large number of MNEs production is no longer a priority because they have completely outsourced it. Their main source of profits is now marketing brands and managing, with the support of logistics, their supply chain. In most cases, production is contracted out to a large number of small and medium-sized enterprises (SMEs), often located in export processing zones (EPZs), while the brand firm handles only non-productive activities such as research, innovation, marketing and logistics.

This changing configuration of world production has had a profound impact on the international division of labour and the commodity chain. Changes in production patterns have also significantly affected labour organizations and their capacity to organize and conduct collective bargaining. Since the process of globalizing production got under way, the key challenges for labour have remained unchanged: How to organize the fragmented universe of workers in their social and economic environments? How to build cross-border union networks? How to negotiate across borders?

A large number of workers in the informal economy, in GSCs and in EPZs are not unionized, mainly for two reasons: the lack of an effective legislative framework protecting workers' rights (in particular the enabling rights such as freedom of association and collective bargaining); and the very real difficulties experienced by the trade unions in organizing workers, due to precarious and poor working conditions, a system of work organization that has divided and scattered workers through outsourcing and informality, and lack of union structures able to capture the new organizational needs of these workers.

Since so many workers now operate in diversified labour markets characterized by various degrees of formality or informality of economies which, in most cases, are embedded in unified global production cycles and GSCs, what needs to be further developed is an organizing strategy able to connect these workers and their social demands, from the workplace to the global level.

The issue of the enabling rights such as freedom of association and collective bargaining should be at the heart of the discussion on GSCs. Ensuring these rights in MNEs and their supply chains remains a major challenge faced by trade unions.

"Responsible GSCs" cannot be promoted on a voluntary basis and with management tools that are usually unilateral and related to corporate social responsibility (CSR). In the last 30 years CSR initiatives have not been able to provide a sustainable framework capable of regulating globalized production processes. The Rana Plaza tragedy was a turning point; it clearly demonstrated that unilateral monitoring systems are unreliable and ineffective. Despite the massive development of a "CSR industry", CSR has not been able to manage the asymmetries between labour and capital and their exponential growth, which has led to greater deterioration of working conditions and growing inequalities.

The broad challenge of the discussion on GSCs is to shift the intervention model based on voluntary initiatives towards a progressive framework based on decent work that puts at its core: (a) the involvement of the social partners in strengthening the process of governance of GSCs within a tripartite framework; and (b) the assumption that the development of sound labour relations is a fundamental element in bringing change to GSCs and EPZs and improving labour rights and working conditions.

The effective involvement of unions in regulatory frameworks to address the challenges of decent work deficits in GSCs is key, and should contribute to developing a methodology for assessing the major decent work deficits and gaps in GSCs. This process should also include the development of a workers' perspective on policies and practices in the areas of investment, trade and taxation, not only at the enterprise level, but also at national and global levels.

Export processing zones (EPZs)

The discussion on GSCs is related to and interlinked with that on export processing zones (EPZs). These zones have contributed to the emergence of GSCs and serve as their major artery. They operate as hubs of transformation of imported raw materials that are then exported to feed into GSCs. Despite their strategic importance in GSCs, or because of it, EPZs are characterized by poor working conditions and widespread violations of workers' rights, notably violations of freedom of association. EPZs have continuously grown in number as GSCs have expanded worldwide. It is against this background that ACTRAV has been actively involved in the process of reinforcing the capacities of trade unions in EPZs in two critical areas: first, in relation to the full exercise of the right to freedom of association and collective bargaining; and, second, to ensure that unions are capable of engaging employers and governments on the socio-economic policies related to EPZs and their working conditions.

Decent work as a policy framework for sustainable supply chains

From the ILO perspective, the issue of governance should be related to the four dimensions of decent work, with the aim of promoting a “sustainable social and economic upgrading” of GSCs.¹ The ILO should provide a policy framework for identifying, measuring and addressing the decent work gaps in GSCs. This baseline should be used in designing, and agreeing with constituents, global, regional, national and sectoral policies aimed at improving social and economic conditions in GSCs.

The ILO's role is to put forward a model that can be easily used at the bipartite or tripartite level by constituents who wish to embark on a new

1. The ILO's Decent Work Agenda, which seeks to combine the objectives of full and productive employment and decent work at all levels, comprises four interdependent pillars: employment, standards and rights at work, social protection, and social dialogue.

methodology for assessing their GSC and improving working conditions accordingly. The dissemination of best practices for improving working conditions in GSCs may be useful, but it should not replace the design of an ILO policy framework for upgrading the social and economic dimensions of GSCs.

This methodology should first help constituents (or union and management, in the case of MNEs) to focus on a specific GSC and, by mapping out the linkages, to obtain a clear and agreed picture of all stages in the supply chain up to the point where it reaches the final customer. A clear mapping would facilitate the process of identifying the gaps in line with the dimensions that form the concept of decent work.

The next stage would be how to address these gaps. Constituents would design tailor-made policies (which could also be embedded in Decent Work Country Programmes – DWCPs) and devise strategies with objectives and indicators enabling the social partners to move forward GSCs that are socially and economically viable. This process could also be developed by enterprises that are willing to upgrade the social dimension of their supply chain.

The issue of assessing gaps related to labour rights in GSCs and EPZs deserves special attention. The ratification of international labour standards, in particular of the ILO fundamental Conventions as well as those ensuring income security, better working conditions and secure employment relationships, would be a key element of a credible policy on GSCs. The effective implementation of these standards via national legislation and legal systems is a prerequisite for leveraging working conditions in GSCs. For this reason, regulatory frameworks at the national level are a key component of the process of governance.

There is also a need for a specific discussion regarding countries that have a poor record of ratifications, in particular of the fundamental Conventions, or that have been repeatedly called by the ILO's supervisory machinery to report on their poor record of implementation of labour standards.

How should we address the issue of workers' rights in those countries? What is the responsibility of business operating in those countries?

We need to put at the centre of the discussion on GSCs the responsibility of MNEs to respect international labour standards (in particular the ILO fundamental Conventions and the Conventions included in the annex to the ILO Declaration on Multinational Enterprises) in their operations and supply chains, even if these Conventions have not been ratified in the producing countries or, as in a large number of ILO member States, they have been ratified but are not systematically applied due to poor governance and/or lack of political will.

Labour relations in global supply chains

It is crucial to develop cross-border labour relations for strengthening collective bargaining and the capacity of trade unions to organize workers in MNEs and in their supply chains. Management-driven CSR programmes lack comprehensive worker involvement and are not designed to develop sustainable labour relations systems. On the contrary, global framework agreements (GFAs) – concluded between MNEs and global union federations (GUFs) – are based on a new dimension of labour relations. GFAs build on the international participation of workers in regulating business practices. From a trade union perspective, GFAs should lead to more democratic industrial relations, and hence the improvement of working conditions along global supply chains. These agreements have the potential to build union networks, promote freedom of association and collective bargaining, and help to organize workers in MNE subsidiaries and suppliers.

Recent case studies document limited dissemination of GFAs in many companies but at the same time reveal several examples of good practice in bringing suppliers, subcontractors and subsidiaries under the GFA umbrella. Looking to the future, the involvement of local actors throughout the GFA process needs to be strengthened: from initiation, through negotiations to implementation. The agreements must be based on cross-border labour relations and involve local unions on the ground.

The work of the ILO primarily addresses States and the ratification and implementation of Conventions. So far, therefore, the ILO has played only a minor role in promoting global labour relations. GFAs are an instrument to regulate supply chains through labour relations and have developed without any direct assistance from the ILO. However, the wish to include the ILO is expressed by trade unions and companies when GFAs – for example by Inditex and Total or Chiquita – are signed by the ILO Director-General as a witness or in his presence. ILO participation can give the agreements additional credibility and legitimacy. This form of global social dialogue is still only emerging, and its continuing growth may well depend on the ability of the ILO and other actors to adequately support the bargaining partners and provide them with guidance on how to maximize the positive economic and social impacts of global supply chain operations.

Governance of global supply chains

A policy framework based on decent work and led by constituents has to be the main driver for the governance of GSCs. Cross-border regulations, social dialogue and labour relations within GSCs will also be key assets for scaling up the process of governance in countries where there is an evident gap in labour legislation and the implementation of international labour standards.

The development of national sectoral cross-border agreements (CBAs) would also lead to crucial synergies with legislative processes.

International labour standards (in particular the recognition and implementation of the enabling rights), social dialogue and labour market institutions are the main building blocks of a governance structure addressing working conditions in GSCs and EPZs, while labour law and labour inspection, as well as labour relations (from the workplace to the global level) are the main governance tools that can lead to the economic and social improvement of GSCs.

Civil society actors, such as consumers' organizations and human rights defenders, can also make important contributions to decent work in GSCs.

At the international level, the challenge for the ILO and for its constituents is to contribute to the global governance of supply chains: mechanisms, relationships and processes between and among States, between States and large MNEs, between markets and fiscal needs of countries, between constituents and their organizations, and through which collective interests are articulated and negotiated, workers' rights and obligations are established and asymmetries between the different parties are recognized and regulated by the international community. Within the UN system, the ILO can and should make an important contribution to this process.

Worker resistance in global supply chains

*Wildcat strikes, international accords
and transnational campaigns**

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* This article draws on M. Anner: "Labor control regimes and worker resistance in global supply chains", in *Labor History*, 2015, Vol. 56, No. 3, pp. 292–307. The author thanks *Labor History* for its permission to reprint parts of the article here.

Workers in global value chains are finding new strategies to address harsh working conditions in global supply chains. These strategies are shaped not only by the exigencies of hyper-competitive global production regimes, but also by state structures and local market conditions. The highly statist system of Viet Nam with its party-controlled official unionism has engendered a powerful wave of wildcat strikes. The harsh, despotic labour market conditions in Bangladesh, with a weak and fragmented labour movement, have pushed activists to pursue international accords. Hegemonic labour control in Honduras, built on factory-level repression, has motivated labour organizing and transnational corporate campaigns.

Thus, an analysis of labour strategies in global supply chains must begin with an analysis of the labour control regimes in which they are embedded. Proponents of a race-to-the-bottom argument would suggest that production goes where wages are lowest, but that argument cannot explain why China continues to dominate apparel production while its wages are four times higher than in Bangladesh. At the same time, those who suggest that production goes where logistics are the most efficient and economies of scale are the greatest (as in China) cannot explain why Viet Nam is one of the fastest-growing major apparel exporters in the world, or why Honduras is the largest Latin American exporter.

Buyers in apparel global value chains want not only to keep costs low, but also to reduce the likelihood of disruption to supply chains caused by worker organization and mobilization. Indeed, what this article will show is that the ten top apparel exporters in the world today reflect three models of labour control. These include state labour control regimes, market labour control regimes, and employer labour control regimes. In the case of state labour control, labour is controlled by a system of legal and extra-legal mechanisms designed to prevent or curtail independent worker organization and collective action. Extreme examples of such regimes include China and Viet Nam, which I label as authoritarian state labour control regimes.

In market labour control regimes, unfavourable labour market conditions discipline labour; strong worker organizing is curtailed because workers are afraid that active participation in a union may result in job loss and prolonged unemployment or underemployment. Low-income countries with very weak labour markets, such as Bangladesh and Indonesia, exemplify despotic versions of market labour control regimes.

Finally, employer labour control regimes in their most extreme form include highly repressive employer actions against workers, including the use of violence or the threat of the use of violence. Examples of such regimes can be seen in Colombia, El Salvador, Guatemala and Honduras.

These three general forms of control are not mutually exclusive or static; all countries have had elements of each system and all countries go through changes over the course of their histories. Bangladesh is a market labour control regime, but workers in Bangladesh also have been killed while organizing

collective action. And in Viet Nam, control is mainly exercised through an authoritarian State, but the fear of unemployment also looms large and serves to increase worker discipline. In sum, these are typologies of labour control regimes that illustrate dominant, not exclusive or static, models of control. They should be seen as a heuristic tool used to elucidate the relations between typical labour control regimes, which are present to various degrees in all cases.

This article makes a second claim: the three models of labour control outlined above in their more extreme manifestations have engendered three patterns of worker resistance: wildcat strikes, international accords and transnational corporate campaigns. That is, how workers protest is partially shaped by how they are controlled. Workers with extremely weak labour market power will have limited effectiveness in attempting to organize and protest at enterprise level since they can be easily replaced, just as workers facing repressive employers and a complicit State will be disinclined to believe they can resolve their demands locally.

Workers in an authoritarian regime who may face imprisonment for developing ties with outside interests will be reluctant to pursue cross-border campaigns or international accords to address their grievances. Rather, wildcat strikes are often prevalent in such regimes, because workers need to circumvent official unions and labour internationalism is not an option. Since only one official union centre is allowed to operate and since that state-sanctioned centre does not effectively represent workers' interests, workers are forced to take matters into their own hands by organizing unauthorized strikes. Yet, as we shall see, they need to do so very carefully, notably by protecting the identities of their leaders.

International accords build on global framework agreements, but they go a step further in that they hold the lead firms in global value chains partly responsible for the cost of decent work through binding agreements. The most recognized example of such an accord can be seen in Bangladesh, a country which, not coincidentally, is one of the more extreme examples of a market labour control regime. Such an accord was pursued in Bangladesh because labour market conditions were so unfavourable to labour that it was necessary to address local market conditions by going outside the national State and using international pressure.

Finally, transnational corporate campaigns have emerged in repressive employer labour control regimes, because the threat of bodily harm by

Table 1. Labour control regimes, resistance patterns, and country examples

Labour control regime	Pattern of resistance	Country case
State-party	Wildcat strikes	Viet Nam
Market despotism	International accords	Bangladesh
Repressive employers	Transnational corporate campaigns	Honduras

employers gives local activists a means by which to frame their concerns through international campaigns that generate maximum impact. Honduras exemplifies a case of a repressive employer labour control regime, because employers have used violence or the threat of violence to control labour. Not coincidentally, Honduras has one of the most vibrant traditions of effective transnational corporate campaigns. Table 1 summarizes types of labour control regime, patterns of resistance, and country-case illustrations.

Labour control and worker resistance in global supply chains

Traditional theories of labour control – often referred to as *labour process theory* – begin on the factory floor. Burawoy (1979) observed how employers built consent among workers by, for example, encouraging them to produce more by competing with one another. In so doing, employers “manufactured consent” by having workers buy into the system. In the decades that followed, a rich stream of scholarship examined hidden and informal mechanisms of hegemonic control, consent and resistance within capital–labour relationships.

This article builds on this tradition by linking domestic patterns of control with the international dynamics of supply chains. In the context of global competitiveness pressure, it explores patterns of labour control at the workplace, labour market and state levels. The formation of national States, for example, has been notoriously linked to patterns of labour control, with the State using its security forces to control labour unrest.

Communist States offer an extreme example of labour incorporation and control. In their study of trade unions in communist countries, Pravda and Ruble (1986) observed how such systems adhered to the Leninist model of dual-functioning unions through which unions are subordinate to the State and must work to defend the socialist system by encouraging labour productivity – the productivity function. At the same time, unions should also protect workers against any potentially harsh treatment by management – the labour protection function. Over time, in many socialist countries the productivity function was emphasized over the protection function, and control over unions shifted from the State to the party.

Market labour control regimes are in many ways the opposite of state labour control regimes in that they often occur in weak States, especially in terms of labour regulation and enforcement capability. Workers have less bargaining power during economic downturns, as high unemployment forces them to accept poor working conditions and makes them cautious about organizing labour unions for fear they might easily be replaced. Webster, Lambert and Bezuidenhout (2008) find that growing labour market flexibility has led to “market despotism”, which is a return of an “old” form of

Table 2. Contribution of wages to a family's basic needs, selected countries, 2011

	Prevailing wage (in US\$)	Wage/Basic needs (%)
Bangladesh	51.67	14
China	214.49	36
Honduras	250.01	47
Indonesia	142.32	22
Mexico	376.27	67
Viet Nam	112.09	29

Source: WRC (2013).

control through coercive market power “where the whip of the market was used to discipline workers” (p. 52).

Any labour market dynamic that increases workers’ sense of vulnerability – whether due to an increase in part-time work, short-term contracts or outsourced labour – will also increase labour control. Workers in such contexts are inclined to put up with bad conditions and low wages rather than risk unemployment and poverty, out of fear that should they speak up they may lose their jobs as a result. Indicators of a labour market control regime are low wages and a high proportion of the workforce that is unemployed or underemployed.

Given its low start-up costs and high competitive pressures, the garment industry is notorious for low wages, outsourcing and precarious employment practices. Some countries, however, face far more difficult circumstances than others. Using data on prevailing and living wages recently compiled by the Worker Rights Consortium (WRC, 2013), we see that Bangladesh has had the lowest wage rate among major apparel exporters, and that in 2011 wages were able to cover only 14 per cent of a family’s basic living needs (table 2).

The third system of labour control examined here is employer workplace repression. As noted above, most theories of labour control begin with employers and the workplace. This is because it is precisely at the point of production that capital is most concerned with ensuring worker discipline in order to realize gains. Harvey (2004) argues that much capital is still accumulated by dispossession through what he refers to as predation, fraud and violence. Indeed, in regions of Latin America and Asia, we are seeing a rise in violence against unionists and worker activists. Colombian employers have for decades notoriously turned to paramilitary forces in order to rid themselves of worker organizers (Gill, 2007); and in El Salvador and Honduras almost every major attempt by workers to form unions since the early 2000s has entailed the threat of violence against activists (CGWR and WRC, 2015).

Worker resistance

The three models of extreme labour control outlined above are conducive to the three patterns of domestic and transnational worker resistance already mentioned: strikes, international accords and cross-border campaigns. Strikes have been a fundamental mechanism through which workers have sought to address their concerns since the beginning of industrial relations. Indeed, whereas scholars such as Scott (1985) have popularized everyday forms of resistance such as pilfering and absenteeism, Perry (1995) rightly contends, “The strike is only one weapon in the arsenal of workers, but it is an especially efficacious and important one” (p. 7). There are two reasons why wildcat strikes are the most common form of worker resistance in state labour control regimes. First, official unions – because of their links with the State and the party and their resulting interest in maintaining “harmonious” employment relations – do not respond to the needs of workers, especially workers in foreign-owned private enterprises where unions are especially weak and working conditions notoriously harsh. Second, the State prevents workers from having strong, direct ties with international advocacy groups. Thus, the State on the one hand blocks access to formal national institutional mechanisms that might address workers’ concerns, and on the other blocks workers’ ability to pursue a “boomerang” (Keck and Sikkink, 1998) – that is, it prevents them from bringing pressure to bear on the State from the outside via transnational alliances. This leaves workers only one option: to take matters into their own hands via localized collective action.

International accords build on global framework agreements (GFAs). In an effort to hold lead firms in global supply chains accountable for employment relations practices and conditions in suppliers, international trade unions have established GFAs with multinational companies (MNCs) (see for example Hammer, 2008). These agreements reach beyond the enterprise and national State levels to achieve labour agreements at the transnational level, and, unlike corporate social responsibility programmes, they are negotiated between labour and MNCs. Yet the clauses in these agreements can be vague, are not legally binding and do not address pricing issues.

A substantive transformation took place when labour unions negotiated the Accord on Fire and Building Safety in Bangladesh with MNCs in 2013. Through this Accord, which can be called a “buyer responsibility agreement” (Anner, Bair and Blasi, 2013), lead firms (the buyers in global supply chains) are held jointly liable for conditions in their supply chain and partly responsible for the costs of producing their products under decent working conditions. The Accord focuses on safe buildings in Bangladesh, but its framework could easily be expanded to cover other issues and more countries.

It is not coincidental that such an accord has been designed to address issues in Bangladesh, with its despotic market labour control regime. No doubt, the dramatic building collapse at Rana Plaza motivated the Accord,

but this event itself did not dictate the outcome – a major international agreement in which northern (mostly European) MNCs agreed to increase the price they pay for the production of their product in order to ensure safe buildings. The reason that worker activists and their allies pursued a transnational accord of this nature is because domestic market conditions have made labour so weak that a more traditional domestic approach would only have reflected this weakness and thus done little to address the problems faced by the workers. Hence, transnational leverage in the form of a binding agreement was a logical choice for worker activists in this context.

The third pattern of worker resistance, cross-border organizing campaigns, builds on a long and complex history of labour internationalism that goes back two hundred years. As Lorwin (1929, 1953) documented, centuries of labour internationalism were shaped by mass migration of workers, competitive world markets, wars, and socialist ideals on the emancipation of labour. And, as Erne (2008) finds, although labour movements have been primarily linked to their nation State through neo-corporatist social pacts and nationalist worldviews, the pressures created by the most recent era of economic globalization have also pushed them to build ties across borders.

The more complex questions are: When will labour pursue internationalism and, if it does occur, what form will it take? Building on the literatures of transnational advocacy and global supply chains, I have previously argued that labour is more likely to pursue transnational solidarity when blocked from resolving its demands through domestic structures and when labour movements are influenced by class-based ideologies (Anner, 2011). What I also suggest here is that extreme forms of employer labour control regimes that involve violence or the threat of violence provide labour movements with a mechanism to frame their issue that is particularly conducive to effective cross-border campaigns.

Labour control regimes and restructuring in apparel global supply chains

Current patterns of labour control regimes in the apparel sector are largely a consequence of the recent dynamics of hyper-competitiveness fomented by restructuring and changing trade rules. In 2001, the World Trade Organization (WTO) admitted China as a member. China's position was enhanced when WTO member States negotiated the Agreement on Textiles and Clothing (ATC) that, on 1 January 2005, phased out the system of quota-based trade in apparel. By 2003, China had overtaken Mexico as the largest exporter to the United States and had become the largest apparel exporter to the world. Asian competitiveness increased further with the Bilateral Trade Agreement of 2001 between the United States and Viet Nam. Like China, Viet Nam offered labour control through state-controlled unions, but with much lower wages.

An additional factor shaping competitiveness dynamics in the apparel sector is brand, and especially retailer concentration relative to suppliers. Since start-up costs in apparel are relatively low, apparel production has been widely dispersed to a very large number of factories in developing countries. By 2006 there were a total of 3,500 export processing zones (EPZs), each with many independent factories within them, employing 66 million workers in 130 countries.¹ At the same time, retailers greatly concentrated their power through advances in logistics and technology. The result was a dramatic increase in value chain monopsony (power consolidation of lead firms relative to downstream suppliers), exemplified by an enormous number of small apparel producers who are forced to compete with one another for contracts with a limited number of retailers and manufacturers. In such a context, the retailers and other buyers largely dictate the price they will pay per garment (Abernathy et al., 1999).

These macro-level political and structural changes have had two dominant effects on workplace dynamics. First, the ability of lead (upstream) firms to set the price paid to smaller production contractors has generated persistently low wages. Second, the push for lead firms to demand just-in-time inventory has generated a work intensity crisis in workplaces. The real dollar price per square metre of apparel entering the US market declined by 46.20 per cent between 1989 and 2011 (Anner, Bair and Blasi, 2013). This suggests that apparel suppliers are indeed producing under increasingly tight economic margins as competitiveness at the supplier level intensifies.

One of the most direct impacts of the shift to shorter lead times, more styles and more volatile orders is in the area of working hours. Forced, excessive and inadequately compensated overtime is an endemic problem in the global apparel industry. Because each new worker hired incurs training and fixed benefit costs for employers, many firms prefer to maintain a smaller workforce and demand that these employees work excessive hours during periods of peak demand. In effect, just-in-time inventory practices have meant that upstream lead firms are increasingly able to shift the risks associated with volatile product demand onto their suppliers, and the suppliers in turn shift the burden onto their workers.

The result of this heightened competitiveness and the resulting pricing and sourcing dynamics is that all major apparel exporting countries now fit into at least one of the three models of extreme labour control regimes outlined above. The largest apparel exporters to the United States are China and Viet Nam, which have authoritarian state labour control regimes. Indeed, approximately half of all apparel imported into the United States (and the world) comes from these two countries. The third and fourth largest apparel exporters to the United States are Bangladesh and Indonesia, despotic market

1. Apparel makes up a large share, but not all, of EPZ production. Consumer electronics and other light manufacturing can be also found in EPZs.

labour control regimes. The fifth largest exporter of apparel to the United States is Honduras, which has a repressive employer labour control regime. Honduras is also the largest apparel exporter to the United States from Latin America, having surpassed in recent years previous apparel powerhouses in the region, notably the Dominican Republic and Mexico. Indeed, Mexico is noticeable for the dramatic decline in its apparel exports to the United States.

Certainly, part of these shifting trade dynamics can be explained by costs. Mexico has one of the highest prevailing wage rates in the apparel sector (see table 2), and it has not been able to compete with other countries, notably in 2011 with Bangladesh. However, a simple race-to-the-bottom wage argument clearly does not tell the entire story, because the largest share of apparel is produced in China and wages are much higher in China than in Bangladesh. Nor does the wage story explain how Honduras came to dominate exports in Latin America, since its wages are higher than in other apparel-exporting countries such as Nicaragua.

Sourcing decisions are no doubt the result of several factors, including production scale, logistical capabilities, infrastructure, and so forth; but these traditional sourcing arguments do not tell the entire story either. This is because, besides keeping costs down, investors want to limit the potential for disruption to their value chain operations that strong, active unions may cause. In addition to production costs and infrastructure advantages, all major apparel-exporting countries offer investors some form of labour control.

In the sections that follow I explore each of the three cases of labour control and worker resistance through three case studies: authoritarian state labour control and wildcat strikes in Viet Nam; despotic market labour control and an international accord in Bangladesh; and repressive employer labour control and cross-border organizing campaigns in Honduras.

Authoritarian state labour control and wildcat strikes: Viet Nam

By 2011, the apparel sector in Viet Nam employed 2 million workers, making it the largest source of formal sector employment in the country (Better Work Vietnam, 2011). Apparel production in Viet Nam has remained mostly in the low-end, Cut-Make-Trim segment (Gereffi and Frederick, 2010), although in recent years full-package production has been growing. Wages have failed to keep pace with inflation and, as shown in table 2, covered only 29 per cent of workers' basic living needs in 2011. Other problems in the sector include chronic overtime, abusive managers and poor food quality in workplace cafeterias (Anner, 2014).

Workers' ability to respond to these concerns, however, is limited by the state labour control regime. The Communist Party's control over trade unions is firmly established in law and practice. The Labour Code states, "Trade

unions are [...] an integral part of the political system of the Vietnamese society under the leadership of the Communist Party of Vietnam.” Article 4.6 of the revised Labour Code states that the purpose of the law is “to develop harmonious, stable and advanced labour relations”. The law also allows for only one national labour centre, the Vietnamese General Confederation of Labour (VGCL), to which the Communist Party appoints national leaders. Strikes are legal in Viet Nam, but they must be organized or approved by the official unions. And trade unions, following the dictates of the Communist Party and its desire for social control and labour peace, do not organize strikes. The regime tolerates isolated enterprise-level strikes that focus on economic demands and grievances, but there is no tolerance for coordinated strikes, strikes that involve any form of violence, or strikes with political demands. The leaders of such actions could be arrested and face imprisonment.

In this context of state labour control via party-controlled labour unions, Viet Nam has experienced one of its greatest wildcat strike waves in its contemporary history. From fewer than 100 strikes per year in the 1990s, by 2006 there were 387 strikes, and by 2011 the country experienced 978 strikes annually. Strikes focus on common worker issues such as wages and benefits. Workers will also strike over bad cafeteria food or an abusive supervisor. Notably, the strikes tend to be short – three days on average – and are remarkably successful. In 95 per cent of the 97 strikes that I studied, workers achieved at least one of their demands (Anner, 2014). Since workers are afraid to identify themselves as strike leaders, employers are often forced to discuss strike demands with large groups of workers, often determining how to respond to strike demands by the level of applause given by the workers when issues are mentioned (*ibid.*).

This form of worker action can be understood in terms not only of the harsh conditions and low wages, but also of the nature of the labour control regime. They are worker-led strikes because official unions do not organize strikes. They are isolated to one factory because isolated strikes are tolerated by the State whereas coordinated strike activity is not. And they are perceived as largely leaderless strikes because an outspoken leader would be perceived as a troublemaker and could face imprisonment.

The short lead times given to suppliers by buyers are also a source of worker power that is leveraged by wildcat strikers. As Kimeldorf (2013) argues, time-sensitive tasks give workers a source of disruptive power. In the apparel sector, the need for urgent orders to meet retailer needs in a lean retailing system of constantly changing fashions and seasons means that a short strike can put a lot of pressure on employers to get workers back on the production lines quickly. Indeed, my field research in Viet Nam suggests that brands and retailers may even communicate with contractors experiencing a strike to demand that they resolve it quickly in order to get the order out on time. This is another reason why wildcat strikes in Viet Nam have such a high success rate.

The question that remains is what wildcat strikes leave in their wake. Although they are remarkably successful, they are also short actions that lead to quick fixes. The result is that the problems repeat themselves, and workers have to make the effort to strike again and again to meet basic demands. More sustained solutions would necessarily involve transforming the system of state labour control. Here, the impact of the current strike wave is more limited, but it is not insignificant. Indeed, a strike wave in the early 1990s contributed to the National Assembly decision to legalize strikes in 1994 (Kerkvliet, 2001). The strike wave of 2005–06 led to a significant increase in national minimum wages (Tran, 2007). Most recently, striking workers helped to motivate the National Assembly to adopt the Dialogue in the Workplace chapter in the revised Labour Code, which went into effect on 1 May 2013.² The revised law requires the election of worker representatives and the holding of worker–management meetings once every three months to discuss production, implementation of collective bargaining agreements, working conditions and other issues requested by worker representatives (Labour Code of Vietnam, Chapter V, Articles 63–65; see also Decree 60/2013/ND-CP).

Despotic market labour control and international accords: Bangladesh

Bangladesh provides an extreme example of a despotic market labour control regime. With a population of 155 million and a labour force of over 76 million, some 32 per cent of workers are underemployed, 31.5 per cent of the population lives in poverty, and the annual per capita gross national income stands at US\$840 (World Bank, 2015). Workers in Bangladesh received an average monthly wage rate of US\$52 in 2011; Bangladesh has long had the reputation for paying the lowest wages among major producers in the industry. And, as shown in table 2, these wages covered only 14 per cent of basic living needs (WRC, 2013). Outsourcing, part-time work, temporary employment and informality all contribute to workers' sense of extreme vulnerability, characteristic of a despotic market labour control regime.

Labour market vulnerability has also contributed to a very fragmented labour movement. This has greatly curtailed labour's ability to organize and demand greater social protection as part of a counter-movement as might have been anticipated by Polanyi (1944). Counter-movements, however, often presuppose a certain degree of structural power to be effective. Apparel workers lacking labour market power also lack the power to demand more effective state protection. The result in Bangladesh has been a weak and corrupt labour

2. Author's interviews, Ho Chi Minh City and Hanoi, March and April 2014.

inspectorate and poor social protection. Workers cannot expect a solution to their most pressing concerns from the State. Indeed, Bangladesh is one of a few countries in which the freedom of association rights do not fully apply to workers in export processing zones.

The hyper-competitiveness of the global apparel industry contributes to a system that seeks to save on costs not only through low wages but also through low commercial property rents. This is because, after wages, rents are one of the major costs of doing business in the apparel industry. The push to keep rents to their lowest possible level has resulted in extremely unsafe buildings. This was brutally illustrated on 24 April 2013, when Bangladeshi apparel workers were victims of the worst industrial disaster in the history of the industry. An eight-storey building with five garment factories, Rana Plaza, collapsed and killed over 1,100 workers; and the Rana Plaza disaster was not the only one of its kind. Since 2005, there have been 11 major factory disasters in the industry, which have taken the lives of 1,728 workers.

These tragedies were especially horrific because in many cases employers had been informed that their buildings were unsafe, but refused to stop production in order to meet the tight lead times imposed on them by buyers. For example, the day before its collapse, Rana Plaza was inspected and deemed unsafe by a government official. The bottom floor of the building was occupied by a bank, which immediately instructed all its workers to leave. The upper floors were occupied by garment factories. In those cases, the factories were attempting to meet the production deadlines imposed, through a system of outsourcing, by the brands and retailers. This illustrates how dynamics upstream in value chains have an impact on working conditions. That is, the despotic market control regime is the result not only of domestic labour market conditions, but also of the exigencies of global value chain pricing and sourcing practices.

What is also important about the Rana Plaza incident is the labour response that followed. Workers protested to demand better state protections, and the international labour movement and labour NGOs immediately began pressuring lead firms to accept greater responsibility for the safety conditions under which their clothing was produced. The idea for a building and fire safety accord had already been pursued by international labour NGOs. When Rana Plaza happened, European firms quickly responded to labour pressure and public outrage and signed up to what became the Accord on Fire and Building Safety in Bangladesh.

The Accord is a significant improvement on a generation of GFAs. Like GFAs, it was negotiated with labour unions, and thus it is a step up from traditional corporate codes of conduct, which are either unilateral or the result of partnerships with NGOs but not labour. The Accord differs from other initiatives in that it is legally binding and includes a pricing clause. According to the text of the agreement, the brands and retailers that signed the Accord should be committed to paying contract prices that would allow

contractors to produce in safe buildings, although in practice they have been reluctant to pay.³

Some observers consider the Accord as a top-down solution. Yet it is important to note that Bangladesh has experienced a considerable wave of labour protests, and in this regard it has something in common with Viet Nam's strike wave. However, the vast majority of factories are not unionized, and in the few unionized factories that do exist the unions are relatively weak and fragmented. Hence, the wave of protest has been weaker than in Viet Nam because market despotism contributes to weaker domestic bargaining power. As a result, Bangladeshi workers have gone beyond the national State, partnered with international labour unions and NGOs, and sought to address some of their demands through the support of an international accord.

What is also notable is the role of symbolic power and framing. When Bangladeshi worker activists pursued labour transnationalism, images of the human horror created by the building collapse were used to shame brands and retailers in the global North. In sum, international labour and NGO pressure, and worker mobilization, resulted in changes for workers in the country despite their extremely disadvantageous market power. Buyers are now committed through a legally binding accord to pay the price for safe buildings, and the country's minimum wage was increased by 77 per cent in January 2014. Labour laws were also reformed, although some of the reforms were inadequate and enforcement remains an issue. At the time of this writing, the final texts on labour implementation procedures were still being written and debated.

Repressive employer labour control and cross-border solidarity: Honduras

Honduras, which has been named as the most violent country in the world on the basis of its annual rate of homicides per capita (UNODC, 2013), represents an example for the purposes of this article of the use of violence and the climate of violence for controlling labour. Although Honduras did not experience the extreme death squad repression of neighbouring countries like El Salvador and Guatemala during the 1980s, state security forces and paramilitary groups did repress labour (Acker, 1988). Yet Honduras has had one of the relatively strongest labour movements in Central America, which can be traced back to the great banana workers' strike of the 1950s (MacCameron, 1983). Partly as a result of this legacy, by the 1990s Honduran unions were organizing far more apparel export plants than any other country in the region (Anner, 2011). Unlike in Viet Nam, there has been a vibrant tradition

3. Author's interviews with Bangladeshi garment manufacturers in the Dhaka region, 22–30 June 2015.

of independent unionism in Honduras. And, unlike in Bangladesh, the union movement has been relatively less fragmented. This has provided the foundation for sustained domestic organizing campaigns.

No doubt, despotic labour market conditions have hurt organizing attempts. Yet wages are higher and labour markets somewhat better in Honduras than in Bangladesh. More significant in controlling labour are efforts by employers, who have pursued a range of union avoidance techniques including the aggressive promotion of company unions (Anner, 2011). Anti-union violence also escalated significantly after the 2009 coup d'état that removed a pro-labour reformer, Manuel Zelaya, from power. In the years following the coup, union leaders of major campaigns to organize workers in the apparel sector faced death threats. For example, Norma Mejia, a garment worker who attempted to organize a Russell Athletic factory, found a note on her sewing machine during the organizing campaign showing a stick figure with its head cut off (YouTube, 2009). When she still refused to stop her organizing efforts, she and all other union members were fired and the factory was closed.

The threat of violence and other repressive actions are similar to conditions faced by worker activists in Central America in the 1980s, but the difference is that the violence during that period was tied to the State, whose leaders saw workers organizing as a political threat to their regimes. In this regard, the 1980s reflected a period of state labour control. In the 2000s, labour control shifted to the employers, who now fire workers and then blacklist them, and also at times threaten them. The State creates a permissive environment through its inaction, as a result of either a lack of capacity or a lack of willingness to punish the perpetrators of the violence.

The question is what sort of response labour pursues in such a context. What we find is that Honduran workers have developed a practice of combining sustained local organizing with transnational pressure on brands, a pattern of resistance to which I refer as cross-border organizing campaigns. As in Viet Nam, strike actions may be common, but strikes are used when necessary to complement an organizing drive; they are not the main mechanism to achieve workers' goals. And as in Bangladesh, there is international pressure on buyers that often results in signed agreements. Unlike the Bangladesh Accord, however, the goal is not to directly influence the price paid for production in order to improve working conditions, but rather to ensure respect for the right to organize and bargain collectively, which in turn should improve wages, benefits and working conditions.

Perhaps the best illustration of such a campaign is the abovementioned campaign to unionize Russell factories in Honduras. Steven Greenhouse of the *New York Times* (18 Nov. 2009) proclaimed this campaign to be one of the more important victories in the history of the anti-sweatshop movement. In this case, while maintaining their workplace organizing drive in Honduras, local unionists reached out to US labour and student activists. The worker–student alliance made sense because Russell was one of the

largest producers of American collegiate apparel. This gave the students a source of economic leverage that they could exploit by demanding that universities cut their contracts with Russell until such time as Russell respected internationally recognized workers' rights.

One particularly effective campaign strategy was to bring Honduran union leaders from the Russell factory to the United States to speak on university campuses. The campaign achieved two objectives. First, it personalized and legitimized the workers' demands. Many campuses cut or suspended their contracts with Russell days after such speaking events on their campuses. Second, it ensured that the Honduran unionists were integrally involved in the campaign. Thus, although the campaign did involve external pressure on the factories, this was not a top-down solution devoid of significant local worker participation.

Approximately 100 major US universities terminated their licensing agreement with Russell on the basis of evidence of anti-union activities in Honduras. And in November 2009, after years of union organizing efforts and an intense one-year transnational campaign, Russell announced that it would reopen the factory and re-hire 1,200 workers. Russell also agreed to recognize the union, begin collective bargaining, and adhere to a neutrality clause for all its other seven factories in Honduras.⁴

The question that remains for Honduras is the sustainability of this pattern of resistance. Organizing cross-border campaigns for every apparel factory to obtain a union is impractical because of the cost and coordination constraints of such efforts. The most logical response would be to campaign for better labour laws and stricter enforcement that would facilitate domestic organizing. This was part of labour's efforts when it lobbied around the free trade agreements with the United States, such as CAFTA-DR. Yet the greater challenge is to work toward modifying the economic dynamics around which the market liberalization model is based, and that would entail engaging in direct bargaining with lead firms in supply chains.

Conclusions

This article has explored how changing dynamics in the global apparel industry have engendered three models of labour control: authoritarian state labour control, despotic market labour control, and repressive employer labour control. It has also explored how variations in labour control regimes have shaped variations in forms of worker resistance. In the cases described, the system of state labour control was conducive to worker mobilization from below in the form of wildcat strikes. The system of market labour control

4. Author's interviews with labour organizers, San Pedro Sula, July 2009; see also Hobbs (2009); Russell Athletic (2009).

contributed to international buyer accords that force brands and retailers to pay the price of safe buildings. Finally, the repressive employer labour control regime resulted in cross-border organizing campaigns that combined international and domestic labour organizing.

The results have been substantial. Not only did Vietnamese garment workers achieve increased wages, better benefits and other workplace improvements in 95 per cent of their strikes, but they also forced the Government to reform its labour laws to allow for more worker participation in workplace governance. In Bangladesh, workers and their transnational allies forced brands for the first time to accept a legally binding accord that holds them accountable for the price of safe factories. And in Honduras, workers and their allies forced the country's largest private sector employer to reopen a factory, re-hire fired workers, recognize the union, bargain for substantially increased wages, and agree to a company-wide neutrality clause that is allowing workers to expand unionization and collective bargaining to other Russell-owned facilities in the country.

There are, no doubt, limits to these patterns of resistance. The wages of Bangladeshi workers remain below subsistence level. Strikes in Viet Nam ebb and flow depending on market conditions and the State's shifting tolerance for contained protests and its desire to provide stability to investors. In Honduras, although some unions are growing, so too is the climate of violence that restrains all but the boldest of workers from protesting. Indeed, the challenge facing labour is not only to achieve limited protection or economic gains within the current model of market liberalization, but also to work toward a modification of the model itself.

Much more research remains to be done, notably on other sectors and other regions of the world. In many ways, the apparel sector provides for sharper examples because the industry is extremely competitive and notorious for paying low wages and providing poor working conditions. This helps to explain the more extreme forms of labour control that can be found in this sector, but such labour control can be found in other sectors facing similar conditions, notably agriculture and extractive industries. The brutal conditions faced by the Marikana miners in South Africa, fomented by a despotic labour market, no doubt contributed to the contentious strike which in turn resulted in violent state repression.

In larger economies such as the United States, we find more mixed models of labour control regimes and worker resistance. In higher-end sectors such as automobiles, we can still find elements of hegemonic control and traditional union organizing, especially in northern, more unionized regions of the country; but we also see labour market despotism in low-end sectors such as the fast-food industry, with patterns of worker resistance based on disruptive street protests. For workers based in the largely non-unionized south of the country, we see unions building cross-border solidarity with unions not only in countries such as Germany to help organize workers, but

also in Brazil. US security industry workers have also used the rules provided by international accords, notably GFAs, to subordinate capital to worker and union oversight (Anner, 2011).

This article illustrates that patterns of global production are not based solely on costs, but also on labour control. Labour control regimes will vary depending on local contexts, but all major apparel exporters subject their workers to one form of control or another. However, just as labour control regimes vary, so too do patterns of worker resistance. Workers are finding the appropriate mechanisms to circumvent their particular form of control; and in many cases they are achieving many of their most immediate demands. More sustained solutions would require restructuring the economic model that has engendered these labour control regimes.

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Effective protection of workers' health and safety in global supply chains

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Over the last 20 years, manufacturing of a wide variety of consumer goods in the global economy has shifted from relatively well-regulated, high-wage and generally unionized factories in the developed world to basically unregulated, low-wage and rarely unionized factories in the developing world. Protecting workers' health and safety in these countries where governments frequently lack the political will or the resources (financial, human and technical) to protect workers within their borders – and are often willing to sacrifice the safety and health of the national workforce to attract foreign investment – is a significant challenge.

However, protecting workers under these circumstances is precisely the goal of the global labour movement and occupational health and safety (OHS) professionals, both to prevent the immediate adverse impacts on those workers directly affected and to counteract the “downward pressure” that bad conditions exert on all workplaces in the global economy.

The prevailing supply chain approach for OHS protection for workers is to incorporate them into the international brands' corporate social responsibility (CSR) programmes in the hope that there will be a “trickle-down” effect of corporate-level OHS protections to the factory floors of the brands' suppliers. This approach has resulted in only marginal improvements of working conditions in global supply chains operating in the real world context of corrupt, ineffective governments, harsh employers who are squeezed themselves by international brands, and desperately poor, vulnerable workers without feasible alternative jobs.

A different approach – exemplified by the work of the Maquiladora Health and Safety Support Network (MHSSN) – is a worker-centred one, with the goal of creating knowledgeable, informed and active workers in factories at all tiers of the global supply chains who are familiar with OHS concepts, hazards and controls, as well as their rights under the law, and who are able to speak and act in their own name to protect their own health and safety on the job.

Characteristics of supply chains in the global economy

Today 51 of the largest 100 entities on the planet are not countries but rather transnational corporations. These corporations control 70 per cent of world trade, one-third of all manufacturing exports, three-fourths of trade in commodities, and four-fifths of technical and management services (Dunning and Lundan, 2008; Mander, 2014).

Many of these corporations have replaced manufacturing facilities in the developed world with multi-tiered supply chains that stretch the length and breadth of the globe. For example, Nike has 744 factories in 43 countries with close to a million workers (Nike, 2014a). The Gap has 1,300 factories in 50 countries sending apparel to its retail stores in Europe and North America

(Gap, 2012). Disney, a major seller of toys, has licences with 5,500 factories in 70 countries and several million workers (Walt Disney Company, 2014). However none of the workers in these supply chain factories are directly employed by Nike, The Gap or Disney. Instead they are employed by tiers of suppliers, subcontractors and, increasingly, temporary help or contingent worker agencies in every tier of the supply chain.

Not surprisingly, the working conditions in global supply chains are frequently illegal, unsafe and unhealthy, and more often than not share the following features:¹

- long hours of work, often in violation of national law;
- low pay, often below the national average for their industrial sector and well below a “living wage”;
- pay that is delayed, underpaid, or never paid in cases of “wage theft” by employers;
- unsafe and unhealthy conditions, including serious uncontrolled hazards;
- physical abuse and sexual harassment;
- child labour; and
- lack of basic legal and human rights.

Documentation of these conditions – which are often not disputed by the international brands but deemed unrepresentative of those prevailing in the entire supply chain – comes from the following sources: (1) news media reports; (2) investigative reports from non-governmental organizations; (3) investigative reports from multi-stakeholder initiatives (MSI) that include brands; and (4) the brands’ own CSR reports.

The corporate social responsibility approach and its failure

Responding to the “anti-sweatshop” campaigns of the early 1990s, global corporations began to adopt codes of conduct and to report on their implementation, first through in-house audits and then by using for-profit, third-party monitoring firms. The CSR movement started out as a cottage industry, but has by now become a US\$15 billion-plus global industry with an extensive universe of conferences, magazines, newsletters, books and professional associations (Smith, 2014). Ironically, an industry set up to solve problems in outsourced supply chain production is now itself outsourcing critical

1. See AMRC (1998, 2012 and 2013); Brown (1999, 2002, 2004, 2005a, 2009a and 2010a); Brown and O'Rourke (2007); Chan (2013); Chan, Ngai and Seldon (2013); Duhigg and Barboza (2012); Gorla and Akter (2014); Hale and Wills (2011); Loomis (2015); Luethje et al. (2013); Ngai and Chan (2012); Pringle and Frost (2003); Takaro et al. (1999).

components of the CSR system, including on-site factory inspections and awarding of “certifications” of safe and lawful working conditions.

The CSR industry and factory suppliers, mindful that future work depends on reported compliance with the brands’ corporate codes of conduct, have found ingenious methods of “gaming the system” of CSR audits and providing “plausible denials” when illegal and unsafe conditions are inevitably brought to light. The vast majority of CSR programmes have an impact, if any, only on the “Tier 1” suppliers, such as Foxconn in electronics or Pou Chen in sports shoes, and virtually no impact on their subcontractors, or the subcontractors of the subcontractors.²

The CSR system has failed to make more than marginal improvements in actual factory working conditions over the last 20 years for three reasons: the dominant “sweatshop business model” in all global supply chains; corrupt and ineffective CSR or “social” monitoring; and the non-existent participation of workers in the development, implementation and verification of factory-level CSR or health and safety programmes.

The supply chains’ business model has several features that work against effective factory-level programmes.³ First, there is the brands’ sourcing department’s “iron triangle” of the lowest possible price, fastest possible delivery and highest possible quality which typically trumps all other considerations, including workers’ safety and other CSR goals. Another is the “race to the bottom” in production costs, where brands pit countries, regions, cities and contractors against one another in a pitiless drive to reduce costs to the lowest possible level regardless of the impact on the workforce. This is manifest in the relentless effort to cut ever deeper, year after year, even with suppliers whose “rock bottom” costs won them the contract in the first place. Suppliers, and their subcontractors down the chain, are routinely told that they will be paid less next year for their products, and less still the year following – and if they do not care for this arrangement, then the business will go elsewhere.

The result of this global business model – now combined with mandatory brand-required CSR projects for which the brands rarely provide any financial support – is that the suppliers and subcontractors have ever-shrinking resources to pay for code-compliant production, including legally required overtime and benefits, or “non-productive” activities such as employee safety training, exhaust ventilation to remove airborne chemicals, or machinery lockout/tagout programmes to prevent amputations.

2. See Barrientos (2013); Barrientos and Smith (2007); Brown (2007); Brown and O’Rourke (2003); Casey (2006); China Labor Watch, 2011–15; Cole and Chan (2015); Confino (2013); Loomis (2015); Nova and Shapiro, 2012–14; SACOM (2013); SOMO (2013a, 2013b and 2015).

3. See Bader (2014 and 2015); Cole and Chan (2015); Confino (2013); Fleming and Jones (2013); Karnani (2010); Loomis (2015); Lyon and Karnani (2010); MSN (2007); O’Rourke and Brown (2003); SACOM (2013); SOMO (2013b and 2015); Wells (2007).

Even if the contractors and their subcontractors had the desire and political will to implement effective safety programmes, few of them have the resources necessary to accomplish this. Instead, supply chain employers mount CSR and OHS programmes for “show”, with the main benefit being marketing and public relations gains for the corporate brands and retailers.

The CSR monitoring that is supposed to detect and correct these problems has been almost completely ineffective, and is often corrupt. These systems have been successfully “gamed” by all involved – brands, contractors, subcontractors and auditors – with the only losers being the workers.⁴

Most auditors do not have the training required – especially in OHS – to make a valid determination of the sufficiency and effectiveness of the factory-level programmes. The standard monitoring, usually announced in advance and often no more than short, “once-over-lightly” or even “drive-by” inspections, are conducted by for-profit enterprises that know their future business depends on satisfying the needs/expectations of their current clients. Ironically, many CSR auditing companies now outsource the actual field inspections and programme evaluations to even less qualified and less responsible subcontractors.

Two of the most well-known examples of CSR audits that resulted in certifications of factories that subsequently had major disasters, killing and injuring workers, are the Ali Enterprise factory in Pakistan and the Rana Plaza factory building in Bangladesh.

At Ali Enterprise, the factory received an “SA 8000” certification just three weeks before an entirely predictable and preventable fire killed 25 per cent of the workforce, 289 workers who were burned to death in December 2012 (Claeson, 2015; ILRF, 2012; SOMO, 2013a). The certification from Social Accounting International (SAI) was subcontracted out to the Italian-based RINA company, which then subcontracted the actual factory inspection in Pakistan to the RI&CA company, which has certified more than 100 factories in Pakistan. Neither SAI nor RINA ever visited the factory. Like all CSR auditing, RI&CA’s inspection report generating the certification has never been publicly released.

At Rana Plaza, two of the five garment factories in the building had received a safe-factory certification from the European Business Social Compliance Initiative (BSCI) prior to the collapse of the building in April 2013 that killed over 1,100 workers and injured 2,000 more (Brown, 2015; Claeson, 2015). The BSCI certification does not address issues of building structural integrity – a major issue in Bangladesh, which is second only to

4. See Anner (2012); Anner, Blair and Blasi (2013); BBC (2014); China Labor Watch, 2009 and 2011–15; Claeson (2015); Clean Clothes Campaign (2005 and 2008); Clifford and Greenhouse (2013); Esbenshade (2004); Frank (2008); Fleming and Jones (2013); Gould (2005); Harney (2008); He and Perloff (2013); ILRF (2012); Locke, Qin and Brause (2007); Locke and Romis (2010); Loomis (2015); O’Rourke (2000); Plambeck and Taylor (2014); SOMO (2013a, 2013b and 2015); Walsh and Greenhouse (2012).

China in global garment production and exported US\$24 billion in garments in 2014.

Another famous example of the failure of CSR certifications to protect workers is the case of Apple's supplier Foxconn. In January 2012, the *New York Times* ran a series of stories on working conditions in Chinese factories producing Apple products that documented illegal, unsafe and unhealthy conditions despite Apple's much-publicized CSR programme and promises (Duhigg and Barboza, 2012).

Apple immediately joined the business-friendly Fair Labor Association (FLA) and paid for them to conduct audits of three supplier factories run in China by the Taiwan-based Foxconn corporation. In March 2012, the FLA issued reports on the factories that noted that two of the three had been awarded "OHSAS 18001" certifications for their occupational health and safety management systems when, in fact, no functional OHSMS system existed in either factory (FLA, 2012). No explanation for this was offered by the auditing company – reportedly the Swiss-based SGS – to the FLA, or by Foxconn or Apple.

The FLA report listed several dozen uncorrected hazards, programme deficiencies and lack of implementation in the report's appendices. It concluded:

Although the factory has obtained an OHSAS 18001 certificate, and the Health & Safety system is well developed as far as written policy and procedures are concerned, the implementation of the system is not effective in many areas, arguably due to the ineffectiveness of the HSE committee and of the methodology and tools used for internal audits and routine HSE inspections, along with the absence of an effective review process.

Most managerial staff interviewed mentioned that these issues have never been raised during external OHSAS 18001 audits.

No active worker representation and participation on HSE committee.

No active system for encouraging workers to participate in ongoing HSE efforts.

Given the economic, political and social contexts in which global supply chains function, and the fatal flaws of the CSR auditing systems, it is not surprising that media stories, NGO reports, MSI reports and even the brands' own CSR reports document continuing hazardous and illegal conditions in the global economy, and supply chains in particular.

Last but not least, none of the current CSR programmes in global supply chains have genuine, as opposed to pro forma, participation from shop-floor workers in the development and implementation of OHS programmes (Brown, 2009b). Part of the reason for this is precisely the high turnover rate

in supply chain factories caused by low wages, long hours and bad working conditions created by the brands' "sweatshop business model" itself.

As is well known in the OHS profession, workers are an essential and necessary element in effective, factory-level OHS programmes that actually reduce or eliminate injuries, illnesses and fatalities. Workers in effective OHS programmes play critical roles in conducting periodic inspections, investigations of incidents, development and verification of corrective actions, and in peer-to-peer training of co-workers. However, this level of worker participation is almost non-existent in global supply chain factories.

Worker-centred approach

An alternative approach to supply chain CSR/OHS programmes is to rely *less* on ever more elaborate occupational health and safety management systems (OHSMS), metrics and external monitoring, and *more* on integrating meaningful worker participation into the key elements of effective programmes – hazard identification, hazard elimination and controls, and worker training and education (Meredith and Brown, 1995; Brown, 2009b).

Although "worker empowerment" and "worker participation" have become common "buzzwords" for CSR/OHS programmes in developed economies, the concepts have been given only lip service in global supply chain factories in the countries where the products are actually made.

If workers are to play a key role in OHS programmes, then they must have the training, knowledge and information necessary to perform the tasks assigned to them. Workers at the factory level must be able to speak and act in their own name in order to protect their health and safety on the job. This has been the goal of the Maquiladora Health and Safety Support Network since its founding in 1993.

The MHSSN consists of approximately 400 occupational health professionals (mostly in the United States) who have put their name on a roster to donate their time and expertise to provide training, information and research as well as technical assistance to worker organizations (unions, workers' centres, injured worker/family survivor groups, women's and community organizations) in the developing world. The Network has developed ongoing partnerships with the labour health education programmes at the University of California at Berkeley and Los Angeles (the Labor Occupational Health Program in Berkeley and the Labor Occupational Safety and Health Program in Los Angeles) to conduct many joint trainings over the last 20 years.

The MHSSN trainings have consisted of interactive, participatory teaching methods using literacy- and culture-appropriate materials to build on the knowledge and experience of the worker participants, and to provide them with the skills and information they need to conduct their own trainings and OHS activities in their workplaces and their communities. Multiple

trainings are usually carried out in order to reinforce the information gained and to provide participants with a sense of confidence and self-efficacy to conduct their own workshops. A binder of easy-to-understand materials in the language of the country where the training occurred is always generated, and often forms the basis of the participants' later workshops and educational activities.

Following the trainings, MHSSN volunteers have provided ongoing assistance with preparation of training materials, curriculum and lesson plans, as well as technical assistance in evaluating specific operations, hazards and controls in workplaces where training participants are involved.

The following are brief case studies of OHS capacity-building activities by the MHSSN partnering with worker organizations in five countries: Mexico, Indonesia, China, the Dominican Republic and Bangladesh.

Mexico

The impetus for the formation of the MHSSN in 1993 was the passage of the North American Free Trade Agreement (NAFTA) and the expectation, as in fact occurred, that many manufacturing facilities would close in the United States and move operations to the US–Mexico border. Although OHS regulations in Mexico are roughly equivalent to those in the United States, there is no effective enforcement of OHS protections in Mexico (Brown, 1999 and 2005a; Meredith and Brown, 1995; *Multinational Monitor*, 2000; Takaro et al., 1999).

From 1993 to 2002, when drug trade-generated violence in Mexico made working there too dangerous, the MHSSN conducted a dozen trainings with worker and community organizations. Because there are few trade unions in the maquiladora sector, and almost none that are member-controlled, the partners for these trainings on the Mexican side of the border from Tijuana to Matamoros were community-based organizations in neighbourhoods adjacent to the maquilas, mainly women's and human rights organizations made up of workers from the maquiladoras.

The principal result of this activity was the development of a corps of approximately 40–45 women workers all along the 2,000-mile border who used the training binder and other materials to conduct their own workshops with co-workers and workers in other nearby facilities. The women trained by MHSSN also conducted activities in their workplaces to call attention to health and safety hazards on site and to collaborate with co-workers to seek employer action to reduce or eliminate the hazards (Meredith and Brown, 1995; MHSSN, 2015).

In October 2007, the MHSSN responded to a request from the Mexican Miners Union and the United Steel Workers in the United States to assist miners at the historic Cananea copper mine in northern Sonora, Mexico (Brown, 2008; Zubietta et al., 2009).

A multidisciplinary and multinational team of occupational health professionals conducted medical screenings, gathered work histories, identified health and safety hazards from an on-site inspection of the huge, 100-year-old open pit mine and large processing plants. The MHSSN team consisted of three occupational physicians, three industrial hygienists, a respiratory therapist and an occupational nurse, who were from Colombia, Mexico and the United States.

The MHSSN team generated a report on the health and safety hazards at the facility, the adverse impacts detectable in the workforce, and a series of recommendations to protect the lives and health of the miners (MHSSN, 2015). The unions held a press conference in Mexico City announcing the report, and met with senior officials of Mexico's workplace health and safety agency.

As a result of the publicity, the mine's owner, Grupo Mexico, contracted with engineering and OHS consulting firms to address all the findings of the MHSSN report and to improve conditions throughout the sprawling facility.

Indonesia

Following the fall of the 31-year dictatorship of President Suharto in Indonesia in 1999, there was an explosion of unions and labour rights NGOs in the country.

In June 2000, working with the Sedane Labour Resource Center (LIPS) labour rights organizations, the MHSSN conducted a training with representatives of 14 organizations – six unions and eight women's, labour and human rights organizations. In addition to classroom activities, the training involved field day exercises at a 7,800-worker sports shoe plant operated by a Korean company producing shoes for Nike (MHSSN, 2015).

Follow-up activities to the training included a meeting with participants in March 2001 by two of the MHSSN instructors, and a second full training in September 2001. The participants in the trainings went on to conduct their own OHS activities using the information and materials provided in the MHSSN events.

One of the unions participating in the June 2000 training, Indonesia Prosperous Workers Union (SBSI), used the training binder to produce an 80-page, pocket-size booklet on key OHS concepts, hazards and controls that had a printing of 15,000 copies financed by the German Friedrich Ebert Foundation.

China

Factory health and safety committees involving production workers are part of Chinese law, but rarely exist in the "foreign-owned enterprises" that are part of global supply chains in apparel, sportswear, toys and electronics.

In July 2001, the MHSSN partnered with the Hong Kong-based China Labor Support Network to put on a training course in Dongguan, China, for managers and workers assigned to be part of joint health and safety committees in three sports shoe factories in the Pearl River Delta producing for Adidas, Nike and Reebok (Brown, 2003a; MHSSN, 2015; Szudy, O'Rourke and Brown, 2003). In addition to 25 committee members of each of the three plants, participants included 17 members of Hong Kong-based labour rights NGOs.

The four-day training was conducted entirely inside a 30,000-worker, Taiwanese-owned factory producing sports shoes for Adidas. On the last day, participants from the three factories met separately to draw up plans for the joint health and safety committees and to develop a list of start-up activities in each facility. The Hong Kong-based NGOs also met to coordinate future activities and to increase attention to OHS issues in their publications and campaigns.

In 2002, two of the MHSSN instructors visited one of the factories, Kong Tai Shoes (KTS) in Shenzhen, to evaluate progress in establishing the health and safety committee. Four of the worker members of the committee were also members of the factory's union executive committee, who had been elected by the 5,000 workers in the facility in a democratic, multi-candidate election required by Reebok, the plant's customer.

The post-training evaluation at KTS indicated that worker members of the health and safety committee had been active in conducting monthly inspections of the facility, identifying and implementing hazard controls, investigating incidents causing injuries and illnesses, and in conducting peer training with co-workers on a variety of OHS topics.

Dominican Republic

In 2010, Knights Apparel of Spartanburg, South Carolina, worked with the US-based Workers Rights Consortium (WRC) to establish the first genuinely "no sweat" garment factory in the Americas, Alta Gracia. The factory, an hour's drive into the countryside from the capital Santo Domingo, pays three times the prevailing garment wage in the Dominican Republic, has a member-controlled union, and a functioning joint health and safety committee (as required by Dominican law).

The MHSSN was asked by plant management and the union, via the WRC, to conduct a pre-operation safety inspection of the facility, which was an abandoned garment factory in an export processing zone (EPZ). MHSSN volunteers conducted a series of site visits before and after the opening of the factory, identifying hazards and verifying the required corrections in 2010 and 2011 (Brown, 2010b; MHSSN, 2015).

In June 2010, MHSSN members conducted a training with all members of the joint health and safety committee on site, and also a training with

members of the trade union's federation that represents workers at other EPZ factories operating as part of global garment supply chains.

A Georgetown University research evaluation of the Alta Gracia factory in August 2014 confirmed that the joint health and safety committee continued to function effectively in identifying and correcting new hazards and continuing to conduct its own trainings and educational activities (Kline and Soule, 2014).

Bangladesh

Years of terrible industrial disasters in Bangladesh – factory fires and building collapses – finally culminated in the Rana Plaza building collapse in April 2013 that killed over 1,100 workers and injured 2,000 more (Brown, 2010a and 2015; Claeson, 2015; ILRF, 2012; SOMO, 2013a).

Arising from the disaster was a new model for protecting workers' health and safety in the ready-made garment industry – the Bangladesh Accord on Fire and Building Safety. The Accord is a legally binding agreement between 190 international clothing brands and retailers and two international unions (IndustriALL and UNI Global Union) and their Bangladesh affiliates for a five-year programme to find and fix electrical, fire and building structure hazards in approximately 1,800 garment factories with more than 2 million workers (Bangladesh Accord, 2013).

In October 2014, MHSSN members conducted a series of trainings and technical assistance sessions with the Dhaka staff of the Accord and with the leadership of the 14 trade unions (the Industrial Bangladesh Council or IBC unions) participating in the Accord. The MHSSN instructors were also able to accompany four Accord engineers on a follow-up inspection of a four-storey, 750-worker factory in Dhaka.

The training of Accord staff – engineers and “case handlers” dealing with worker complaints – covered key OHS concepts and issues, as well as information on how to take and effectively investigate worker complaints. The IBC union training was focused on effective participation in joint factory health and safety committees (now required by Bangladeshi law), as well as information on basic OHS concepts in hazard recognition, evaluation and control.

The factory health and safety committees will be initiated in the second half of 2015, and Accord and IBC participants in the MHSSN trainings will be involved in workshops and other trainings to build the capacity of both worker and management members of the committees (Bangladesh Accord, 2015).

At the same time, the MHSSN is working with three other California OHS organizations (the California Collaborative) to support an initiative to establish a “Worker-Community OHS Academy” that would provide training, information and materials to workers and their organizations in

a variety of industrial sectors, as well as to community-based organizations made up of workers.

This grassroots effort is designed to increase the capacity of worker and community organizations in the area of OHS so as to reach workers who may not belong to trade unions or other institutions currently involved in the national and international efforts to improve working conditions in Bangladesh. The Bangladesh Accord, unless renewed, is set to expire in May 2018.

Limitations of MHSSN's work

The MHSSN is a small, voluntary network of occupational health and safety professionals who have donated their time and expertise over the last two decades to empower workers in global supply chains so that the workers can speak and act themselves to improve working conditions in their workplaces and industries.

This work does not exist in a vacuum, however, and it has been affected by larger political and economic changes beyond the Network's control. For example, the violence and periodic economic crises in Mexico have meant that MHSSN volunteers have been unable to work in the country since 2007, and the maquila workers themselves have not been able to take OHS issues into their workplaces at certain periods of time, for fear of losing their jobs in times of economic retrenchment. The miners at the Cananea mine lost their strike over health and safety issues, and conditions for the replacement workers have deteriorated since the strike was broken.

The KTS factory in China experienced a change of ownership in 2003, and the new owners of the plant were not as interested in worker participation as the previous owner and greatly curtailed the activities of the plant's health and safety committee.

Conclusion

Despite the constraints, the MHSSN's work has set a useful example of how occupational health and safety professionals can use their skills and knowledge to strengthen the capacity of supply chain workers and their organizations to understand and act on OHS principles to protect their own lives and their co-workers' health and safety as well.

The combination of participatory, interactive teaching methods, accessible materials, follow-up and ongoing technical assistance has made it possible for workers and their organizations in specific locations of global supply chains to increase their activity to protect workers' fundamental right to a safe and healthful workplace.

Over the last 20 years, the MHSSN has learned the importance of being able to conduct a series of follow-up trainings (one-off events yield little results) and ongoing technical assistance; and that there is a very limited supply of accessible OHS materials appropriate for grassroots worker organizations in the sea of OHS publications that exist on the Internet.

The obstacles to putting on more trainings, developing accessible materials and providing ongoing professional-quality technical assistance is not lack of interest on the part of professional OHS volunteers in the MHSSN or among base-level worker organizations, but rather a lack of financial resources.

The international union movement – from global federations to local unions – could play a key role in providing the resources – financial, human and technical – needed to replicate and scale up the successes of the MHSSN in developing OHS capacity in base-level worker organizations.

Among the contributions that unions could make are:

- providing funds to support initial and follow-up trainings;
- providing funds and qualified personnel to support ongoing technical assistance;
- providing funds for the development of accessible, literacy- and culturally appropriate OHS materials;
- providing qualified personnel to collaborate with and partner local worker organizations in the development of accessible OHS materials;
- establishing “sister organization” relationships with base-level worker organizations in countries and/or industrial sectors where global supply chains exist and are growing; and
- establishing and supporting worker-community OHS training and assistance centres in producer countries that would provide ongoing, institutionalized support for local worker efforts to improve working conditions in multiple industries and global supply chains.

Given the ever more savage working conditions in global supply chains, and the failure of CSR and other top-down management systems to protect workers, the development and strengthening of a worker-centred approach to improving working conditions globally is essential. Global organized labour can play a critical role in preventing nineteenth-century working conditions from being imposed on the twenty-first century's workforce, and in ensuring that every working person can return home at the end of their shift safe and sound.

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One click to empowerment?

*Opportunities and challenges for labour
in the global value chain of e-commerce*

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Working conditions at the online retailer Amazon have received some negative attention in recent years. In 2014, the International Trade Union Confederation Convention voted Amazon's founder and CEO Jeff Bezos the "worst boss in the world", for reasons of tax avoidance and deplorable working conditions (ITUC, 2014). The 2015 Big Brother Award by the German NGO Digitalcourage also went to Amazon for invading the privacy of its warehouse employees by asking for personal health data and for organizing digital day working through its crowd-working platform Mechanical Turk. The *Financial Times* (2013) reported that workers in Amazon's warehouses in the United Kingdom were constantly tracked through an electronic device, and in the same year a German television documentary showed alleged neo-Nazi security agents bullying Amazon's temporary foreign workers (ARD, 2013).

Already in November 2011, the *Süddeutsche Zeitung* had pointed out that unpaid interns sent by the Federal Employment Agency were doing most of the packing at Amazon's Düsseldorf warehouse during the 2011 holiday season, while in the United States, the *Morning Call* of 18 September disclosed that ambulances were permanently stationed outside a warehouse in Pennsylvania during the summer of 2011 waiting to collect heat-affected workers since there was no air conditioning inside.

These few examples help to illustrate why Amazon has earned such a bad reputation as an employer. The struggle for better working conditions has already begun, even though the online retail giant is proving to be resistant to unionization. This prompts the question whether there are specific challenges and opportunities for trade unions when dealing with e-commerce workers. It can be argued that unions still have to fully grasp the economic mapping of workers connected with e-commerce.

Amazon is by far the most important global e-commerce player at present, with second-quarter sales of US\$23.18 billion in 2015 (Amazon, 2015). However, companies such as the Chinese JD.com and Alibaba, the Brazilian Saraiva, the Nigerian Jumia, and the Japanese Rakuten are regionally much more important than Amazon and growing as well (Research and Markets, 2014).

As online retail enterprises replace brick and mortar retail, it becomes increasingly important to find means of reaching out to e-commerce workers. The first section of this article proposes mapping e-commerce workers within existing frameworks of global value chains (GVCs). In the second section, the current labour struggles at Amazon are discussed in light of insights from the GVC approach. The last section summarizes the findings and proposes recommendations for strategy.

The commodity chain approach was the first to map the interconnections between actors in globalized systems of production. Gereffi (1994) analysed the role of the various participants in production chains in terms of their opportunities to “upgrade”. This framework, which distinguished between buyer-driven and producer-driven chains, has stimulated a broad body of empirical and conceptual research to this day. As Bair (2005) noted, the commodity chain approach represented a promising new avenue mainly because it was different from both Wallerstein’s (1979) world system theory – which describes relations between the core and the periphery in a more abstract way – and also from the business-inspired concept of global value chains that focuses exclusively on opportunities to increase the value added at the individual firm level (Porter, 1985).

In later work, Gereffi, Humphrey and Sturgeon (2005) elaborated on the governance patterns of value chains, defining five types:

1. **Hierarchical** chains describe vertically integrated companies, i.e. all processes and operations along the chain are fully controlled and directly owned by the firm.
2. **Captive** chains are characterized by a strong lead firm and a number of suppliers which are not owned by the lead firm but are dependent upon its activities. Transactions are highly complex.
3. **Relational** chains represent scenarios with long-lasting relationships among suppliers and lead firms that are not easily substitutable.
4. **Modular** chains consist of less formal and less lasting relationships between suppliers and the lead firm in so far as there is a much lower degree of mutual dependency.
5. **Market** chains are characterized by weak linkages between different firms and thus low degrees of control, direct ownership and transaction complexity.

Other parallel research has explored more specifically the roles of the various actors, as well as institutional factors, within global production networks or systems (see Dicken et al., 2001; Coe, Dicken and Hess, 2008). These approaches have not only emphasized the multidimensional links between different firms but have also made room for actors such as labour groups and civil society. In her work on the ILO Decent Work Agenda, Barrientos (2007) recognized the increased importance of a consumer-orientated production as one of the central features of current global production systems and identified several avenues for “social upgrading” within these systems. It is important to recall that the shift from chain to network approaches in political science has reflected in large part the shift towards more network-oriented

transnational companies in the “real world”. This global shift has brought new challenges for trade unions in terms of dealing with a new international division of labour that is characterized by the relocation of production premises by transnational companies as well as the coexistence of “peripheral conditions” in all regions and high value adding industries in developing countries (see Dicken, 2007; Hoogvelt, 2001; O’Brien and Williams, 2007). If labour is to meet these challenges it must revisit its power resources in light of these developments.

Defining the power resources of labour

The power resources of labour are commonly referred to as structural and associational power (see Wright, 2000; Silver, 2003). Structural power refers to the power derived from the workers’ position within the economy: their workplace bargaining power that stems from the ability to disrupt processes (e.g. logistics, key production centres), as well as their marketplace bargaining power that reflects the scarcity of their jobs in the labour market. Associational power describes “the capacity of workers to mobilize themselves to act collectively” (Brookes, 2013, p. 8). It refers, among other things, to the capacity of a union or community organization to find the right mobilization mechanisms for its members, strategically plan and carry out a campaign, or forge coalitions (see Swarts, 2008; Hyman, 2010; Lévesque and Murray, 2010).

Webster, Lamberg and Bezuidenhout (2008) discussed the power resources of labour in a more globalized world, and concluded that the structural or “logistical” power of unions, as they called it, could be strengthened through the emergence of an increasingly sophisticated logistical infrastructure opening up points of intervention for labour worldwide. However, they pointed out that this required an increase in the associational power of unions by forming truly global unions with the capacity to mobilize their members for collective *global* action. At the same time, new avenues were opening up through an increased “symbolic” power of labour, which refers to the heightened awareness of customers of the quality and manufacturing conditions of their product. Relying only on symbolic power can, however, lead to voluntary codes of conduct where real responsibility is easily eluded and where actors are often victimized instead of empowered, as already pointed out by Barrientos (2007).

In addition to structural, associational and symbolic power it is necessary to mention institutional power, which one author has defined as “the capacity of workers to influence the behaviour of an employer (or another actor) by invoking the formal or informal rules that structure their relationship and interactions” (Brookes, 2013, p. 14). This refers to the legacy of former labour struggles and their explicit or implicit impact on today’s labour relations in a given country.

E-commerce refers to commercial transactions such as the buying and selling of products and services conducted only through electronic means (Laudon and Traver, 2011). It can be subdivided into business-to-business (B2B), business-to-consumer (B2C) and consumer-to-consumer (C2C) activities.

E-commerce is nothing new in itself, but it was not until the mid-2000s that the Internet became an essential part of people's daily lives as well as of their consumption, first in North America and Europe but quickly also in most other developed countries. As technological progress facilitated access to services regardless of location and time of day, online shopping became increasingly common, turning into a social phenomenon (Rastas, 2014).

As of 2013, global revenues in e-commerce amounted to more than US\$1.3 trillion, according to the statistics portal Statista (2015). B2B sales represent the largest part of this commerce. In B2C sales, mobile purchases have been rapidly growing. Annual desktop B2C e-commerce sales in the United States rose from US\$72 billion in 2002 to 359 billion in 2014. However, while the share of US B2C sales accounted for 35.8 per cent of global e-commerce sales in 2010, this number is estimated to decrease to 26.9 per cent in 2015, suggesting the growth of e-commerce in other parts of the world. This holds especially true for Asia, where China is expected to account for almost a fourth of global e-commerce sales by 2016. A 2013 report from the World Trade Organization shows that mobile cellular subscriptions worldwide grew from an average of about 20 per 100 inhabitants in 2001 to over 80 in 2011, with the use of m-commerce and m-banking also growing in Africa and Asia (WTO, 2013).

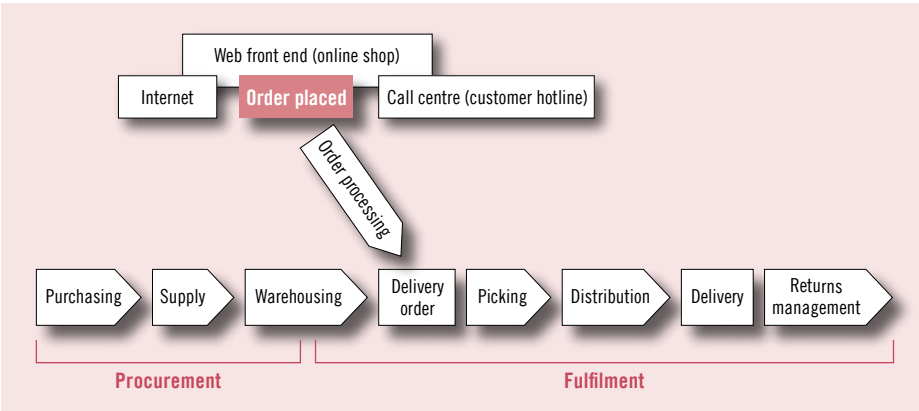
B2C and C2C e-commerce include a broad range of online retail offers (books, music, flights, clothes, electronics, tickets, to name just a few), as well as paid online services, paid content, and platforms for third-party sellers. As consumers are more inclined to buy any product online, the importance of intermediary platforms is growing. These are of two types: those that provide only intermediary online services, such as Amazon, eBay or Alibaba ("pure players"); and those that also have brick and mortar shops, such as the retail giants Walmart or Tesco ("all-rounders"). The success of these intermediaries, with Amazon as global leader, is often explained by the fact that they provide access to almost any product category. The intermediaries have become a natural starting point for most online shopping, regardless of the product sought. This implies a certain preselection of products by the intermediaries. It also suggests that Amazon and others are slowly turning into what Jeff Bezos intended in 1994 when he said that he wanted to create Amazon as "the everything store: (...) an Internet company that served as the intermediary between customers and manufacturers and sold nearly every type of product, all over the world." (Stone, 2013, Ch. 1, p. 5). Of course there are also e-commerce companies that have specialized in certain market segments such as tourism (priceline.com, Expedia) or clothing (Zalando, Primark).

Mapping e-commerce workers in global value chains

In an early study, Eichener and Heinze (2005) emphasized that most processes in e-commerce that directly involve the customer are virtual. They suggested dividing the value chain into procurement, purchasing process and fulfilment, with procurement and fulfilment as underlying operations and the purchasing process as the main interaction between the customer and the intermediary, as depicted in figure 1. They also argued that most online retailers focus on procurement and the marketing of their web shop, acting as a job stimulus for companies involved with upstream or downstream activities such as website hosting, logistics, distribution or customer support. This suggests a rather modular governance pattern. Gereffi (2001) coined the term “infomediary-based value chain”, where the intermediary becomes central to a chain. Let us therefore walk through Amazon’s procurement, purchasing and fulfilment process to identify the respective chain types.

Procurement refers to the steps that precede the appearance of a product or service in the online shop or platform, as well as the delivery and storage of these goods before they are ordered by the customer. In the case of Amazon, this refers to all purchases of goods and services, including the contracts with suppliers, content providers or business partners. Amazon has a huge variety of legal relationships with these external sources, as its multi-level sales strategy produces a complex network of ownership structures at the procurement level. This goes from a very low degree of mutual responsibilities to a deep entanglement. For instance, Amazon’s marketplace only requires third-party sellers to register, comply with the rules on what can be sold and how it is presented, pay fees for using the Amazon infrastructure, and choose whether or not the fulfilment is handled by Amazon. This implies relatively

Figure 1. E-commerce value chain



Source: Eichener and Heinze (2005); author's translation.

weak linkages between the actors, together with a low degree of control, direct ownership and transaction complexity – typical for a market value chain as defined by Gereffi, Humphrey and Sturgeon (2005) (see above). However, the relationship can change when business partners decide to intensify that relationship and use more of Amazon's services. In its global sales programme, Amazon offers to handle the logistics, payment, customer service and returns management for third-party sellers – all decisions that intensify the linkages and make the supplier more dependent on the strong lead firm. In addition to its own marketplace, there are a large number of marketing arrangements with companies that allow Amazon to offer its huge product range. For instance, there have been such arrangements with Home Box Office (HBO), Target, Toys 'R Us, the National Basketball Association or for the pre-orders of the Harry Potter books.

A third but very important pillar of its broad product range is the acquisitions and investments made by Amazon, including the launching of its own subsidiaries. It can be argued that this is not procurement in a strict sense. However, such acquisitions and investments play an important role in Amazon's revenue and show the diversity of its profile. Amazon's website (2014a) lists, among others: A9.com, Alexa, AmazonFresh, telebuch.de (now Amazon.de), Joyo.com (now Amazon.cn), the Internet Movie Database, audible.com, Kiva Systems, Endless.com, Brilliance Audio, Love Film International (now Amazon Instant Video Germany), vine.com, Zappos. Amazon Kindle stands out as the most important "own product" line. It is obvious that there is a much more hierarchical governance structure between Amazon and its subsidiaries. It should be kept in mind that all these "own products" have their own supply chains that would be worth scrutinizing in detail with reference to conditions of work: the scandals surrounding Foxconn (Ruckus, 2013) – a supplier for Amazon – raises the question of the extent to which a company is also responsible for workers in subcontracting firms. However, this goes beyond the scope of this article.

The **purchasing** or ordering process by the customer includes the web shop and customer support, and also the technological infrastructure for accessing the web shop, finding information on the product and completing the transaction. Amazon has several departments dealing with marketing, web front end and background IT, as well as customer support. These services are the company's core activities and are thus partially concentrated at the headquarters in Seattle. Additionally, the company has software development centres worldwide, as can be verified through Amazon's career portal: 14 in North America (Canada and the United States), 11 in Europe (in Germany, Ireland, Luxembourg, Netherlands, Romania and the United Kingdom), five in Asia and one in Africa (Amazon, 2014b). There are customer service centres spread across the globe: in China, Czech Republic, Costa Rica, Germany, India, Ireland, Italy, Jamaica, Japan, Morocco, Philippines, South Africa, United Kingdom, United States and Uruguay. The infrastructure for

order handling suggests a close vertical integration and a hierarchical governance structure which might be connected to the fact that data management, technological innovations and marketing strategies are the core value-creating activities at Amazon.

The **fulfilment** phase begins when an order is placed and passed on from the online shop. Amazon calls its warehouses and logistic centres “fulfilment centres”. There are currently over 100 Amazon fulfilment centres worldwide: about 50 in North America, 30 in Europe and 25 in Asia, and their number is constantly growing. In parallel, Amazon is developing and deploying ever more automated technology, and is already using 15,000 Kiva robots across the United States as of 2014 (*Business Wire*, 2014). Tasks in the fulfilment centres are divided into four stages (France5, 2013): “receivers” are responsible for registering goods as they arrive; “stowers” store these goods in the huge warehouses; “pickers” are sent to collect the desired products after a delivery order; and “packers” prepare them for delivery. All steps are planned in detail and monitored through electronic devices that provide the most worker efficiency. Work in the fulfilment centres is, again, characteristic of a hierarchical governance pattern with a high degree of control and ownership – even if hiring and other operational services (e.g. security) are partially outsourced to agencies.

Once a parcel leaves the fulfilment centre it enters the realm of Amazon’s logistics partnerships. Across the globe, Amazon contracts various delivery companies for shipping its products to the customer, and for the management of returns. There are often priority partnerships, including contract fines when promised delivery times are not met; otherwise a service such as Amazon Prime, which guarantees fast delivery, could not be offered. These long-lasting relationships that are not easily substitutable indicate a more relational governance pattern. Lately, Amazon has also been experimenting with using drones (BBC, 2015), delivery to car trunks (NBC News, 2015), and delivery through other customers (*Fortune*, 2015), which would loosen its dependence on other delivery services.

To summarize, there is no one type of governance pattern in Amazon’s value chain. Stemming from the multi-sales strategy and complex network ownership structure, we can identify at least four types: first, a market chain relationship with its third-party sellers; second, a captive relationship with suppliers that depend heavily upon its infrastructure; third, hierarchical patterns that apply to its subsidiaries, customer services centres, software development centres and fulfilment centres; and, fourth, the relational links with some of its contracted logistics partners.

What can this mixed picture offer trade unionists in their quest for potential points of intervention?

It is clear that hierarchical patterns prevail in a large part of Amazon’s value chain, from the production/provision of many products and services to its technological core and the fulfilment centres. Amazon can be held directly

responsible here – and this affects 165,000 employees around the world as of 2015, not including seasonal temporary workers (Amazon, 2015). But the globally dispersed workforce, and the division of labour into subsidiaries, customer service, software development and fulfilment require a carefully thought-through strategy. Drawing on the power resources of labour, the “logistical” power of workers seems especially high in an interconnected business model: a threat of interruption of the online shopping experience for the customer can be powerful, as this is the basis of Amazon’s growth. To do so, key strategic points need to be identified for the concrete goal of a campaign. Unions could for example identify key subsidiaries/investments (e.g. Kindle) and disturb the provision of goods or services – which however carries the risk that the missing product would go unnoticed in the broad product range. The warehouses could be tackled – the impact would, however, be low when the market can be also served from other nearby warehouses. The customer services centres could be targeted, given that there are fewer workers to be organized, but this would only work for certain language groups where services cannot be instantly switched to an alternative centre.

Tackling one of the technological departments promises a huge effect while involving fewer workers – as long as these tasks cannot be switched to another software centre either. Organizing strategic workers, cross-country alliances and cross-sectoral alliances can be the solution to this problem. Strategic workers are IT specialists or technicians who ensure the proper operations of, for example, a warehouse, and who are not easily replaceable. Cross-country alliances are necessary to make substitute serving from another warehouse or call centre impossible. Cross-sectoral alliances could take a closer look at the relational business partners and increase pressure by coordinating, for instance, a simultaneous action by warehouse workers, postal workers and truck drivers. How feasible are those strategies? The following section looks at current and past labour struggles at Amazon.

Labour struggles at Amazon

There have been union activities concerning Amazon in several countries as the company has expanded throughout the world. Qualitative research in union publications as well as an exchange with union leaders has helped to reconstruct some of these activities, without a claim to be complete.

In the **United States**, Amazon’s “home base”, there are currently more than 50 logistics centres, several sorting centres, the headquarters in Seattle, and several customer services and software development centres. There is a total of about 25,000 employees, with an additional 80,000 temporary workers for the Christmas season as of 2014. There have been different approaches to organizing workers from various unions since the company started to operate in the 1990s. The earliest attempts go back as far as 2000

when the Communication Workers of America started to organize 400 customer service employees of a call centre in the Seattle area; the centre was soon closed (*Time Magazine*, 2014). Around that time, the United Food and Commercial Workers launched an organizing drive for the then 5,000 warehouse workers, cooperating with the Prewitt Organizing Fund; this, however, was eventually aborted (*In These Times*, 2001).

Currently, the Services Employees International Union (SEIU) has been trying to organize the security guards in Seattle who work for companies subcontracted by Amazon. For instance, SEIU has filed several complaints with the National Labor Board for violations of sick leave practice by the company Security Industry Specialists (SIS) which has been contracted since 2012. When Amazon claimed no responsibility for these subcontracted workers, SEIU walked into the 2014 shareholders' meeting. The nine Seattle City Council members endorsed a public letter in July 2014, stating that they were "deeply concerned about the appearance of retaliation against workers trying to form a union" (Seattle City Council, 2014). SIS agreed to settle the claims with the city in March 2015. City council members repeated their appeal to Amazon to hire a responsible security firm, and a broad coalition of unionists and community organizations used the 2015 shareholders' meeting to remind Amazon of its corporate responsibility to help keep public transit and housing affordable.

In another attempt, the International Association of Machinists and Aerospace Workers reached out to technicians at an Amazon warehouse in Middletown, Delaware, who eventually voted by 21 to six against third-party representation at the beginning of 2014 after an intensive campaign from both the union and the management (*Seattle Times*, 2014).

Unions have also been involved with legal claims against Amazon workers. The Supreme Court decided in 2014 that time spent waiting at security checkpoints does not need to be compensated (CWA, 2014). On the other hand, the company agreed in a settlement with the National Labor Board to change its rules so that employees can discuss pay and working conditions without fear of being disciplined (*Bloomberg*, 2014).

According to trade unionists, Amazon has proven to be rather hostile towards organizing attempts. Due to its growing importance in almost every sphere of retail, it nevertheless remains an important target for unions. The fact that the company employs a high number of temporary and subcontracted workers adds to the difficulties of this union-hostile environment.

In the **United Kingdom**, Amazon launched its operations in 1998 and now employs approximately 7,000 workers, of whom 5,800 are permanent. During the Christmas season there are up to 15,000 temporary workers, mostly employed through subcontractors.

An early organizing attempt by the Graphical, Paper and Media Union (GPMU) in 2001 was crushed in a "union-busting" operation (Gall, 2004). Today, the general union GMB is organizing workers at the logistics depots,

with varying union density from warehouse to warehouse, according to a union representative. For several years activities by GMB have involved an organizing and media campaign. In 2013 the union successfully drew attention to the poor working conditions at Amazon warehouses, as well as alleged tax avoidance. The BBC and other media reported that Amazon workers had to walk 10 miles a day during their shift, while being constantly tracked and monitored. GMB has also frequently stressed the union-hostile environment at Amazon. At the 2013 Trades Union Congress, a GMB spokesperson described their activities as underground organizing, comparing their tactics to those of the French resistance during the Second World War, or human rights campaigns in totalitarian regimes (GMB, 2013).

Acceptance of union activities, the end of permanent control (“dataveillance”), a living wage for workers and compliance with UK regulations on job redundancy have been among the issues tackled by GMB recently. Parallel to the media campaign which seeks to build up external pressure, the union says it has found individual representation and the encouragement of person-to-person recruitment to be the most effective way of organizing. Given the hostile environment, GMB is taking a long-term approach to the situation at Amazon and welcomes the international alliance with other unions.

In **Germany**, Amazon employs about 9,000 workers at nine logistics centres. The warehouse workers at Amazon have walked out over demands for a collective bargaining agreement several times since May 2013. The services union Vereinte Dienstleistungsgewerkschaft (ver.di) demands the application of the retail and online retail sector agreement, while Amazon refuses to negotiate and claims to apply wages from the logistics sector (ver.di, 2014). Strikes have been intermittent for the last three years, and have taken place at the fulfilment centres in Bad Hersfeld, Leipzig, Gräfenberg and Rheinfeld. The walkouts have raised broad national and international awareness. Solidarity campaigns by students accompany the strikes, as well as a coordination with collective action during the regular wage negotiation rounds of the retail sector. While the struggle has not yet led to official negotiations, there have been voluntary pay increases such as a Christmas bonus. Another success was the setting up of works councils at the fulfilment centres, starting in 2012. Works councils are part of Germany’s codetermination system, and represent workers’ interests on important aspects of working conditions such as safety precautions, but excluding wages and other regulations that are reserved to collective bargaining negotiations. The warehouse workers’ struggle has been one of the longest ongoing labour conflicts during recent years in Germany, and has also launched international cooperation, as will be described below. Meanwhile, workers at Amazon Prime Instant Video Germany have also joined the labour conflict; they went on strike in March 2015, extending the strikes beyond the warehouses.

In parallel, another intensive labour conflict escalated at the beginning of 2015 in the related sector of Germany’s postal workers. Deutsche

Post restructured its operations into 49 regional companies, thus breaching a national contract against outsourcing, according to ver.di (2015). Deutsche Post's national agreement is not applied to its regional components. The company claimed the restructuring was necessary in light of a reconfigured industry and increased competitiveness. After several failed negotiations, postal workers went on strike for four weeks in June, with the effect that the outsourcing process was halted. Interestingly, the delivery of parcels for priority e-commerce enterprises such as Amazon went on even during the strike. With heavy contract fines looming, Deutsche Post used its remaining capacity first and foremost for these services, according to reports (*RP Online*, 2015).

While the struggles of the postal and warehouse workers coincided, they were triggered by different circumstances and pursued different goals; nevertheless, it should be noted that workers in most parts of the e-commerce value chain – including truck drivers, call centre agents and IT specialists – organize through ver.di. Union density, however, varies considerably and conventional B2B shipping still seems to outnumber e-commerce shipping in the logistics sector. This might explain why the ver.di Amazon campaign has so far mainly involved warehouse workers.

In **France** there are four Amazon logistics centres, at Saran, Sevrey, Montélimar and Lauwin-Planque, with approximately 5,000 workers. These are unionized; they have walked out several times over decent salaries, a 13th-month salary, and defined work schedules and breaks. The Confédération Générale du Travail (CGT) called for several strikes in 2013, 2014 and 2015, joined by Force Ouvrière (FO) and Union syndicale Solidaires (SUD). Industrial relations in France are specifically regulated: companies with elected union spokespersons have to meet with the unions for obligatory annual negotiations. Irregularities were reported in the elections of union representatives at Lauwin-Planque (*L'Humanité*, 2015). After the compulsory negotiations in 2014 failed, strikes during the Christmas season sought to reopen them. In 2015, after several bargaining rounds, walkouts in May and a membership consultation, in late June Amazon.fr and the CGT reached an agreement which provides for wage increases between 0.8 and 1.8 per cent, a leave day for moving, and social dialogue with the CGT on working conditions (RFI, 2014).

In **Italy**, Amazon is located in Piacenza, Milan and Cagliari, with a total of about 1,000 permanent employees. As recognition of a national agreement is obligatory in Italy, Amazon applies the collective national agreement (CCNL) for commerce. The CCNL is an agreement signed by all three large trade union confederations organizing in this sector – CGIL, CISL and UIL – and is renewed every two years. The current agreement that provides for moderate wage increases was renewed in March 2015 (CCNL, 2015). However, the large number of temporary workers is alarming unionists: in 2013, 700 out of 1,000 workers at the largest warehouse in Piacenza were

temporary. The unions Filcams-CGIL, Fisascat-CISL, UILTuCS-UIL and Si Cobas have been attempting to organize workers (Filocams-CGIL, 2013). A major challenge is the difficulty in even approaching employees, so that union density remains low. So long as employees have not elected their Unitarian Union Representatives, access to the premises can be denied, and enterprise-level negotiations on working conditions cannot take place. A SI-Cobas spokesperson has called the warehouse in Piacenza a “fortress” (Nowak, 2015). The Filcams-CGIL had been protesting since 2011 before it was invited to a first meeting at the beginning of 2014.

In **Poland**, Amazon opened its first logistics centre in October 2014 and now operates two near Wrocław and one near Poznań; they are currently used to serve the German market as Amazon.pl is not yet available. There are approximately 5,000 workers at these centres, of whom about 2,500 are temporary workers. NZZ Solidarnosc has accompanied the process from the very beginning, registering Solidarnosc at Amazon Fulfillment Poland in January 2015 and conducting leadership elections shortly after. Union ambassadors have also been elected to represent workers in the factory councils. The newly elected union representatives opened negotiations with the CEOs of Amazon in July on wages, work hours and benefits, as well as paid overtime, bonuses and paid holidays. According to the union, working hours at Amazon Fulfillment Poland are much longer than in the rest of Europe, while wages are approximately four times lower. The union is in the process of establishing itself and has been closely cooperating with its German counterparts. It has launched a social media campaign to reach out to the workers, and plans to employ open dialogue, partnership and willingness to solve problems in a reasonable manner.

In the **Czech Republic** Amazon operates a centre for returns management in Dobroviz, near Prague, and is currently building a fulfilment centre at the same location, with the expectation that 2,000 permanent and 3,000 seasonal jobs will be created there – but with much lower wages than is common for the region (*Frankfurter Rundschau*, 2015). The Czech union OSPO has been in close contact with colleagues from Poland and Germany, and is thus prepared to reach out to these workers as soon as the new centre starts operating.

At the **international level**, an alliance between unions organizing Amazon workers was forged in 2013. Workers from the Czech Republic, France, Germany, Poland, United Kingdom and United States have been regularly in contact with each other since then. There have been solidarity visits from Polish and Czech unionists at German strike meetings. A delegation of German workers went to the Seattle headquarters in 2014 to meet representatives from US unions and hold a rally there. In 2014 UNI Global Union and the International Transport Workers’ Federation (ITF) officially announced their cooperation on the Amazon situation. This primarily contributes to an exchange of experiences and raising public awareness of the issue,

as was witnessed during the French strikes, as well as the early involvement of unions in countries such as the Czech Republic and Poland while Amazon was still planning its new logistics centres. At this early stage, cooperation has been limited to network meetings and solidarity visits. The next few months will show whether a common strategic approach for a coordinated struggle can be developed, and whether or not unions from other countries will join it.

When comparing union organizing across countries, Amazon's hostile attitude towards trade union activity appears constant. Despite this hostility, important milestones have been reached: the application of the national agreement of commerce in Italy, the election of union representatives and compliance with obligatory annual negotiations in France, the election of works councils in Germany and union ambassadors in Poland. This ends the myth that e-commerce will generally stay out of the reach of unions.

Using the power resources approach, it could be argued that these differences stem from the different **institutional power** resources of labour. Where industrial relations are highly regulated or have historical roots, as in France, Germany, Italy and Poland, union activities have resulted more quickly in workers' representation through institutionalized structures at the enterprise level, or even in collective bargaining agreements. Huge efforts are still required for any improvements beyond mere compliance with institutionalized or legal regulations. The current lack of institutionalized union representation in the United Kingdom and the United States goes a long way in explaining why trade union activities are more easily kept out and forced "underground".

While labour certainly has a great deal of **structural power** through the key role of fulfilment centres – a clear focus of union activities – there is a danger that strike activities could be easily circumvented by using neighbouring warehouses. In addition, warehouse workers have little market bargaining power in so far as they are easily replaceable. The system of temporary contracts aggravates this situation and requires unions to revisit successful strategies for ensuring core labour standards and organizing precarious workers (see Scherrer, 2007; ILO, 2013). The few organizing attempts to target other worker groups teach mixed lessons about their structural power. The call centre near Seattle was closed after workers organized, implying that their bargaining power was low. The technicians in Delaware were a small group of 27, but resistance to their attempt to unionize was fierce, indicating that they held an important position. The strike at Amazon Prime Instant Video Germany directly affected the provision of DVDs, which are however just a small part of Amazon's product range.

As for the **associational power** of labour, it goes beyond the scope of this article to evaluate all the actors involved, as well as their capacity to design and carry out a strategic campaign. However, the recent international alliance of unions working on the conditions at Amazon, supported by UNI and ITF, should be emphasized here; it appears that it has already made an impact. In Poland, for example, NZZ Solidarnosc succeeded in putting

the need for unionization on the agenda even before Amazon employed its first worker there. There is no doubt that the media and organizing campaign at Solidarnosc, as well as the union elections, were understood to be part of an international struggle both by themselves and by the media. As pointed out above, the global structure of Amazon's core activities and operations requires even stronger international cooperation in order to create well-coordinated economic pressure across countries and sectors, and it must involve key workers or subsidiaries. A global union strategy is needed for a globally operating company. The associational power of labour thus becomes a key factor for future struggles – whether at Amazon or any other globally operating e-commerce company.

The international alliance has successfully framed the Amazon struggle as a model labour conflict of the twenty-first century. This is directly linked with the **symbolic power** of labour. At the present time, public awareness of the working conditions and labour struggles at Amazon is so high that unions in institutionally difficult circumstances can use this as a lever in their local struggle, as was done notably when German workers visited the US headquarters. The Polish example is another instance of this. Other examples of symbolic power are the letter by City Council members in Seattle expressing concern about retaliation against security workers, the ITUC voting for Bezos as the “worst boss in the world”, or the reference to French resistance tactics by unionists in the United Kingdom.

Conclusions and strategy recommendations

From a labour organizing point of view, it is important to note that a large number of Amazon's operations are closely controlled through direct ownership, subsidiaries or investment links. This opens up many more possible points of intervention than might be expected: the product/services provision through the subsidiaries, the core technological and marketing services, the customer services, and the large fulfilment centres. Only the third-party sellers are relatively loosely connected with Amazon. Using these points of intervention requires unions to overcome the following challenges:

- Amazon's complex network structure precludes conceiving Amazon workers as a homogeneous workforce. Bridging some of these differences towards a common understanding will be necessary in order to devise efficient strategies. Different mobilization tactics will be needed for blue-collar and white-collar workers.
- Amazon's operations encompass different sectors and take place in 32 countries. Cross-sectoral and cross-country coordination of union activities is necessary in order to overcome the threat of displacement of activities by the company.

- Amazon has been extremely hostile towards unions, even using “union-busting” consultancies. Where industrial relations are institutionalized, unions should push for implementing what is required. In some countries this includes even the application of a collective agreement. For everything beyond the minimum required, a well-prepared campaign with a mid- to long-term orientation is advisable.
- International awareness of the labour struggles at Amazon is currently high. Using this for mobilizing workers can be recommended even if it does not replace the building up of local resources.
- A major part of the difficulty in sustainably organizing workers at Amazon lies in the job insecurity of so many of them. Short-term contracts and sub-contracting deprive workers of efficient means to fight for their interests. Unions therefore need to prioritize the struggle of precarious workers and assist in ending their status as workers without basic rights.

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Global framework agreements: Achieving decent work in global supply chains?

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In recent decades the world economy has been transformed: trade liberalization and the dynamics in international investment have helped facilitate the rise of the “supply chain model”. The ensuing fragmentation of production has undermined the power of labour to bargain over wages and working conditions at the national level. Global framework agreements (GFAs) – concluded between multinational enterprises (MNEs) and Global Union federations (GUFs) – bring a new dimension to global labour relations in response to these challenges. In GFAs, corporations consent to respect workers’ rights and to promote decent work globally within their subsidiaries and along their global supply chain (GSC). For trade unions, the conclusion of GFAs is based on labour relations and is intrinsically linked to forging solidarity links and to facilitating unionization as well as linkages between trade union networks.

In parallel, the traditional regime of labour regulation based on government-enforced compliance has been reshaped, moving towards an emerging global labour governance regime (Hassel, 2008). In this regime MNEs and organized labour face the challenge of addressing the issue of decent work in global supply chains. In response to governance gaps, a myriad of different initiatives have emerged, such as management-driven codes of conduct, the Global Reporting Initiative (GRI), and the Sullivan Principles or the Caux Principles of Business. Most of these initiatives have failed to produce sustainable improvements for workers’ rights and have often been a fig leaf hiding the fact that, in the end, profit considerations trump social concerns (Schömann, 2008; Locke, Amengual and Mangla, 2009). In order to effectively realize the potential of MNEs to address decent work deficits in supply chains, the 104th International Labour Conference in 2015 commissioned the ILO to conduct research on good practices for the procurement of goods and services by large enterprises in supply chains.

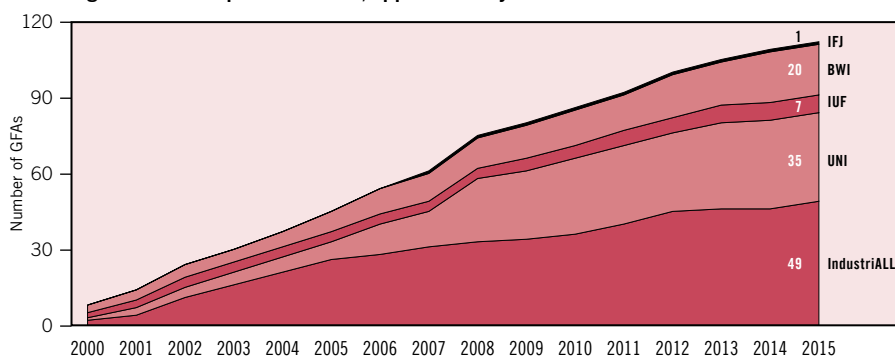
Global framework agreements can be an example of such good practice. The value added of GFAs compared to other initiatives is that they are the outcome of direct negotiations between the representatives of management and workers in a MNE. From a trade union perspective, GFAs should lead to more democratic industrial relations and hence to improved working conditions along global supply chains. A key element for the success of GFAs is the requirement that the lead firms influence their subcontractors and suppliers. This article intends to answer two questions: which references to GSCs are included in the text of GFAs; and how do GFAs affect GSCs in practice? To do so, we start with a content analysis of the 54 most recent GFAs (signed between 2009 and 2015) to evaluate their formal scope of application to MNEs’ suppliers and subcontractors. Moreover, we look at the evolution of these references over time. To answer the second question, 25 case studies are evaluated to analyse how the implementation process of GFAs along the supply chain is working in practice. The goal of this report is to help identify examples of good practice in GFAs to promote decent work in GSCs.

This article proceeds as follows: the first section defines GFAs and gives an overview of their evolution; the second presents a content analysis of all GFAs in the research sample; the third section evaluates the 25 case studies and puts the question on the practical impact of GFAs in supply chains at the centre of the analysis; and the fourth shows an evolution over time in the way GFAs refer to GSCs; and the last section concludes and suggests avenues for further research.

Global framework agreements: An overview

Global framework agreements have developed over the last two decades in response to economic globalization. They exhibit a growing need of organized labour and some multinational companies for additional governance structures that build on labour relations. GFAs specify the responsibility of a multinational company to follow particular standards with regard to fundamental labour and social rights, working conditions, industrial relations, health and safety conditions, training, and environmental protection provisions in more than one country and often worldwide (Telljohann et al., 2009). Recently such agreements have been signed by the MNEs Total (France), ThyssenKrupp (Germany) and Gamesa (Spain). **At the time of writing (June 2015), 112 companies were identified as signatories to a GFA.** Figure 1 illustrates the growing importance of GFAs in the last 15 years and shows furthermore the spread of GFAs, apportioned by Global Union federations (GUFs).¹

Figure 1. Development of GFAs, apportioned by Global Union federations (GUFs)



Note: IFJ = International Federation of Journalists; BWI = Building and Wood Workers' International; IUF = International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations; UNI = UNI Global Union; IndustriALL = IndustriALL Global Union.

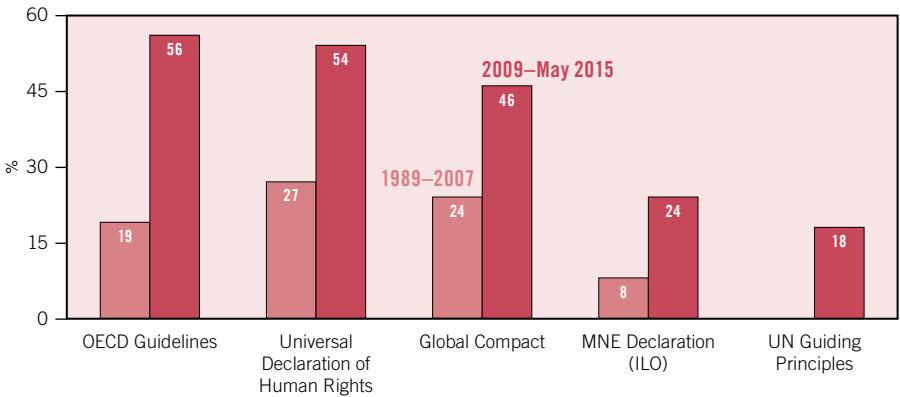
Source: Graph created by the author (number in sample = 112).

1. No common definition has emerged on the mandatory features of GFAs yet. Therefore, this evaluation uses public information provided by IndustriALL, UNI Global Union and BWI. The IUF does provide a list of concluded GFAs on its website. The sample was amended to the best of the author's knowledge with further agreements clearly identifiable as a GFA signed by the IUF and other GUFs.

Evolution of the content of global framework agreements

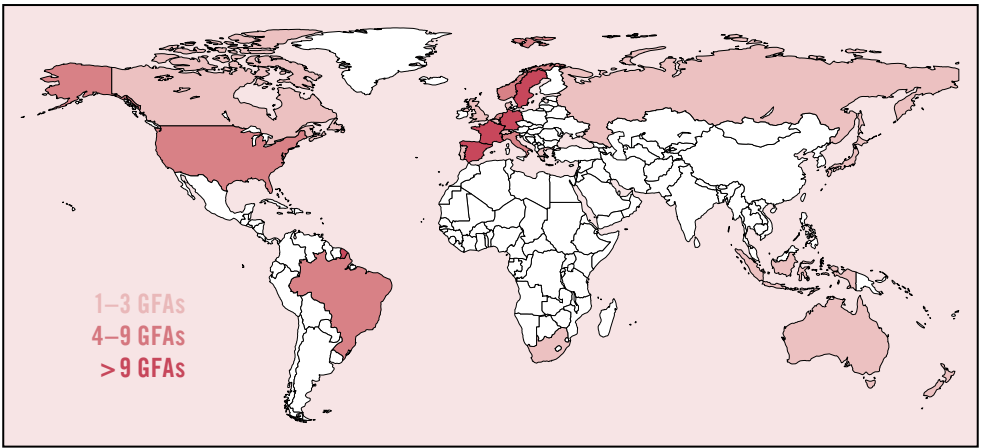
One of the main features of GFAs is that these agreements replicate or are based on other pre-existing international instruments and principles that have to be honoured. Besides the steady growth in the number of new GFAs since 2000, there has also been a qualitative evolution with regard to the inclusion of international instruments and principles. A comparison of more recent GFAs with older ones evinces a clear trend towards a more comprehensive inclusion of pre-existing international instruments and principles. Most notably, an increasing number of GFAs include a reference to the ILO

Figure 2. References in GFAs to international instruments and principles (percentages)



Note: The UN Guiding Principles on Business and Human Rights were enacted in June 2011. Therefore, the share of GFAs relating to the UNGP takes into account only agreements concluded after this date (number = 39).
Sources: Author's calculations based on an evaluation of GFAs negotiated from 1994 to 2007 (number in sample = 62) compiled by Nikolaus Hammer in Papadakis (2008), pp. 267 et seq.; author's evaluation of GFAs negotiated from 2009 to May 2015 (number in sample = 54).

Figure 3. Number of GFAs apportioned by location of headquarters



Source: Graph created by the author (number in sample = 112).

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Figure 2 compares the references to international instruments and principles in GFAs concluded or renewed during the time period 2009–15 (May) with GFAs concluded up to 2007.

Multinational enterprises: A European focus

GFAs are usually signed for the employer by the company's CEO or head of human resources, sometimes together with managers of the group's subsidiaries (ILO International Training Centre, 2010). On the workers' side GFAs are usually signed by the General Secretary or President of a GUF; sometimes together with other workers' representatives. The 112 companies that are identified as signatories to a GFA come from 23 different countries (figure 3). The majority of the agreements were signed by companies headquartered in Europe and particularly by companies from Germany (25), France (15), Spain (12), and the Scandinavian countries, with 10 companies headquartered in Sweden.

Global framework agreements: Major features addressing global supply chains

This section looks at references to suppliers and subcontractors in GFAs and which formulations might be considered examples of good practice to achieve decent work in GSCs. It analyses the content and formal scope of application of GFAs signed between 2009 and 2015. Of the 54 companies in the research sample, 43 are headquartered in Europe, two each in Brazil, Indonesia, Japan and South Africa, and one each in Malaysia, the Russian Federation and the United States. With regard to trade union participation, about 50 per cent of the GFAs surveyed were concluded by IndustriALL and 26 per cent by UNI Global Union; the remainder were signed by the BWI and IUF. Some of the agreements were signed by more than one GUF. These 54 GFAs are a full sample of all agreements that were concluded or renewed in the period investigated. In total, the 54 MNEs are the direct employer for approximately 4.8 million workers. Additionally, the business practices of these MNEs have a direct impact on a large number of workers employed in other companies along the global supply chains.

Scope of application to global supply chains

An evaluation of all GFAs in the research sample shows that about 80 per cent of the agreements make a reference to the global supply chain of the MNE. However, regarding the extension to the supply chain there are a number of

different concepts. The variety of clauses complicates the evaluation of the agreements and some simplifications were necessary to capture the different characteristics under the chosen categories. To facilitate this evaluation, four groups of references are distinguished here: (1) no reference to the supply chain; (2) inform and encourage suppliers and subcontractors; (3) potential termination of the contract; and (4) reference to the entire supply chain. The following subsections provide more information on the four groupings as well as practical examples on how references to GSCs are commonly framed in GFAs.

No reference to the supply chain

The working conditions at supplier companies are not necessarily addressed in GFAs. In this group, the text of the GFA contains no reference to the working conditions at suppliers and subcontractors of the MNE. It was found that about 20 per cent of the agreements in the research sample are in this category.

Inform and encourage suppliers and subcontractors

Some 40 per cent of GFAs include an obligation for the MNE to inform its suppliers and subcontractors of the related parts of the GFA and to encourage adherence. This type of provision demands that MNE exercise some power and take (effective) measures in order to ensure that suppliers respect the agreement. However, it remains unclear what concrete actions are required from the MNE to demonstrate that it has effectively encouraged its suppliers and subcontractors to comply with the GFA. Box 1 gives examples of how these references to the global supply chain are commonly framed in GFAs.

Box 1. Inform and encourage suppliers and subcontractors

Norske Skog-IndustriALL: “Norske Skog will *notify* its subcontractors and suppliers of this Agreement and *encourage* compliance with the standards set out in paragraph 2 below.”

ThyssenKrupp-IndustriALL: “ThyssenKrupp *ensures* that its suppliers shall be *informed* in a suitable manner about these fundamental principles. ThyssenKrupp *encourages its suppliers to consider* these principles in their own corporate policy.”

Potential termination of the contractual relationship

One out of four GFAs in the research sample use stronger wording and treat respect for provisions in GFAs as a criterion for establishing and continuing business relations with suppliers and subcontractors. The continuing violation of standards set out in the GFA is seen, in the last instance, as a reason to terminate business relations. As a first step, many GFAs provide for warnings

and sanctions in case of violations of standards set out in the agreement. However, in most of the GFAs it is not very clear what kind of sanctions will apply and whether sanctions are supposed to apply only in case of a serious breach, or in any breach. In some agreements it can be inferred from the wording that the sanctions will apply only when there is non-compliance with (fundamental) ILO standards or basic human rights, apparently leaving out of its scope violations with regard to principles embodied in other multi-lateral instruments or other general provisions included in the agreement. As shown in box 2, the obligation to terminate the contract can be phrased as being compulsory or as an objective to be reached.

Box 2. Potential termination of the contractual relationship

Svenska Cellulosa AB (SCA)-IndustriALL: "At the same time any proven violation of the principles contained in the Agreement that is *not remedied* despite warnings *will lead to termination of relations* with the company concerned."

Securitas-UNI: "Securitas *shall endeavour* to work with business partners who conduct their business in a way that is compatible with the terms of this agreement, and it *shall consider* not doing business with any partner that fails to comply with these standards."

Reference to the entire global supply chain

The majority of GFAs deal with the direct suppliers and subcontractors of the MNE. However, given the nature of supply chains, it would seem essential not to limit the application of the GFA in this way but to include the suppliers and subcontractors of the direct suppliers and contractors of the MNE. In the research sample, the GFAs negotiated with the companies EDF, PSA Peugeot Citroën, Inditex, Total, Lafarge and Enel include an explicit reference going beyond the direct suppliers and subcontractors of the MNE (see box 3). Welz (2011) conducted an evaluation of GFAs concluded before 2008 and reports that CSA-Czech Airlines, Royal BAM and Triumph International are among the companies that acknowledge comprehensive responsibility for their whole production chain.

Box 3. Reference to the entire supply chain

PSA Peugeot Citroën-IndustriALL: "PSA Peugeot Citroën *requests* from its suppliers *a similar commitment in respect of their own suppliers and sub-contractors*."

Inditex-IndustriALL: "Inditex undertakes to apply and insist on enforcement of the International Labour Standards mentioned above *throughout its 'supply chain'* regarding all workers, whether they be directly employed by Inditex or by its external manufactures or/and suppliers."

Scope and reach of application

Generally, all provisions in GFAs should apply to suppliers and subcontractors according to the defined scope of application. However, it is important to emphasize that the whole of the agreement is not always applicable; it is sometimes stated that only certain provisions in the GFA will apply to the GSC. This section examines the extent to which provisions in GFAs are applicable to suppliers and subcontractors.

It is sometimes agreed in GFAs to make adherence to all standards a prerequisite for a business relationship. The GFA signed by Inditex extends the scope of application of terms of the agreement to all workers, whether directly employed by Inditex or by suppliers. However, many GFAs take a more selective line treating only, for example, the health and safety provisions as a selection criterion for suppliers, or imposing compliance with specific ILO Conventions only.

For example, PSA Peugeot Citroën consents to communicate the provisions in the GFA to suppliers and subcontractors and to request that these apply the ILO Conventions mentioned in the agreement (see box 4). The GFA signed by Salini Impregilo requires subcontractors and suppliers to “recognize and meet the above mentioned criteria”; however, the agreement remains vague as to which criteria are intended. Such blurry expressions may leave room for discussions and conflicts. The GFA signed by Solvay requires the company to consider not doing business with partners that seriously violate “employee health and safety legislation or basic human rights”.

These examples show that in principle, the sanctions apply only in the case of violations of clauses that are considered to be the most important in GFAs. This may reflect the balance that MNEs and GUFs have to strike between the definition of global principles and the autonomy of legally independent suppliers and subcontractors.

Box 4. Scope and reach of application

PSA Peugeot Citroën-IndustriALL: “PSA Peugeot Citroën undertakes to communicate this agreement to these companies and request that they *apply the previously mentioned ILO international Conventions*.”

EDF-IndustriALL: “Any serious failure, not remedied following notification, to comply with *legal requirements* or related issues of the *occupational health and safety, ethical behaviour towards customers and environmental protection*, shall result in the termination of our relations with the subcontracting company (...).”

Joint activities: Collaboration on monitoring, training programmes and global reviews

Achieving decent work in global supply chains?

GFAs are still a recent phenomenon and come in many different forms. This general observation is particularly true for specific provisions in GFAs addressing relations with suppliers and subcontractors. There are several examples of good practice in GFAs but only a few general trends have emerged as yet. The next subsections present the variety of specific provisions in GFAs addressing relations with suppliers and subcontractors and give illustrations of good practice.

Continuous consultation meetings

In anticipation of conflicts and to ensure the implementation of the agreement, 85 per cent of the agreements evaluated establish a specific continuous forum for dialogue between the management of the MNE and representatives of the GUFs. In a few GFAs it is explicitly agreed that business relations and working conditions at suppliers and subcontractors should be a topic of discussion in these meetings (see box 5).

Box 5. Discussion of GSCs in continuous meetings

Statoil–IndustriALL: “Statoil and IndustriALL will meet annually to discuss (...) general corporate policy on employment, occupational health, safety and environmental issues affecting within the company and, as appropriate, between the company and its *related companies including suppliers and subcontractors*.”

Joint monitoring and review of global framework agreements

Furthermore, in some GFAs it is agreed that the lead MNE undertakes additional monitoring measures to ensure compliance along the global supply chain. The most complex system of monitoring is laid out in the GFA signed by Inditex, a Spanish multinational clothing company (Miller, 2011). An additional protocol specifies enforcement of the agreement in Inditex’s supply chain and stresses that local trade unions can play a pivotal role in monitoring the working conditions at suppliers. Other agreements include the obligation for the company to conduct periodic audits or reviews of the GFA. In the GFA signed by IndustriALL and ZF Friedrichshafen, the company consents to include the principles set out in the agreement into the criteria for regular audits. In other GFAs the bargaining partners agree to conduct site visits in subsidiaries of the MNE in different countries. The GFA signed with the German company Wilkhahn includes a provision regarding site visits at suppliers and subcontractors (see box 6).

Box 6. Site visits to subsidiaries

ThyssenKrupp–IndustriALL: “The representatives of the International Committee shall furthermore be free to *visit production sites* of a company or companies of the Group in a region or a country of their choosing each year (...).”

Wilkhahn–BWI: “*An audit shall be carried out every three years at a Wilkhahn company, a licence partner or a supplier.* BWI may make it possible for the unions at the respective location to participate in the meetings of the monitoring committee.”

Supporting suppliers and subcontractors

A number of GFAs include commitments to carry out joint work and training programmes at MNE subsidiaries in different countries. GFAs seldom include provisions on training programmes and customized guidance directly targeted at suppliers and subcontractors. Box 7 gives examples of how references to training measures and support of suppliers can be framed in GFAs.

Box 7. Support of suppliers and subcontractors in the GSC

Inditex–IndustriALL: “Inditex and IndustriALL Global Union undertake jointly to *develop training policies and programmes on labour issues* designed to progress the implementation of the Agreement throughout the Inditex supply chain.”

PSA Peugeot Citroën–IndustriALL: “Any failing relating to the respect of human rights shall lead to corrective action plans after a warning from PSA Peugeot Citroën. (...) *A specific process will also be set up for small companies of suppliers and subcontractors, to enable them to gradually apply the previously stated ILO standards.*”

Disclosure of supplier information

For trade unions, the monitoring of GFAs in the global supply chains of MNEs is challenging. In the first instance, to enable trade unions to monitor adherence to the standards of a GFA along the GSC, it is of crucial importance that the MNE provide information about the companies in the global supply chain. Whether a company is producing goods or delivering services for a particular MNE is often not open to trade union scrutiny. Disclosure on the GSC can include commercially sensitive information; therefore, an understanding of confidentiality about the information disclosed may be necessary. However, only seldom do GFAs contain clauses on the disclosure of companies in the global supply chain of the MNE. Box 8 illustrates how references to the disclosure of suppliers can be formulated in GFAs.

Box 8. Disclosure of supplier information

Inditex-IndustriALL: “In order to realize IndustriALL Global Union access to Inditex’s suppliers, as a means to reinforce the monitoring control system of the latter, it is hereby agreed that the Supplier information shall be provided to the governing body of IndustriALL Global Union.”

Procurement practices: Inclusion of GFA standards in commercial contracts

Several States have adopted procurement practices that take into account working conditions in supplying companies (Schulten et al., 2012). Through access rules for public procurement markets, governments can influence the incentives for companies to follow particular labour standards. Similarly, the procurement practices of MNEs could include elements of the Decent Work framework or provisions agreed on in GFAs. The various ways in which GFAs influence and determine MNE procurement practices have been analysed above. However, MNEs that sign GFAs have two different sets of obligations: one with the GUF by virtue of the agreement, and another with their suppliers and subcontractors by virtue of commercial contracts. Therefore, it can be important to include the principles set out in the GFA in the commercial contracts with suppliers and subcontractors. This ensures that a violation of the GFA standards constitutes a valid reason to terminate the contract with the supplier or subcontractor. Box 9 gives an example of how such an obligation can be worded in a GFA.

Box 9. Inclusion in commercial contracts

Pfleiderer–BWI: “Pfleiderer shall ensure implementation of the agreement at the different locations by taking suitable internal measures. These include specifically: (...) inclusion in purchasing instructions and agreements with suppliers, wherever possible (...).”

Structured review of existing case studies on the impact of GFAs on global supply chains

GFAs have inspired a number of publications in recent years and there is an emerging body of literature concerning them. The search for case studies on the implementation of GFAs involved a structured review of the existing literature. The screening for appropriate publications was conducted in June 2015. The so-called “grey literature” (non-peer-reviewed sources such as reports, dissertations, conference literature, working papers and primary data

sources) was included in the search because it makes up a sizable portion of publications on GFAs.²

In total, 25 case studies were identified and evaluated. They analyse the implementation of GFAs in 18 specifically named MNEs: SKF, Volkswagen, Securitas, G4S, Daimler, Bosch, Inditex, Lukoil, AngloGold Ashanti, Takashimaya, Quebecor World Inc., Carrefour, Leoni, Chiquita, EDF, PSA Peugeot Citroën, IKEA and Telefónica. Moreover, a number of case studies kept the anonymity of the MNEs concerned. The studies document the implementation of a GFA in a MNE either in general or with a specific regional focus. Overall, the case studies explicitly analyse the implementation of GFAs in ten different countries and one region: Brazil, Bulgaria, Germany, India, Italy, South Africa, Spain, Turkey, United Kingdom, United States, and Latin America. Many of these studies draw on larger research projects conducted for the ILO, EUROFOUND and the European Commission, as well as the German Hans-Böckler-Foundation.

Table 1 provides an overview of these 25 case studies, indicating among other things the name of the MNE and the country or region in which the implementation of the agreement was analysed. The evaluation of the case studies was limited to the identification of examples of good practice at suppliers and subcontractors. It does not include overall assessments on the success of the implementation process of GFAs in particular MNEs.

The review focuses on the potential of GFAs to enable local trade unions to engage in industrial relations and organize campaigns along the supply chains of MNEs. Unfortunately, it is notoriously difficult to obtain information about the implementation process at suppliers and subcontractors of MNEs, and the available information in the case studies on this specific question is rather scarce. Many of the studies focus on the implementation process of the GFA in the MNE and its subsidiaries. If a case study includes information about the implementation of the GFA in local subsidiaries or at suppliers and subcontractors this is indicated in the table. Whenever a case study does not contain information on the implementation of the GFA along the GSC this is indicated as well.

2. Some of the case studies identified could not be included in the evaluation because they were not accessible to the author. If a study has been included in several publications it is evaluated only once in table 1. Due to the number of case studies on GFAs, some publications may have inadvertently been omitted in the evaluation.

Table 1. Evaluation of case studies

Author(s)	Company	Country focus	Year of publication	Impact on local subsidiaries	Impact on suppliers and subcontractors
Mihailova/ Ribarova/ Dimitrova	SKF	Bulgaria	2015	✓	✗
Whiteall/Lucio/ Mustchin/ Rocha/ Telljohann	Volkswagen	Germany, Italy, Spain, United Kingdom	2015	✓	✗
Fichter/Stevis	9 anonymized MNEs	United States	2013	✓	✓
Fichter/Sayim/ Agtas	6 anonymized MNEs	Turkey	2013	✓	✓
Marzan	Securitas, G4S, Volkswagen, Daimler	United States	2013	✓	✗
Arruda/Fichter/ Helfen/Sydow	7 anonymized MNEs	Brazil	2012	✓	✓
Wundrak	Volkswagen, Daimler, Bosch	India	2012	✓	✗
Miller	Inditex	No country focus	2011	✗	✓
Papadakis	Lukoil	No country focus	2011	✗	✗
Papadakis	AngloGold Ashanti	No country focus	2011	✗	✗
Papadakis	Takashimaya	No country focus	2011	✗	✓
McCallum	G4S	South Africa	2011	✓	✗
Stevis	Daimler	No country focus	2010	✓	✓
Hennebert	Quebecor World Inc.	No country focus	2011	✓	✓
Royle/Ortiz	Carrefour	Spain	2009	✓	✗
Egels-Zandén	1 anonymized MNE	Not available	2009	✗	✗
Voss	Leoni	No country focus	2008	✓	✓
Schömann	Securitas	No country focus	2008	✓	✗
Schömann	Chiquita	Latin America	2008	✓	✓
Sobczak/Havard	EDF	No country focus	2008	✓	✓
Sobczak/Havard	PSA Peugeot Citroën	No country focus	2008	✓	✓
Wilke	IKEA	No country focus	2008	✓	✓
Voss/Wilke	Bosch	No country focus	2008	✗	✓
Sobczak/ Schömann/Wilke	Telefónica	No country focus	2008	✓	✗
Riisgaard	Chiquita	Latin America	2004	✓	✓

Note: ✓ = Yes; ✗ = No.

Synthesis of the findings

When assessing the results of the case studies it is important to bear in mind that they differ in depth, for example in the number of interviews conducted with trade union and management representatives. While some of the studies are rather short and build mostly on secondary sources, others report extensively on the experiences of local actors.

The first general observation is the limited impact of GFAs on suppliers and subcontractors. MNEs do not necessarily fulfil the duty stipulated in the GFA to inform suppliers about the existence of the agreement, and hence GFAs are often unknown. However, the impact of GFAs on global supply chains varies. The case studies exhibit several examples of successful practices in bringing suppliers, subcontractors and subsidiaries under the GFA umbrella. For example, in Brazil, trade unions shut down machines at one MNE for two hours to force the company to exert pressure on a supplier to rehire fired union representatives (Arruda et al., 2012). The Inditex GFA helped in facilitating the reinstatement in supplier companies in Peru and Cambodia of over 200 trade union members who had been dismissed (Miller, 2011). Following the reinstatements, the membership of local unions often increased drastically. Other GFAs have been incorporated into the supplier's guidelines and supplier auditing checklists (Voss and Wilke, 2008).

To monitor the implementation process of GFAs, MNEs' central management and GUFs meet regularly and exchange views. Reportedly, complaints brought to the attention of the monitoring group at Daimler involved mostly working conditions at suppliers (Stavis, 2010). All this can help to draw more attention to working conditions at suppliers and subcontractors.

It is reported that in some MNEs management has been paying closer attention to problems associated with subcontracting since the conclusion of the GFA (Fichter and Stevis, 2013). One such example is an MNE providing training for local suppliers in Brazil and Turkey (Stavis, 2010). At PSA Peugeot Citroën the group's most important suppliers made a commitment to respect the new standards stipulated in the GFA (Sobczak and Havard, 2008). This provides evidence of the role that GFAs and GUFs can potentially play to ensure workers' rights along the MNEs' global supply chain.

A second finding is that the implementation of GFAs in local subsidiaries is better documented than at suppliers and subcontractors. However, the case studies report that GFAs are not always communicated and disseminated to all subsidiaries. As a result, GFAs are often unknown among managers in MNE subsidiaries and within the ranks of local trade unions (Fichter and Stevis, 2013; Arruda et al., 2012). Nevertheless, there are many documented examples of good practice and successful unionization at subsidiaries. GFAs were successfully invoked in several subsidiaries to facilitate unionization and improve industrial relations. In particular, case studies in the security industry stress the successful unionization of several thousand

security guards in subsidiaries of G4S and Securitas in South Africa and in the United States (Marzan, 2013; McCallum, 2011). Positive effects of GFAs on local trade union organization campaigns are also found in the subsidiaries of MNEs in other industry sectors. For example, the IKEA GFA is reported to have had a positive impact on the unionization of subsidiaries, particularly in Poland (Wilke, 2008). At Chiquita, a case study reports the recruitment of up to 5,000 new members in Honduras and Colombia following the signing of the agreement (Schömann, 2008).

The implementation of GFAs in subsidiaries often requires recourse to the headquarters of MNEs to discipline its local management (McCallum, 2011). In instances where subsidiaries leave the group, the GFA may cease to be applicable. However, the EDF case study shows how this sort of situation can be handled and reports that the buyers of such subsidiaries committed themselves to respecting the provisions in the GFA for a transition period of three years (Sobczak and Havard, 2008).

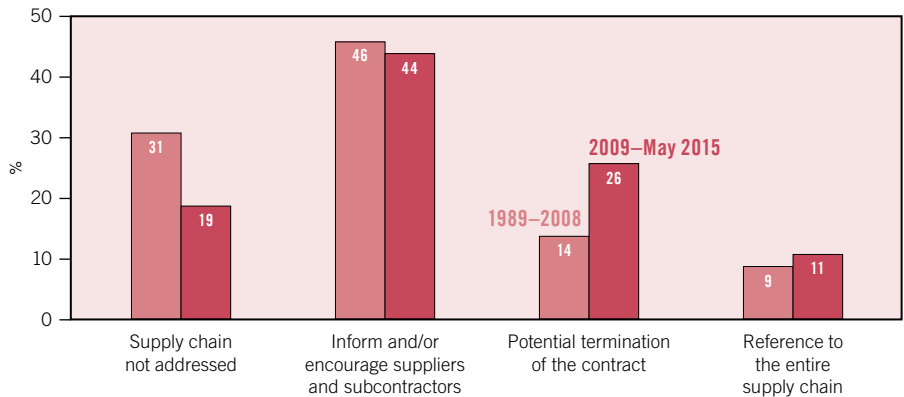
Evolution of global framework agreements

GFAs have evolved over the last 15 years. This results from GUFs having reviewed their strategy and demanding a second generation of GFAs that involves stronger implementation, dispute resolution procedures, as well as the facilitation of unionization rather than simply consenting to it (International Metalworkers' Federation, 2006; UNI, 2007). We have seen above (e.g. figure 2) a comparison between GFAs signed between 2009 and 2015 and earlier agreements that shows that an increasing number of GFAs make explicit references to international frameworks such as the MNE Declaration, the OECD Guidelines and the UN Universal Declaration of Human Rights. At the same time, the ways in which GFAs address supply chains has evolved. We have looked at four different ways in which GFAs address GSCs. Building on these four groups, this section now compares how references in GFAs to the global supply chain have evolved over time. The results of an evaluation by the present author of the 54 GFAs negotiated between 2009 and 2015 are compared to the results in a report prepared by Telljohann et al. (2009), which contains an evaluation of 68 existing GFAs during 1989–2008.

The first clearly visible trend is that newer GFAs are more likely to address the application of the agreement to the supply chain. While Telljohann et al. (2009) report that 31 per cent of the GFAs did not mention suppliers and subcontractors at all, the proportion shrank to 19 per cent in the evaluation of GFAs concluded or renewed between 2009 and 2015 (see figure 4). This trend indicates a growing need for more effective social regulation in global supply chains, as well as the added value GFAs and labour relations might have in this field. The second trend is that a larger share of the more recent GFAs treats respect for the provisions in GFAs as a criterion

for establishing or continuing business relations with suppliers and subcontractors. These agreements mention some form of consequences in the case of continuous violations. The number of agreements that fall into this category has almost doubled, from 14 to 26 per cent in more recent GFAs. Only a small fraction of GFAs explicitly include the entire supply chain.

Figure 4. Inclusion of suppliers and subcontractors in GFAs (percentages)



Source: Telljohann et al. (2009), p. 32, for 1989–2008; author's evaluation of GFAs negotiated between 2009 and 2015 (number = 54).

A way forward

The previous section has shown an evolution between two generations of agreements: GFAs signed from 2009 to 2015 and agreements signed earlier. Beyond 2015, in considering a next generation of GFAs it would be important to further improve the quality of the agreements. They should ideally be based on cross-border labour relations and involve local unions at grass-roots level. From a trade union perspective, GFAs should promote collective bargaining at the local or national level and develop cross-border recruitment and organizing campaigns by using union networks in MNEs.³ The suggestions below focus on what can be learned for the drafting and implementation of future agreements from the content analysis and the evaluation of the case studies. Following this, directions for future research are briefly discussed.

The content analysis of the 54 most recent GFAs shows that there is great variation in how these agreements make reference to the global supply chains. This article has quoted several examples taken from the texts of GFAs and has identified examples of good practice in promoting freedom

3. See, for example, the IndustriALL revised GFA guidelines, adopted by IndustriALL's Executive Committee in Tunis in December 2014.

of association and collective bargaining at suppliers and subcontractors of MNEs. Generally, the bargaining partners should strive to:

- include a reference to the entire supply chain of the MNE;
- include the duty of the MNE to treat respect for provisions in the GFA as a determining criterion for establishing or continuing business relationships with suppliers and subcontractors;
- phrase the obligations of the MNE with regard to the supply chain not as an objective to be reached but as a compulsory requirement; and
- include all vital provisions of the GFA within the scope of application to the supply chain.

Moreover, the text analysis shows that there are several examples of good practice for further collaboration between MNEs and trade unions on local and global reviews and training programmes, as well as measures to enable local trade unions to monitor the GFA at supplier and subcontractor sites. Unfortunately, practice in this area is still only emerging. To further strengthen the implementation of GFAs along the supply chain it will be important to include the following points:

- wide dissemination of the GFA to suppliers and subcontractors as well as local trade unions;
- joint training measures at suppliers and subcontractors on labour relations and in applying ILO standards;
- joint monitoring of the GFA and site visits by the implementation group at local suppliers and subcontractors;
- disclosure of information on the companies in the global supply chain of the MNE;
- integration of the GFA in the procurement practices of the MNE and in commercial contracts with suppliers and subcontractors;
- the list of regular topics in the continuous consultation meetings includes working conditions at suppliers and subcontractors; and
- duty of the MNE to insist on the continued application of the GFA at least for a transition period in subsidiaries which leave the group.

This evaluation of the 25 case studies on the implementation of GFAs shows that it is crucial to strengthen local ownership. In the past, GFAs had overall only a limited impact on suppliers and subcontractors because they were largely unknown among managers at local suppliers and within the ranks of local trade unions. Moreover, local actors who are aware of them seldom have much understanding of their role. The case studies provide arguments to further strengthen the wording in GFAs with regard to the application of these agreements to global supply chains. In one case study, an MNE ceased an

inquiry into abuses of workers' rights when it realized that the company was not one of its direct suppliers. This example stresses the importance of not limiting the application of the GFA to the direct contractors of the MNE, but of including the entire global supply chain. Examples of good practice in the case studies provide evidence of the significant role that GFAs and GUFs can potentially play to ensure workers' rights along the global supply chain of MNEs by bringing suppliers, subcontractors and subsidiaries under the GFA umbrella. However, looking to the future, the involvement of local actors throughout the GFA process needs to be strengthened, from initiation through the negotiations and implementation. GFAs work best when they are integrated in local labour relations; the involvement of local actors could go beyond local trade unions and involve the management from local subsidiaries or even a co-signing of the agreement by important suppliers and subcontractors of the MNE. All this could help to develop new forms of social dialogue on the global level, embedded in local realities.

There are several avenues for further research. Many case studies focus on the implementation process of the GFA in the MNE and its subsidiaries. Further research is needed on the local implementation of GFAs at suppliers and subcontractors, focusing on the potential of GFAs to enable local trade unions to engage in industrial relations and organizing campaigns along the supply chains of MNEs. It will be important to analyse differences between industry sectors to better understand the dynamics of supply chain relationships and how these have an impact on workers' rights. Depending on the governance structure of the supply chain, MNEs and GUFs will be better or worse equipped to influence suppliers and promote decent working conditions. The structure of the supply chain should therefore be taken into consideration when drafting references and procedures in GFAs to regulate the global supply chain of the MNE. More research and suggestions are necessary to strengthen the application of GFAs to suppliers and subcontractors and to develop local ownership of the agreements.

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Transforming supply chain industrial relations

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IndustriALL

Pressure on multinational corporations (MNCs) to account for violations of workers' rights in their global supply chains is increasing. Campaigns by Global Union federations, NGOs and online campaign networks are making the connections between labour rights abuses at the far reaches of a company's supply chain and the global headquarters that controls the chain and collects the profits. Workers and their unions are becoming increasingly sophisticated in identifying the MNCs at the top of the supply chain when violations take place, and are pressuring them to act.

Workers at all stages of global supply chains can justifiably ask why their pay and working conditions are so poor when they are making products or contributing services for corporations that rake in massive profits and could well afford to guarantee all workers in their supply chains a decent standard of living. In the last quarter of 2014, Apple reported the biggest quarterly profit ever by a corporation: US\$18 billion. It is sitting on cash reserves of US\$142 billion. Meanwhile the workers who make the products responsible for generating these unprecedented profits receive only US\$4 for making an iPhone 6 that retails in the United States for US\$649. MNC buyers at the top of global supply chains do not necessarily employ directly the workers in the factories that produce their goods, but their purchasing decisions have a powerful influence over wages and working hours.

The UN Guiding Principles make clear that a company is responsible for conditions in its supply chain, regardless of where the work is performed and what the employment relationship is between it and the workers. This positive development has made it impossible for multinational companies to evade accountability for abusive conditions through their extensive use of outsourcing, subcontracting, agency work and other means of avoiding direct employment relationships. But what if the entire sourcing model is precisely predicated on low wages, long hours and exploitative working conditions? How can a company fulfil its responsibilities within a system that entrenches abuses of worker rights?

The global garment industry

In garment industry supply chains, exploitative working conditions are standard. Workers are forced to work long hours, often far beyond legal boundaries, for poverty wages and in conditions that breach even the lowest of occupational safety and health standards. Many live in absolute poverty whilst others teeter just above it. Continual downward price pressure by companies keeps workers' wages low while their purchasing power declines against inflationary increases on basic necessities such as food and energy.

The wage of most garment workers is no higher than the level of the minimum wage in their respective country, which in many cases is well below the level of subsistence. In countries where the minimum wage is set at

industry level, wages for textile and garment workers are lower than for other industries. Global average wages in the textile and clothing industries are respectively 24 per cent and 35 per cent lower than the manufacturing industry average wage.

Excessive working hours are a continuing and entrenched problem. Production peaks are managed by relying on excessive overtime. Workers are compelled to work extremely long hours in order to supplement their basic earnings towards a level where they can support themselves and their families. Even when they work excessive additional hours, many workers are unable to achieve this goal.

Precarious employment conditions are rife, with temporary contracts, agency work and subcontracting the norm. Violations of the right to freedom of association are commonplace, unionization rates are extremely low and collective bargaining is rare.

Decades of public campaigning and recurrent fires and building collapses occasioning multiple deaths have given a high level of visibility to labour conditions in garment supply chains. But the responses by those corporations responsible at the top of the chain have been insufficient to bring about the fundamental change necessary to guarantee the rights of garment workers.

The failure of corporate social responsibility

Garment companies have developed extensive corporate social responsibility (CSR) programmes which rely on auditing and compliance in the attempt to improve conditions in the factories which produce for them. These unilateral, voluntary and non-binding efforts have overwhelmingly failed to improve wages and working hours or to ensure respect for workers' right to join a union.

Not only have they proved to be ineffective, but in giving reassurance that something is being done, they have become obstacles to finding genuine solutions to the root causes of low pay and excessive working hours.

Dissatisfaction with the results of their own auditing efforts has led many companies to join multi-stakeholder initiatives (MSIs) to address compliance in their supply chains, but the results are often no better than unilateral company efforts, relying as they do on similar auditing methods and failing to address the root causes – the supply chain production model itself.

For more than 15 years, the major MSI programmes have grown in the number of companies that have joined them, yet the MSIs have not demonstrated results in their ability to improve workplace standards and respect for rights such as freedom of association, nor to increase wages above poverty level.

While ILO standards are the reference point for most CSR efforts, these have done little to ensure actual respect for ILO standards, and virtually

nothing for the fundamental rights that enable respect for workers: freedom of association and collective bargaining. Where freedom of association is respected and workers are allowed to organize unions and bargain collectively, they are able to defend themselves against exploitation and obtain decent incomes and working conditions. Where these rights are denied, the CSR model is unable to fill the gap. But there are clear reasons why efforts based solely on CSR and auditing will continue to fail: they do not make any fundamental change to the way that production is organized.

Why CSR cannot be the answer

Clothing supply chains are complex and subject to frequent change. Most factories produce clothes for a number of brands, reducing the influence that any one brand can have on a particular factory. As fashion changes, so do sourcing choices, as companies seek out the factories that have the capacity to meet their changing demands. Outsourcing and subcontracting by the factories themselves, either to source items such as buttons and zips, or to take up production that the factory has overcommitted to and cannot carry out, further reduces the impact of CSR.

Even if a lead company were able to secure better control of its supply chain by reducing the number of factories it gives work to and by placing orders to take up the full capacity of each factory so that they do not produce for other brands, its efforts would still be limited by the context in which the factory is operating. Currently wages in many garment-producing countries are way below the level of a living wage, and working hours are typically way in excess of ILO standards and even national legislation. The gaps are so large that it would not be possible for an individual factory to change its own conditions so dramatically and still remain competitive. It would also quickly become subject to pressure from employers' associations and other factories not to step outside existing norms. This is the reason why no brand has been able to achieve this feat, even in factories where it sources 100 per cent of its production. How much influence can one company indeed have on conditions for employing labour which are systemic and entrenched?

Corporate self-regulation is clearly not the answer, yet CSR is not about to disappear any time soon. It has spawned a multi-million dollar social auditing industry, which means that despite the lack of results, there is so much invested that many companies will hope to achieve incremental change through improvements to existing approaches. But since the compliance and auditing model focuses on individual factory performance without identifying and addressing root causes and systemic barriers, these efforts will continue to be ineffectual. There is a growing public awareness of the lack of results delivered by CSR programmes – flashy websites and reports are no longer an adequate smokescreen behind which companies can continue

business as usual. Faith in the auditing model was further shaken when it became known that the social auditing and certification bodies SAI and BSCI gave clean bills of health, respectively, to Ali Enterprises before it burnt down killing 254 workers, and to Rana Plaza before it collapsed, killing more than 1,100 workers. Better solutions need to be urgently found, and only strategies that take into account the nature of the industry and the manner in which sourcing decisions are made have any chance of success.

Building new models of cooperation

Violations of the rights of garment workers, low pay and excessive working hours are not restricted to any one country or any one region: they are a global problem to which there needs to be a global response. Nothing less than a fundamental change to the way that production is organized in garment supply chains will provide relief to workers from poverty wages and crippling working hours.

Such a fundamental change may very well turn out to be the legacy of the Rana Plaza collapse. This turned out to be a defining moment for the way that companies approach supply chain compliance. It brought to a head the public debate on the ineffectiveness of auditing and made possible a ground-breaking new agreement between unions and companies to make garment factories in Bangladesh safe.

That agreement is the Accord on Fire and Building Safety in Bangladesh. The Accord is a legally binding agreement between global unions and more than 200 clothing companies. It marks the turning point from the failed CSR auditing model and towards global supply chain industrial relations that deliver genuine change. In the negotiations that led to signing the Accord, companies and unions were able to work together to identify the underlying reasons why the factories had not been made safe despite years of auditing and CSR programmes. These have been addressed in the design of the Accord, which includes commitments by brands towards their supplier factories to maintain orders and to ensure that financing is available to factories to do the necessary renovations. If factories do not comply, signatory brands are required to end their business relationship.

Run by a joint steering committee of equal numbers of union and brand representatives, the Accord recognizes and supports the vital role of workers in monitoring factory safety. The signatory companies commit to recognizing workers' right to refuse unsafe work and to setting up joint health and safety committees in each factory. Unlike with voluntary codes of conduct, workers have the assurance that these commitments can be enforced through a legally binding agreement. The Accord also introduces a new level of transparency to the industry. All inspection reports and corrective action plans for each factory producing for Accord brands are publicly available on the Accord website.

The Bangladesh Accord establishes a new model of cooperation between global buyers and trade unions to enforce compliance with standards, and promises to change fundamentally the way that companies deal with abuses in their supply chains. The challenge now is to build on this model by developing more agreements to address other systemic supply chain rights violations.

Through the Accord experience, unions and companies have identified the elements that must be present in order for strategies to improve supply chain labour standards to be effective. Efforts must be collaborative, and involve buyers, factories, workers and their unions. They must address root causes, including purchasing practices. They must include longer-term commitments from buyers to suppliers in order to provide an incentive for them to comply, as well as sanctions if they do not.

These experiences have made it possible for garment companies and IndustriALL Global Union to join forces to apply such an approach to living wages in the garment industry. This process is known as ACT. It started when a group of garment brands and retailers came together to discuss how they could collaborate at industry level to make genuine and significant progress towards a living wage. They identified freedom of association and collective bargaining as well as reform of purchasing practices as vital conditions for any improvements in the sector. The brands agreed among themselves to a set of enabling principles on living wages in supply chains. These principles promote a joint approach and recognize the primary role of collective bargaining at industry and national levels in reaching agreement on a living wage. Having established the parameters of their cooperation, the brands entered into dialogue with IndustriALL Global Union on how to work together at industry level to develop the strategies that will drive the fundamental changes needed to make living wages a reality.

Identifying the root causes

Garment workers are currently under-represented by trade unions, which face massive barriers to organizing from both employers and governments. In many garment-producing countries, collective bargaining structures are weak or absent: over 90 per cent of workers in the global garment industry have no possibility to negotiate on their wages and conditions and so are not able to claim their fair share of the value that they generate. A typical pair of jeans made in Bangladesh retails for anywhere between US\$30 and US\$50, or more for a prestige brand. But the worker who makes them receives only 10 cents.

The lack of industry wage bargaining in the garment industry has left workers reliant on ineffective minimum wage mechanisms for any wage increases. While minimum wage fixing at least establishes a common floor, the

wages that result are well below the level of a living wage in most major garment-producing countries such as Cambodia and Bangladesh. Garment sector wages in Bangladesh are currently US\$68 a month, but unions say that these need to increase to at least US\$120 for workers to be able to support themselves and their families adequately. In Cambodia, the minimum wage has risen to US\$128 a month, but this is still well below the US\$150–177 living wage demanded by unions. Government control over the process and outcome means that many factors that are unrelated to the needs of garment workers end up influencing the eventual rate. Conversely, other industry-specific factors that have a bearing on wages, such as working hours, non-wage benefits and productivity improvements, are not considered.

Where bargaining does take place in the garment industry, it is primarily conducted at the level of the individual factory. This puts an enormous burden on unions that lack the strength and resources to conduct negotiations one factory at a time – in Bangladesh alone there are more than 4,500 factories producing for the export industry. Particularly in supply chain industries like clothing and electronics, bargaining at the level of individual factories will never be enough to drive up pay and conditions when demands by MNCs for ever lower labour costs suppress wages and conditions in a race to the bottom. There are limits to how far an individual factory or business can step ahead of its competitors, and unscrupulous MNCs will simply move to suppliers with lower standards and lower labour costs. Likewise, efforts by individual MNCs to raise standards, particularly when these do not include reform of purchasing practices, will meet with opposition in their supplier factories which have to compete with other factories on labour costs. Even if buyers increase the prices they pay, without collective bargaining in place there is no guarantee that the increases will be passed on to workers. Furthermore, most suppliers have multiple buyers, all of whom negotiate prices with them individually.

Industry bargaining is key

Collective bargaining at industry level is the missing mechanism which will enable significant progress to be made towards living wages for garment workers. Its virtual absence from the garment industry today is the primary obstacle to achieving higher wage outcomes.

Industry bargaining enables the particular features of the textile and garment industry to be taken into account in wage structures in a way that minimum wage fixing processes are unable to do. It enables comprehensive agreements to be reached that take into account all relevant issues including wages, overtime, working hours, production peaks and productivity and efficiency. Once there is a functioning mechanism for collective negotiation between employers and garment workers, other systemic problems such as the

chronic undervaluation of women's work can be addressed through more appropriate compensation for skills.

Industry-wide agreements make it very difficult for employers to escape their obligations. They effectively take labour costs out of competition by creating a level playing field that enables conditions to improve for all workers in an industry, regardless of whether the multinational company that their factory supplies has a CSR programme, or whether their factory is even part of a global supply chain at any given time. The incentive then is to compete on the basis of efficiency, process innovation, skills and upgrading rather than by undermining wages and working conditions. Factories have a collective interest in ensuring that they are not undercut by unscrupulous employers paying wages lower than the prevailing rate. This is particularly true in labour-intensive industries such as the garment industry. Industry bargaining takes conflict out of the workplace and is more efficient, requiring fewer resources for employers as well as trade unions and providing stability and predictability to buyers, factories and workers. By covering all workers in an industry, it also ensures the inclusion of the most vulnerable workers including the many migrant workers, contract workers and homeworkers found in the garment industry.

MoU on living wages in the garment industry

IndustriALL has signed a Memorandum of Understanding with each of the brands involved in the ACT process. The MoU is explicit in identifying the development of industry bargaining in garment-producing countries as essential to achieving living wages and the need for effective recognition of workers' rights to freedom of association and collective bargaining in order for this to be realized. The intentions expressed in the MoU aim at transforming the way that wages are set in garment-producing countries. In the context of global supply chains, where the buyers at the top of the supply chain have the greatest power to influence where value is distributed along the chain and how much of it ends up in the hands of workers, commitments to reform purchasing practices in support of industry bargaining are essential.

The ACT process seeks to develop the means to link the supply chain responsibilities of buying companies to the collective bargaining process between local unions and employers. This will involve developing contractual or other mechanisms that support suppliers to implement the negotiated wage. Commitments to continued sourcing and greater stability of orders will be key, as will commitments that prices paid will take account of negotiated increases.

By linking national industry-level collective bargaining between unions and employers to the purchasing practices of brands, the ACT process creates a framework for genuine supply chain industrial relations. Through industry bargaining, wages can be negotiated at a level that enables workers to

properly support themselves and their families while addressing the specific nature of the industry, working hours, productivity and other issues that have a bearing on wages. To ensure that the agreed rate is actually paid, the resulting agreements need to be registered and legally enforceable under national laws. Factories also have to have the means to pay the agreed rate and this is achieved through reforming purchasing practices. All three elements must be present to create a system that will actually deliver on living wages.

The aim of the ACT process is to establish systems of industry agreements supported by brand purchasing practices as the primary means of wage fixing in the global garment industry. The next step will be to start efforts to implement it in key garment-producing countries. For this, the engagement of employers, trade unions, governments and other actors is essential. ACT companies will work with their suppliers and IndustriALL with its affiliated unions in selected countries to bring them together to develop an agreed plan of action and set a framework for negotiations towards living wages. This is likely to require capacity building for both employers and trade unions, as until now there has been no framework for them to come together at the level of the industry and negotiate in this way. Given the hostility to trade unions in many garment-producing countries, a strong focus on the right to freedom of association will be needed.

This is an ambitious aim and there is recognition of the need to catalyse support for a fair and stable global garment industry by making the case for promoting a living wage system which is collectively bargained on an industry basis. It will require significant political will, particularly in those countries that supply cheap labour to global supply chains. It will involve the construction or improvement of industrial relations structures, including development of representative employers' associations where these are absent. It is anticipated that the ILO will play an important role and be a vital source of practical and technical expertise.

At the same time as working towards the development of industry bargaining, the MoU commits IndustriALL and ACT companies to continuing to make joint approaches to governments in support of higher minimum wage outcomes. In 2014, IndustriALL called jointly with brands sourcing from Cambodia for increases to the minimum wage, while providing commitments on maintaining orders and ensuring their purchasing practices take account of wage increases.

The way forward

For the first time, the ACT process has established the commitment of the global union and major clothing brands to working together to create a system that, by addressing the structural barriers to living wages that guaranteed that previous efforts would not succeed, has a genuine chance of

increasing garment workers' wages in a way that is scalable, sustainable and enforceable.

Drawing on these experiences, and those of the Bangladesh Accord, there is no reason why similar models cannot be developed that institutionalize relationships between buyers, factories and workers to address other labour rights problems that are entrenched in the very way that supply chains are managed.

In the garment industry, the institutions designed to protect workers' rights have not been adapted to keep pace with rapid evolution of global supply chains, resulting in low wages and exploitative working conditions throughout the industry. There is now an opportunity to remodel the industrial relations architecture to address the realities of employment relationships and working conditions in today's global supply chains, towards genuine supply chain industrial relations.

New life for the ILO Tripartite Declaration on Multinational Enterprises and Social Policy

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The globalization of supply chains and the need to secure decent working conditions along global production lines has for some years been gaining in importance for the ILO's Decent Work Agenda, and it is encouraging that the International Labour Conference will discuss the issue at its 105th Session in June 2016.

While the ILO's classic means of action in relation to conditions of work in multinational enterprises has been to provide guidance through its supervisory mechanisms, in particular the Committee on Freedom of Association (see ILO, 2013), and through technical assistance projects (for example, Better Work or Score), more limited action has been devoted to promoting the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the MNE Declaration). Adopted in 1977 by the ILO Governing Body at its 204th Session, and amended in 2000 and 2006, the Declaration has nevertheless too often seemed to be a well-kept secret outside the walls of the ILO.

Now, almost 40 years on, this article argues that after a thorough review of both the text and the follow-up mechanism the MNE Declaration should be included in the future "package" of initiatives established by the Organization to respond to the decent work challenges in global production systems.

It is helpful to go back briefly to the years preceding the adoption of the Declaration, in order to understand its roots. The post-colonial debate of the 1960s dwelt on the issue of nationalization of foreign assets. As Olivier De Schutter writes (2015, p. 7):

Nationalization was seen by developing countries as a means through which they could assert their newly proclaimed sovereignty over national resources proclaimed both under the human rights covenants adopted in 1966 and under the resolutions adopted by the UN General Assembly as part of the New International Economic Order. But industrialized countries and the G-77 – also called the "non-aligned" countries – could agree neither on the conditions under which such expropriation could be allowed to take place, nor on the remedies to be made available to the investors, nor on the levels of compensation to be granted.

The gap between the principles of the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly on 16 December 1966 (in particular Art. 1(2) on the rights of people to "freely dispose of their natural wealth and resources") and the reality became even clearer with the 1973 military coup in Chile. It was clear that a response was needed: the Organisation for Economic Co-operation and Development (OECD) established the OECD Guidelines for Multinational Enterprises in 1976, and the ILO Governing Body followed one year later with the MNE Declaration.

Both initiatives were a “voluntary” continuation of work begun on the writing of a United Nations code of conduct for MNEs that had failed to materialize. In the words of Kari Tapiola (2001, p. 1): “In the 1980s there was little real action for implementing or strengthening the observance of the principles of the OECD and ILO instruments concerned. Most countries were far more interested in obtaining multinational investments than in controlling them.”

What made – and makes – the ILO MNE Declaration distinct from other initiatives is that through tripartite consensus, government, employer and worker representatives decided to distil a set of principles derived from the relevant ILO Conventions and Recommendations (which were annexed to the Declaration) to guide the operations of transnational enterprises. But they included more than that: as the inclusion of “social policy” in the title implies, the Declaration also encourages the positive contribution of MNEs to economic and social progress, in conjunction with governments, trade unions and employers’ organizations as well as companies in the host countries. The idea is to create a virtuous cycle for the development priorities and social aims of the countries where the companies operate; in other words, to foster sustainable development.

Although foreign direct investments (FDI) were closely linked to companies directly establishing branches in foreign countries when the MNE Declaration was adopted in 1977, the text already recognized the “complexity” of MNEs and their “diverse structure”, explicitly stating that “the Declaration does not require a precise legal definition of multinational enterprises” (ILO, 2006, para. 6). It is also crucial that the negotiators had already stated that MNEs needed to recognize that the complexity of their operations can “lead to abuse of concentration of economic power and to conflicts with national policy objectives and with the interest of workers” (ibid., para. 1).

It is therefore important that MNEs commit to the observance of a rule of proceeding that respects the laws of the country they operate in as a basic minimum, while accepting to go beyond in order to realize the ILO principles in practice, even in countries that may not have ratified the standards in question. Box 1 briefly summarizes the MNE Declaration.

This overview gives a sense of the wide scope and richness of the ILO text, which links necessary legislative action with industrial relations within and across borders. In current global production settings, unions would certainly recognize the importance of discussing the different themes along the global supply chain.

Since contracting and subcontracting arrangements have been increasingly used to deny workers’ rights, it is all the more important to link the MNE Declaration (which has not been updated in almost ten years) to new paradigms in this regard, such as the guidance provided by ILO Employment Relationship Recommendation, 2006 (No. 198), or the Conclusions of the

Box 1. The MNE Declaration: An overview

General policies

MNEs should obey national laws, respect international standards, honour voluntary commitments, and harmonize their operations with the social aims and structure of countries in which they operate.

Employment promotion

Governments should promote full, productive, freely chosen employment. MNEs should endeavour to increase employment opportunities and standards in host and home countries; give priority to the employment, development, promotion and advancement of host country nationals at all levels; and promote employment through use of employment-generating technologies and local sourcing arrangements.

Equality of opportunity in employment

All governments should promote equality of opportunity in employment.

Security of employment

Governments should take suitable measures to deal with the employment impacts of MNEs. MNEs should strive to provide stable employment and reasonable notice to government authorities when operational changes would have major employment effects. Governments, together with MNEs, should provide some form of income protection for workers whose employment has been terminated.

Training

Governments should develop national policies for vocational training and guidance. MNEs should ensure relevant training is provided to all employees, to meet the needs of the firm and those of the host country. Multinationals should also afford opportunities within the enterprise as a whole to broaden the experience of local management.

Conditions of work and life

In developing countries, MNEs should provide the best possible wages, conditions of work (including health and safety), and benefits, adequate to satisfy basic needs and within the framework of government policies. Governments should adopt policies ensuring that lower income groups and less developed areas benefit as much as possible from MNE activities. MNEs should provide upon request information concerning health and safety standards observed in other countries which are relevant to local operations.

Industrial relations

Workers should have the right to establish and join organizations of their choosing, and protection against anti-union discrimination. MNEs should allow collective bargaining, providing facilities and access to resources that will allow meaningful negotiation. MNEs and national enterprises should consult regularly with employees on matters of mutual concern. All workers should have the right to submit grievances without prejudice, and to have them investigated. MNEs and national enterprises should work to develop resolution mechanisms to assist in the prevention and settlement of disputes.

Source: Summarized from ILO (2006). The full text is available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf

Tripartite Meeting of Experts on Non-standard Forms of Employment which took place in February 2015 (ILO, 2015).

In recent times, the Workers' Group at the ILO has been reluctant to pursue a revision of the text of the MNE Declaration, fearing – with reason – that since the Declaration is comprehensive and progressive, any revision might lose good language. On the other hand, it can be argued that this inaction has de facto led to preservation but not to the realization of practical outcomes for workers.

There is thus plenty of scope for “cleaning” the text of the many references to the 1970s context, as well as seizing the opportunity for a serious discussion of its content, hence allowing for a new ownership by contemporary constituents. Similar discussions have taken place with regard to the OECD Guidelines in its reviews and annual reports, the latest in 2014. The point is to try not to lose the substance of the MNE Declaration's structure (which addresses the complete set of issues regarding industrial policy), while adding global supply chains to the picture, including collaboration among States as well as between the social partners across countries, for example through robust global framework agreements. In addition, the list of standards in the Annex should be updated to include the most recent guidance provided by the ILO.

A major problem for the success of the MNE Declaration has been the follow-up process, which has proved inadequate to the task. One element of the follow-up was the survey to be conducted globally every four years; this proved to be a negotiating nightmare for the MNE Subcommittee and in the end did not really add to the practical use of the Declaration, even though the language that was eventually negotiated, for example for the 7th Survey, would prove to be very progressive. In view of the limited number of replies, among other reasons, in 2006 the ILO Governing Body decided to set aside this global exercise and to look for alternative options (see below).

The main problem, however, has been the dispute resolution procedure (see the attached Annex) which has proved cumbersome and difficult to use. It has been used mainly as a way for the Employers' Group to exercise a veto. Where the procedure states, “The Officers of the Committee on Multinational Enterprises shall decide unanimously after consultations in the groups whether the request is receivable under the procedure” (para. 4), the term “unanimously” of course goes beyond the usual interpretation of “consensus” in ILO terminology.

Fortunately though, when the MNE Declaration was adopted the existing ILO supervisory mechanisms were safeguarded “in respect of matters falling under the freedom of association procedure” (para. 58). While this was a positive step in terms of recognition of jurisprudence as well as of the value of the role of the Committee on Freedom of Association (CFA), it is true that this process has not added to the use and visibility of the MNE Declaration.

In its previous attempts to advocate for a revision of the follow-up process and other aspects of the Declaration, the Workers' Group encountered resistance on the part of the Employers' Group as well as government representatives. The Workers' perception was that the other social partners were satisfied with the status quo.

In 2007, on the occasion of the Declaration's 30th anniversary, there was renewed interest in revisiting it. While this milestone was adequately celebrated in Geneva with "Multiforum 07", a high-level meeting bringing together corporate, labour and civil society leaders, this failed to generate momentum to raise the profile of the Declaration and to make it a pillar of the Organization. Although the idea was quickly shelved, the movement towards change kept growing, and it is indicative that this discussion took place in the same year that the ILO was laying the groundwork of the Declaration on Social Justice for a Fair Globalization (2008), whose scope is clearly a strong match with the guidance in the MNE Declaration.¹

One means of breaking the impasse around the MNE Declaration was the agreement to establish the Helpdesk for Business on International Labour Standards,² which has been of assistance to users through both direct Q&As and consultation of compiled responses. Its website is also rich in information, but it was clear that this would be very much a first step, since users tend to be individuals acting under almost complete anonymity.

Lengthy negotiations took place over several Governing Body meetings, leading to the adoption in March 2014 of a new promotional follow-up without suppressing the existing one. The various actions agreed upon are summarized in box 2.

Although all the actions agreed upon are relevant, implementation within the ILO as a whole (that is, apart from the unit directly involved, the Multinational Enterprises and Enterprise Engagement Unit) is still at an infant stage. However, the first experience at the 18th American Regional Meeting in Lima, Peru, in October 2014 was positive; a high number of replies to the questionnaire were received within a very limited time frame and an interesting tripartite special session on "Multinational Enterprises, Development and Decent Work" was held to discuss the report (ILO, 2014b) as part of the new implementation strategy.

Although implementation within the Office still has to be developed, for example in statistics and the Knowledge Management Gateway, workers' organizations too could be more proactive in using the avenues that have

1. Ebrahim Patel, then a Worker member of the ILO Governing Body and now Minister of Economic Development in the Republic of South Africa, played an important role in both Multiforum 07 and the drafting of the 2008 Declaration on Social Justice for a Fair Globalization; see http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS_087453/lang-en/index.htm; and http://www.ilo.org/ilc/ILCSessions/97thSession/pr/WCMS_094005/lang-en/index.htm.

2. See <http://www.ilo.org/empent/areas/business-helpdesk/lang-en/index.htm>.

Box 2. Implementation strategy of the follow-up mechanism of and promotional activities on the MNE Declaration, 2014: A summary

A. Promotional activities:

- (a) awareness raising and capacity building (e-learning module with training courses at Turin ILO Training Centre; resource kit on the MNE Declaration and relevant ILO documents);
- (b) country-level assistance (tripartite dialogue at national level including multi-nationals; possible establishment of a dialogue/consultation mechanism which could oversee partnerships and technical cooperation projects);
- (c) global network of MNE Declaration focal points;
- (d) promotion at the sectoral level (better links with sectoral activities and through innovative approaches);
- (e) mainstreaming the MNE Declaration in technical cooperation and PPPs;
- (f) dialogue (company–union facilitation service);* and
- (g) Regional Meetings (inclusion of topics related to the MNE Declaration in setting the agenda of Regional Meetings and in the report of the Director-General).

B. Survey to collect information on the effect given to the principles of the MNE Declaration

The creation of an integrated system for gathering information on the MNE Declaration replacing the universal geographical survey, including:

- (a) information already available in the ILO Knowledge Management Gateway;
- (b) new data generated following capacity building for national statistical offices;
- (c) research; and
- (d) information collected directly from the tripartite constituents through a short questionnaire rotating annually across the four regions (preceding ILO Regional Meetings; after a full cycle of Regional Meetings, these elements will be synthesized into a global report to be submitted to the Governing Body).

* In the words of the Tripartite Ad Hoc Working Group on the Follow-up Mechanism of the MNE Declaration: "Dialogue lies at the heart of the MNE Declaration. Where a company and a union voluntarily agree to take advantage of using the facilities of the ILO to meet and talk, without prejudice, under a chairperson agreed upon by the secretariats of the Workers' and Employers' groups, such a meeting would be organized with their support. This service would be promoted both through the ILO Helpdesk for Business on International Labour Standards and by workers' and employers' organizations" (ILO, 2012, Appendix, para. 15).

Source: ILO (2014a).

been so painstakingly negotiated, in particular, the company–union facilitation service offered (see note in box 2).

The Bureau for Workers' Activities (ACTRAV) continues to work with global unions in order to be part of this equation. Outstanding examples of global or regional activities have included the ICEM–Rhodia dialogue at the ACTRAV Symposium on the Right to Organise Collective Bargaining in October 2009, the Regional African Workshop held in Johannesburg in September 2011 to strengthen UNI Africa affiliates in dialogue with the

South African telecommunications giant MTN, and ACTRAV's recent presentation at ILO headquarters in July 2015 of the global framework agreement between IndustriALL and Solvay, the Belgian-based chemicals company. But it is evident that much more needs to be done, besides the occasional involvement of the ILO in company–union activities.

Looking ahead, the ILO Director-General has launched the Enterprise Initiative as one of the activities celebrating the ILO's centenary in 2019: it is therefore important that this not be managed or intended as a stand-alone initiative for companies – which would be simply a form of corporate social responsibility – but as an avenue for companies that want to connect in a more stable and positive way with the ILO on the basis of its standards and principles; hence, as a minimum, companies that want to implement mature industrial relations along their supply chain. In order for them to do so, a policy framework is needed – and, in my opinion, an updated MNE Declaration is the answer – but we also need to have a credible implementation mechanism. This is why I am convinced that the real “make or break” aspect is linked to the procedure for the examination of disputes which, as this article has argued, is currently the weak part of the equation.

The world is moving fast in this domain, and various initiatives have begun at regional and multilateral levels addressing social policy and rights at work: in particular the revision of the “twin sister” of the MNE Declaration, the OECD Guidelines, but also the promulgation of the United Nations Guiding Principles on Business and Human Rights (United Nations, 2011) as well as regional and other private initiatives.

I do not address here, and intentionally, developments where other institutions (such as the International Organization for Standardization, ISO) are trying to set up their own private standards for the world of work, since I am of the opinion that there is a need for a credible initiative linked to multilateral public policy, and it is the ILO that has received this mandate. Furthermore, an independent and strong initiative from the ILO itself will serve to deter individual initiatives or at least to demonstrate their different level of importance.

Looking at the OECD Guidelines and the UN Guiding Principles, we note that these two major institutions have created bodies that are vehicles for dispute examination or resolution (National Contact Points for the OECD and the UN Working Group on Business and Human Rights). What do these initiatives have in common? They refer to the body of ILO standards as a primary source of commitment to regulation. However, neither the members of the National Contact Points (in whatever form) nor the Experts of the Working Group on Business and Human Rights claim to be experts on international labour issues; they are willing to conciliate positions and find solutions, but – at least at present – do not claim expertise in the interpretation of ILO standards. Yet such expertise is a necessary condition for the examination and resolution of disputes and grievances.

Since the ILO is universally recognized as the repository of international labour standards and their supervision, as well as being the UN agency that covers the world of work in order to protect the rights of workers (including therefore the labour component of human rights), it is necessary for the Organization to reclaim its space in terms of offering a credible mechanism, first for the actors that would want to use it directly, but also in order to give guidance to other institutions confronted with a dispute within the ILO remit.

It is possible to learn from the successes of the various international bodies that have dealt with dispute resolution. Because this discussion will necessarily be linked to future options to be discussed and negotiated by the Workers' Group of the ILO Governing Body (whether as a whole or through a working group), I refrain for the purpose of this article from dwelling on proposals that I have personally been involved with in the past. It should be noted however that various established bodies function very well and are recognized for their independence and fair process. They can be a source of inspiration.

It is evident that to be credible the mechanism needs to be agile and robust at the same time, with a mix of independent experts having the characteristics of the judges at the ILO Administrative Tribunal, such as a balance in nationalities and gender, and able to interact with the tripartite constituency of the ILO.

Some may think such a goal too ambitious in this day and age. Yet because we are coming late to the revision of our instrument, we can learn from the past and the weaknesses of other instruments, and use this occasion to be ambitious for the future world of work, which has an urgent need for viable and better solutions in a cross-national context.

Now is the time to update the MNE Declaration through an inclusive process, possibly through the International Labour Conference instead of simply through the Governing Body as was done in 1977 and for subsequent revisions; and to set in place credible and flexible procedures for dispute resolution beyond the promotional follow-up mechanisms already agreed upon. In so doing, the ILO can easily reclaim its rightful place in the multilateral system, as well as becoming the reference point for innovative industrial relations processes at the global level such as global framework agreements.

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Annex

Procedure for the examination of disputes concerning the application of the tripartite declaration of principles concerning multinational enterprises and social policy by means of interpretation of its provisions

*(adopted by the Governing Body of the International Labour Office at its 232nd Session, Geneva, March 1986)**

1. The purpose of the procedure is to interpret the provisions of the Declaration when needed to resolve a disagreement on their meaning, arising from an actual situation, between parties to whom the Declaration is commended.

2. The procedure should in no way duplicate or conflict with existing national or ILO procedures. Thus, it cannot be invoked:

- (a) in respect of national law and practice;
- (b) in respect of international labour Conventions and Recommendations;
- (c) in respect of matters falling under the freedom of association procedure

The above means that questions regarding national law and practice should be considered through appropriate national machinery; that questions regarding international labour Conventions and Recommendations should be examined through the various procedures provided for in articles 19, 22, 24 and 26 of the Constitution of the ILO, or through government requests to the Office for informal interpretation; and that questions concerning freedom of association should be considered through the special ILO procedures applicable to that area.

3. When a request for interpretation of the Declaration is received by the International Labour Office, the Office shall acknowledge receipt and bring it before the Officers of the Committee on Multinational Enterprises. The Office will inform the government and the central organizations of employers and workers concerned of any request for interpretation received directly from an organization under paragraph 5(b) and (c).

4. The Officers of the Committee on Multinational Enterprises shall decide unanimously after consultations in the groups whether the request is receivable under the procedure. If they cannot reach agreement the request shall be referred to the full Committee for decision.

5. Requests for interpretation may be addressed to the Office:

- (a) as a rule by the government of a member State acting either on its own initiative or at the request of a national organization of employers or workers;
- (b) by a national organization of employers or workers, which is representative at the national and/or sectoral level, subject to the conditions set out in paragraph 6. Such requests should normally be channelled through the central organizations in the country concerned;

(c) by an international organization of employers or workers on behalf of a representative national affiliate.

6. In the case of 5(b) and (c), requests may be submitted if it can be demonstrated:

- (a) that the government concerned has declined to submit the request to the Office; or
- (b) that three months have elapsed since the organization addressed the government without statement of the government's intention.

7. In the case of receivable requests the Office shall prepare a draft reply in consultation with the Officers of the Committee on Multinational Enterprises. All appropriate sources of information shall be used, including government, employers' and workers' sources in the country concerned. The Officers may ask the Office to indicate a period within which the information should be provided.

8. The draft reply to a receivable request shall be considered and approved by the Committee on Multinational Enterprises prior to submission to the Governing Body for approval.

9. The reply when approved by the Governing Body shall be forwarded to the parties concerned and published in the Official Bulletin of the International Labour Office.

**Official Bulletin* (Geneva, ILO), 1986, Vol. LXIX, Series A, No. 3, pp. 196–197 (to replace Part IV of the Procedures adopted by the Governing Body at its 214th Session (November 1980)). See *Official Bulletin*, 1981, Vol. LXIV, Series A, No. 1, pp. 89–90.

Source: ILO (2006).

The Maritime Labour Convention, 2006: A model for other industries?

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The Maritime Labour Convention (MLC, 2006) came into existence in 2006 and eventually into force in 2013 when 30 countries had ratified it.¹ It consolidated 37 existing maritime Conventions which had been adopted between 1920 and 1996 into a single Convention,² brought existing provisions up to date and included a number of new and innovative ones.

The MLC, 2006 was the result of a process launched at the 81st Session (1994) of the International Labour Conference, leading to the establishment at the 262nd Session of the ILO Governing Body, held in March 1995, of a working party on policy regarding the revision of standards, known as the “Cartier Group”, which worked for seven years and eventually identified ten maritime Conventions which were in need of updating. The International Transport Workers Federation (ITF) and the International Shipping Federation (ISF) observed that it would take a considerable period of time to update those Conventions under the usual process. It was also considered that, given the large number of maritime Conventions, a new mechanism should be found to facilitate their amendment to reflect changes in the shipping industry.

The informal discussions led to an agreement that a new consolidated Convention was the way forward. In January 2001, the 29th Session of the ILO Joint Maritime Commission (a bipartite body of 20 seafarers and 20 shipowners) made a number of recommendations which were considered by the 280th Session of the ILO Governing Body held in March 2001. The Commission agreed to a resolution concerning the review of relevant ILO maritime instruments:

The Commission, under this item, discussed the significance and impact of maritime labour standards. It agreed that many of the existing ILO maritime labour instruments were outdated, deficient and not reflective of modern practices; those which were up to date and pertinent were not sufficiently ratified. It concluded that the best way forward in line with the integrated approach approved by the Governing Body at its 279th Session (November 2000) was the adoption of a single “framework” instrument which would consolidate the existing body of ILO maritime Conventions and Recommendations (ILO, 2001, para. 5).

The Commission recommended the Governing Body to take a number of steps, including the establishment of a high-level tripartite working group on maritime labour standards to assist with the work of developing the proposed new instrument and defining the modalities of work for the working group. This working group in effect prepared the grounds for what became the Maritime Labour Convention, 2006.³

1. As of July 2015, 66 member States had ratified the Convention.

2. It did not include the ILO Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185), or the Seafarers’ Pensions Convention, 1946 (No. 71).

3. The text of the Convention is available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/normativeinstrument/wcms_090250.pdf.

The innovations

Maritime Labour
Convention, 2006:
A model for
other industries?

The new Convention set out a Code that lays out the more technical and evolving dimensions governing labour conditions in the maritime transport industry. This is a novel structure to an ILO Convention, as is the inclusion of a simplified amendment process for the Code (Article XV) via the Special Tripartite Committee (Article XIII). This means that the Code can be amended without the need to adopt a protocol which would require member States to ratify the Protocol to the Convention. Article III (Fundamental rights and principles) and Article IV (Seafarers' employment and social rights) underpin the Regulations and Parts A and B of the Code. Part A (Standards) of the Code is mandatory while Part B (Guidelines) is recommendatory. However, the Member has to give due consideration to implement its responsibilities in the manner provided for in Part B of the Code (Article VI (2)).

The MLC, 2006 establishes duties and responsibilities on the flag State, port States and labour-supplying States as provided in Article V (Implementation and enforcement responsibilities). The flag State is required to inspect the vessel and issue a Maritime Labour Certificate covering the 14 points set out in Appendix A5-I (16 when the 2014 amendments will enter into force). The Maritime Labour Certificate is valid for five years but its validity is subject to an intermediate inspection by the competent authority which is required to take place between the second and third anniversary of the date the certificate was issued. In addition, to ensure compliance between inspections, there is a Declaration of Maritime Labour Compliance (DMLC). Part I is completed by the competent authority and identifies the national requirements, while Part II is drawn up by the shipowner and identifies the measures adopted to ensure ongoing compliance with the national requirements between inspections.

Appendix A5-II is identical to Appendix A5-I and lists the 14 points that can be carried out by an authorized officer conducting a port State inspection. The inclusion of comprehensive provisions for the exercise of port State control provides additional safeguards and promotes compliance. The initial inspection is limited to examining the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance. If there are clear grounds for believing that the working and living conditions on a ship do not conform to the requirements of the Convention or that there are reasonable grounds to believe that the ship has changed flag to avoid compliance, or more simply if there has been a complaint, the Port State Control Officer (PSCO) will proceed with a more detailed inspection. Standard A5.2.1 (Inspections in port) provides at paragraph 6:

Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention and:

- (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
- (b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers' rights);

the authorized officer shall take steps to ensure that the ship shall not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform forthwith the appropriate shipowners' and seafarers' organizations in the port State in which the inspection was carried out.

Provisions for port State control are also found in International Maritime Organization (IMO) Conventions and provide a powerful incentive for compliance, as non-conformity can result in ships being detained. The port State control regime is organized around regional memoranda of agreement and the reports of the Port State Control Officer (PSCO) inspections are available on their databases and provide historical information for a PSCO to target vessels for inspection and to check that plans of action to rectify non-conformities have been implemented.

Guideline B5.2.1 (Inspections in port) of the MLC, 2006 shows the importance attached to seafarers' rights:

1. The competent authority should develop an inspection policy for authorized officers carrying out inspections under Regulation 5.2.1. The objective of the policy should be to ensure consistency and to otherwise guide inspection and enforcement activities related to the requirements of this Convention (including seafarers' rights). Copies of this policy should be provided to all authorized officers and should be available to the public and shipowners and seafarers.

2. When developing a policy relating to the circumstances warranting a detention of the ship under Standard A5.2.1, paragraph 6, [...] the competent authority should consider that, with respect to the breaches referred to in Standard A5.2.1, paragraph 6(b), the seriousness could be due to the nature of the deficiency concerned. This would be particularly relevant in the case of the violation of fundamental rights and principles or seafarers' employment and social rights under Articles III and IV. For example, the employment of a person who is under age should be considered as a serious breach even if there is only one such person on board. In other cases, the

number of different defects found during a particular inspection should be taken into account: for example, several instances of defects relating to accommodation or food and catering which do not threaten safety or health might be needed before they should be considered as constituting a serious breach.

The MLC, 2006 requires labour-supplying States to exercise jurisdiction over seafarers' recruitment and placement services established in their territory by requiring the State to inspect them and ensure that they operate in conformity with a standardized system of licencing or certification or other form of regulation, and meet the provisions set out in Standard A.1.4 (Recruitment and placement). If the labour-supplying State has not ratified the MLC, 2006, the flag State has to ensure that the shipowner has in place a mechanism to verify that the recruitment and placement service meets the requirements of the Convention.

A further innovation was the inclusion of a "no more favourable treatment" clause (Article V (7)) which permits a ratifying State to enforce the Convention on ships flying the flag of a State that has not ratified the Convention while the ship is in a port within their territory. As it is likely that ships flying the flag of a State not having ratified the MLC, 2006 will be targeted by a PSCO, there is an incentive for flag States to ratify the Convention.

Consulting the representative national shipowners' and the national seafarers' organizations is fundamental to the operation of the Convention at the national level and for the exercise of the flexibility permitted by the MLC, 2006 – so much so that Article VII (Consultation with shipowners' and seafarers' organizations) was included:

Any derogation, exemption or other flexible application of this Convention for which the Convention requires consultation with shipowners' and seafarers' organizations may, in cases where representative organizations of shipowners or of seafarers do not exist within a Member, only be decided by that Member through consultation with the Committee referred to in Article XIII.

The 2014 amendments to the MLC, 2006 will expand on the references to financial security found in Regulation 2.5 (2) by inserting a new Standard 2.5.2 (Financial security). The flag State will have to ensure that the vessel carries a certificate or other documentary evidence issued by a financial security provider which will state that seafarers, should they be abandoned by the shipowner, are repatriated at no cost to themselves. It will provide maintenance and support for the seafarers while they are abandoned, meet all their repatriation costs and pay up to four months of outstanding wages and other entitlements. A similar amendment was adopted to Standard A4.2

(Shipowners' liability) to give effect to the reference to financial security in A4.2 (1 (b)). A further seven paragraphs will be added to Standard A4.2 (to be renumbered as A4.2.1) and a new section Standard A4.2.2 (Treatment of contractual claims) added. A further certificate or other documentary evidence of financial security, issued by the financial security provider, will be required attesting that it will meet contractual claims for death or long-term disability due to an occupational injury, illness or hazard.

Benefits and gaps

The benefit of the MLC, 2006 is that it sets an enforceable international minimum standard. Vessels are being stopped for non-compliance. The Paris Memorandum of Understanding on Port State Control (Paris MoU) has agreed on a concentrated inspection campaign for Maritime Labour Convention compliance in 2016. The PMoU (2014) reported:

20 August 2014 marked the first anniversary of the entry into force of the Maritime Labour Convention (MLC, 2006). During these first 12 months 113 ships were detained by one of the Paris MoU Authorities for MLC-related deficiencies. This represents 17.4% of the total number of detentions (649) in the Paris MoU during this period.

During the first year 7.4% (3,447) of the total number of 46,798 deficiencies recorded was linked to the MLC, while 160 (4.6%) were marked as a ground for detention resulting in 113 detained ships. Detainable deficiencies were most frequently recorded in the areas "payment of wages" (39.5%), and "manning levels for the ship" (28.6%). Other areas with high deficiency levels are "health and safety and accident prevention" (43.1%), "food and catering" (15.4%) and "accommodation" (10%).

The MLC, 2006 retained the provision of the minimum monthly basic pay or wage figure for able seafarers, found in Guideline B2.2.4:

1. The basic pay or wages for a calendar month of service for an able seafarer should be no less than the amount periodically set by the Joint Maritime Commission or another body authorized by the Governing Body of the International Labour Office. Upon a decision of the Governing Body, the Director-General shall notify any revised amount to the Members of the Organization.
2. Nothing in this Guideline should be deemed to prejudice arrangements agreed between shipowners or their organizations and seafarers' organizations with regard to the regulation of standard minimum terms and conditions of employment, provided such terms and conditions are recognized by the competent authority.

The ILO-recommended minimum wage is now reviewed by the Subcommittee on Wages of Seafarers of the Joint Maritime Commission and the current figure is US\$585 (ILO, 2014). It should be noted that the 2003 Subcommittee meeting also adopted guidance on the interpretation of the total minimum wage of able seafarers using provisions found in the relevant ILO maritime instruments which have been incorporated into the MLC, 2006 (see Article X).

The MLC, 2006 section on social security protection is quite weak and places the responsibility on the country of residence. The reality of the shipping industry is that under the flag of convenience system there is no genuine link between the beneficial owner and the flag State, with the crew coming from a third country and being supplied by recruitment and placement services. Seafarers are typically employed on short-term contracts, often of nine months' duration. There is not a great deal of information available on the extent of bilateral or multilateral agreements to cover social security protection.

The provisions on accommodation did not significantly raise the minimum standards established by the ILO Accommodation of Crews Conventions of 1949 and 1970 (Nos 92 and 133). There have been significant changes since then which have resulted in vessels having a faster turnaround time and seafarers less opportunity for shore leave. Seafarers live and work on the ship, so the accommodation provisions need to reflect their aspirations.

Guideline B3.1.11(4) provides that consideration should also be given to including the following facilities at no cost to the seafarer, where practicable:

- (j) reasonable access to ship-to-shore telephone communications, and email and Internet facilities, where available, with any charges for the use of these services being reasonable in amount.

Ships on international voyages are outside the coverage of mobile phone networks and are reliant on satellite communications. Access to the Internet and being able to communicate are increasingly seen as human rights. It is regrettable that the MLC, 2006 does not provide a mandatory requirement to facilitate the availability of social communication for seafarers.

Current challenges

The most significant issue arising from the implementation of the MLC, 2006 is the wide number of categories of personnel who work on a ship without being considered as seafarers. During the negotiations it was made clear that, with the exception of guest musicians, everyone on a cruise ship was to be considered a seafarer. The same is not the case for cargo and offshore vessels. Over the years the number of crew has been substantially reduced and

maintenance is undertaken by riding repair crew, whose principal place of work is on *a* ship rather than *the* ship – that is, they move from one ship to another and a number of flag States have excluded them from being classed as seafarers.

Lessons for future ILO Conventions

The ILO has been adopting international labour standards (ILS) based on the principle of universality⁴ since 1919. The role and significance of this principle reached new heights with the advent of economic globalization. However, with a clear decline in ILO standard setting since the mid-1990s, questions have been raised about the utility of ILS in tackling the effects of globalization. Primary among these is the view that ILS do not factor in the varying stages of economic and social development of member States (Hepple, 2005). This, in turn, is thought to be a key reason for the gross disparity in the number of ratifications of ILO Conventions between industrialized and developing countries. Furthermore, the failure of many (primarily developing) member States to adequately implement and enforce ILO Conventions has shown the need for more flexible approaches to ILS.

Philosophy of the Maritime Labour Convention, 2006

In many ways, the MLC, 2006 has answered this clarion call for change. It has been called a “global pilot project for exploring innovative approaches to implement the concept of decent work for transnational workers and employers”.⁵ From the outset, the Convention’s architects acknowledged the need for a pioneering instrument to confront the many issues faced by workers in this most globalized of industries. Indeed, the MLC, 2006 is unique in that it truly reflects the *reality* of the shipping industry and uses original approaches to gain widespread ratification.

Chief among the keys to the Convention’s success is the philosophy that underpins it: promoting decent work and a fair globalization. This translates into secure decent work for seafarers and a level playing field for shipowners. As a result, unscrupulous shipowners and inept flag States can no

4. Since the adoption of the ILO Declaration of Fundamental Principles and Rights at Work (1998), the concept of universality has taken on a new meaning, with member States undertaking to respect, promote and realize the fundamental rights enshrined in the core Conventions by virtue of membership regardless of ratification status. A full list of ILO Conventions is available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::>

5. Interview with Cleopatra Doumbia Henry. Available at: http://www.ilo.org/global/standards/maritime-labour-convention/news/WCMS_236264/lang-en/index.htm

longer continue to engage in unfair competition by effectively sanctioning substandard working conditions. This is precisely what the *no more favourable treatment* clause (Art. 5, para. 7) does: ships of countries that have ratified the MLC, 2006 will not be placed at a competitive disadvantage as compared with ships flying the flag of countries that have not ratified it. This approach is a major pull factor for member States, thereby making ratification attractive.

Under the principles of rational institutionalist theory, States are expected to use international institutions to improve or consolidate their preferred standards while reducing the risk of suffering competitive disadvantages in world markets (Baccini and Kounig-Archibugi, 2011). The MLC, 2006 puts this theory into practice by removing the incentives to a regulatory race to the bottom in the shipping industry by guaranteeing a level playing field for all.

The MLC, 2006 also recognizes the gaps in international maritime law resulting from the evolution of the shipping industry. For example, the proliferation of flags of convenience has meant that the requirement for a genuine link between a ship and the flag (see the United Nations Convention on the Law of the Sea, Art. 91) is no longer effectively implemented. This phenomenon has led to flag States not adequately assuming jurisdiction over social matters concerning their ships as required by international law (ibid., Art. 94). As discussed below, the MLC, 2006 mitigates this problem by creating an enforcement regime based on a multi-party approach.

A laboratory for innovation

The MLC, 2006 includes a number of innovative features from both a structural and a broader international law perspective. From a drafting viewpoint, it offers a new format inspired by IMO instruments (McConnell, Devlin and Doumbia-Henry, 2011). This essentially entails a hierarchical regulatory approach with mandatory provisions and non-binding guidelines contained in a vertically integrated format. The MLC, 2006 also permits national provisions implementing the rights and principles of the Convention in a manner different from those set out in the text so long as it is “substantially equivalent” (Article VI, paras 3 and 4). This level of flexibility encourages widespread ratification.

The creation of a Special Tripartite Committee under Article XIII to, among other things, carry out the simplified amendment process is another novel feature of the MLC, 2006. This committee can also consult with member States that do not have trade unions (where required by the Convention). Not only does this allow member States with undeveloped industrial relations structures to ratify the Convention and ensure minimum protection for workers, but the core ILO values of tripartism and social dialogue are also promoted.

From a broader international law perspective, the MLC, 2006 can be considered a game changer. While still an international treaty binding sovereign States, its strength is that it effectively focuses on getting shipowners to change their attitude towards workers' rights. Although ratifying States are the primary target of compliance, the enforcement mechanisms are intended to influence non-State actors in the form of shipowners and ships themselves. Therefore, the primary pressure on flag States to ratify the MLC, 2006 and comply with it will ultimately come not from other governments or the ILO itself, but via the flag preferences of shipowners (Lillie, 2008). The Convention's comprehensive enforcement mechanisms are crucial in this regard.

There are several ways to address problems of non-compliance with the MLC, 2006. If the problem is with the flag State, the issue can be raised directly with the ILO through official channels. If the problem is with a shipowner, the matter can be raised with the flag State or with the port State via the on-board and shore-based complaints procedures. There is also a mechanism for flag State inspectors and another for Port State Control Officers; these are regular official requirements to ensure initial and ongoing compliance.

While there are other ILO Conventions that establish responsibilities of employers, for example in relation to OSH in the Occupational Safety and Health Convention, 1981 (No. 155), enforcement, accountability and remedies have not been fully developed (ICJ, 2014). The MLC, 2006 addresses these issues by guaranteeing effective compliance by shipowners through an enforcement framework that involves the industry's key players: flag States, port States and labour-supplying States. Every ship of 500 gross tonnage or above operating internationally has to have a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance (DMLC), both issued by the flag State. These details form the basis of the inspection regime in that the port State authorities can check against them for compliance. These inspections can have significant indirect financial implications for shipowners if deficiencies are found. Labour-supplying States also have to make sure that recruitment and placement services through which labour is contracted are properly regulated. They may also have responsibility for the provision of social security. Therefore, shipowners wishing to take advantage of dubious employment schemes are left with little room to manoeuvre.

It is evident from these provisions that the MLC, 2006 aims to dismantle the ILO's so-called "supply-chain bureaucracy" (van der Heijden and Zandvliet, 2014) that limits the effective monitoring of international labour standards (ILS). Under the ILO's standard supervisory mechanisms, if a company has been accused of violating ILS, the ILO will request the relevant member State to request information through its national employers' association. In contrast, the MLC, 2006 has a much more direct method of guaranteeing employer compliance through port State inspections that, as previously mentioned, may have financial consequences for them.

A model for other industries?

As a next-generation ILO instrument, the MLC, 2006 should be used as a model or source of inspiration for promoting decent work in other industries. This can most easily be done by concentrating on a specific sector, but there may also be scope for cross-sectoral application.

Sectoral instruments

Although not yet in force, the ILO Work in Fishing Convention, 2007 (No. 188), adopts MLC-like characteristics, principles and concepts for the fishing sector (see McConnell, Devlin and Doumbia-Henry, 2011). Both instruments are firm with respect to rights and principles, but flexible with respect to implementation. Convention No. 188 specifically addresses the contemporary working conditions of fishers, which is important since most of the existing ILO instruments on fishing were adopted over 50 years ago. The Convention was adopted by the ILO's Governing Body despite the fishing sector being far more incongruent than shipping in terms of employment relationships and vessel ownership. Similarly, the social partners in the fishing sector have nowhere near the level of representation in tripartite discussions of their shipping counterparts.

In the trucking industry, which is well-regulated at the international, regional and national levels, professional drivers continue to face significant health and safety issues. They are also often denied basic labour and social security rights. In Europe, more and more professional drivers work away from home for uninterrupted periods of up to three months. Here they are subject to dubious employment schemes, spend their nights and weekends in their trucks or in substandard accommodation, feed on canned food, have no access to basic facilities such as toilets and showers, and work at substandard wages (ETF, 2013). In the East and West African transportation corridors, work is casual, low-paid, insecure and unsafe, and involves long hours.⁶ In Australia, statistics show that road transport workers are 15 times more likely to be killed while at work than any other worker, making it the country's most dangerous industry. Among other things, evidence shows that low rates of pay for truck drivers cause unsafe practices that lead to the 330 truck-related accidents on Australian roads each year.⁷

With many of the serious problems faced by seafarers are equally applicable to professional road transport drivers, a specific ILO instrument covering

6. See, for example, the International Transport Workers' Federation East Africa Organising Project, available at: <http://www.itfglobal.org/en/resources/videos/?Video=11036>.

7. See Transport Workers' Union of Australia "Safe Rates" Campaign, available at: <http://saferates.org.au/>.

the sector is not inconceivable. There are already existing ILS⁸ covering the sector and well-organized social partners who can promote change. The scope of a possible future road transport labour convention should cover the same spectrum of issues as the MLC, 2006, including driver training and licensing, wages, hours of work and rest, leave, accommodation and recreational facilities, health protection and medical care, and social security protection. Compliance and enforcement mechanisms should involve all the primary actors in the industry: the State of vehicle registration, the transport agencies of States in which the vehicles operate, labour-supplying States (usually the issuers of driving licences), transportation companies, and majority and minority contractors. A further innovative measure would be the strategic inclusion of the Transports Internationaux Routiers (TIR) certification system in the process.⁹

In the aviation sector, as airlines have contracted out their functions such as maintenance and information technology, employment has become international. The lifting of restrictions on ownership has brought air transport to the same situation as shipping, with flags of convenience becoming prevalent (ITF, 2014). Private employment agencies are increasingly used by airlines and companies operating at airports. This has led to a rise in temporary employment, causing confusion about the regulations and agreements that apply, even about which national jurisdictions apply. In one well-documented case, “a non-EU airline uses an Irish registration, despite having no Irish base, to fly within Europe and to the US, with Thailand based crews on a variety of Far Eastern contracts” (ETF, 2014).

Unlike the seafaring, fishing and trucking trades, the civil aviation industry is more complex in terms of the number of job categories involved. However, governments and sectoral social partners have agreed that competitive pressures have enhanced challenges for decent and productive work (ILO, 2013). While also agreeing that occupational health and safety should be considered a shared responsibility requiring a global approach, they concluded that social dialogue is an essential element to improve sustainability, decent and productive work (*ibid.*).

Therefore, just as with a possible ILO road transport instrument, an aviation labour standard should tackle the full gamut of workers’ rights. In terms of compliance and enforcement, the State where aircraft are registered, the State issuing the Air Operator’s Certificate, labour inspectors, labour-supplying States, and airlines should all have comprehensive roles. An aviation labour inspectorate based in the world’s airports could also be a feasible option.

8. See list of relevant ILO sectoral instruments, available at: <http://www.ilo.org/global/industries-and-sectors/transport-including-civil-aviation-railways-road-transport/lang-en/index.htm>.

9. TIR is an internationally harmonized system of customs control that facilitates trade and transport whilst effectively protecting the revenue of each country through which goods are carried.

Cross-sectoral instruments

Maritime Labour Convention, 2006: A model for other industries?

Following the Rana Plaza disaster in 2013, a renewed focus has been placed on the legal regulation of labour and human rights in supply chains. The general ability of States to protect workers' rights derived from ILS is increasingly being called into question. The ILO's Declaration on Multinational Enterprises and the OECD Guidelines for Multinationals developed in previous decades looked to engage multinationals in best practice. Subsequently, the Global Compact Principles, UN Guiding Principles on Business and Human Rights, ISO Standards, and voluntary reporting initiatives, among others, have set the tone in relation to corporate accountability for human rights violations.

Despite the existence of these quasi-legal tools, new forms of redress are required to deliver effective remedies for human rights abuses. While multinational companies are increasingly expressing their commitment to standards set by international treaties on a voluntary basis through their corporate social responsibility (CSR) policies or otherwise, access to justice remains a problem. In this connection, the Accord on Fire and Building Safety in Bangladesh between brands and trade unions is a welcome initiative. The Accord, a legally binding agreement, ensures that major retailers implement a series of health and safety measures to create a safe garment industry in the country.

In the summer of 2014, the UN Human Rights Council passed a resolution "to establish an open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights".¹⁰ Also, the 2016 International Labour Conference will feature a general discussion on decent work in supply chains, albeit not a standard-setting exercise at this stage.

With a clear appetite in some quarters for a binding international instrument in the field of business and human rights, the ILO is seen as a possible avenue for implementation. The characteristics, principles and concepts of the MLC, 2006 can be applied to a future cross-sectoral ILO instrument promoting decent work in supply chains. Similar to the disenchantment with flag States' ability to protect seafarers' rights leading to a robust enforcement mechanism in the MLC, 2006, any possible supply chain instrument should seek to actively engage non-State actors.

One option would be to merge the ILO's 33 existing occupational safety and health instruments into one new Convention, along the lines of the MLC, 2006 (van der Heijden and Zandvliet, 2014). However, if a new supply chain convention is contemplated, it should as a minimum require member

10. For the text of the resolution, see: <http://business-humanrights.org/en/un-human-rights-council-adopts-two-resolutions-on-business-human-rights-includes-our-analysis-of-recent-developments>.

States to adopt legislation or equivalent measures to implement clear policies aimed at addressing ILS violations in companies' supply chains. Although there is a debate to be had on whether multinational companies or national companies should be covered by the instrument, it is paramount that lead firms and parent companies have accountability over the conduct of their suppliers and subsidiaries respectively.

As with the MLC, 2006, where a *shipowner* has been broadly defined to cover third-party agents assuming the role of shipowner for the purposes of the Convention, a supply chain instrument should contemplate a similar requirement from lead firms and parent companies. While the MLC, 2006 does not deal directly with legal remedies for aggrieved seafarers, it contains progressive on-board and shore-based complaints mechanisms. A supply chain instrument should, as a minimum, require member States to establish similar operational level complaints mechanisms for workers. A further step would be for member States to allow workers access to legal remedies in their home States and any other States that have jurisdiction over the company concerned. Complaints against the ratifying State over compliance with the instrument could be dealt with via official ILO channels.

In terms of monitoring and enforcement, the ILO could discharge the duties to national labour inspectorates and judicial authorities, or, as suggested by some, create an international inspectorate in-house. Just as ITF ship inspectors work closely with Port State Control Officers, any national or international labour inspectorate should have close working relationships with private inspectors. This can then be followed up through a certification system similar to the Declaration of Maritime Labour Compliance (DMLC).

Conclusion

While the MLC, 2006 can be considered a resounding success, with 66 ratifications to date amounting to 80 per cent of gross tonnage, using it as a model for other industries or cross-sectorally is bound to be a challenge.

As the poor rate of ratification for the Work in Fishing Convention, 2007 (No. 188), shows, a number of factors limit the willingness of States to adopt such instruments. For example, if there are hardly any requirements under current national legislation to provide social protection for the category concerned, it will be difficult for some States to get independent information on abuses in that sector. Under-reporting of incidents in that industry can also be an issue. Therefore, many new elements in national legislation would have to be developed to make them consistent with the new instrument. Furthermore, the combination of actors required to implement the Convention can be a burden on States that lack the capacity and know-how.

The MLC, 2006 succeeded in coming to fruition despite the fact that it had to straddle both international maritime law and labour law. It effectively mainstreams labour standards within existing maritime regulatory structures. If such a feat is possible in the maritime industry, there is nothing stopping governments and social partners in other sectors from pushing for similar legally binding instruments in their sectors.

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Labour organizing and private compliance initiatives

*Lessons from the International
Finance Corporation's "performance
standards" system*

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In recent years it has been argued that working conditions in developing economies can be improved by making supply or investment contracts conditional on compliance with certified labour standards, or by offering the less concrete market incentive of improved “corporate reputation” through product labels that certify the successful completion of some kind of social auditing process. The overwhelming majority of these private compliance initiatives – also known as (transnational) private regulation – cite the International Labour Organization as a source of normative authority and make explicit reference to the two fundamental Conventions on freedom of association and collective bargaining.¹ In this article we assess the potential for workers and trade unions to use private regulation as a tool for organizing and seeking recognition from employers.

There is by now a fairly extensive research literature on private regulation. The emerging consensus is that while market incentives to improve wages and conditions of work have had a modest positive effect on certain measurable welfare outcomes such as hours of work and health and safety standards, there has been little discernible impact on the capacity of workers to pursue such improvements for themselves via collective action (AFL–CIO, 2013; Barrientos and Smith, 2007; Egels-Zandén and Merk, 2014; Lund-Thomsen and Lindgreen, 2014).

It is tempting to conclude on this basis that transnational private regulation has been captured by employers. With so little evidence of any change in power relations, it looks as though improvements in pay and working conditions will always be limited by the financial interests of businesses. Nevertheless, this may be too pessimistic a view. Existing research arguably pays insufficient attention to the capacity of workers and unions to use private regulation proactively rather than waiting for some independent monitoring and enforcement process to take its course.

In this article we report on some new survey and case study research that shows what can be achieved when workers’ organizations have the capacity to take advantage of the opportunities offered by private regulation, but that also illustrates the limits of private regulation in the absence of organized labour. We conclude by drawing some policy lessons for national and international trade unions.

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Up until relatively recently, the transnational regulation of labour and employment was exclusively a public affair. Since 1919 the International Labour Organization (ILO) has been engaged in the process of constructing an international framework of labour and social security law intended to define globally accepted conditions of work and thereby to prevent the adoption of economic policies and business strategies that rely on low labour costs.

However, the peculiarity of the ILO as an international organization is that it includes institutionalized representation from bodies other than States: workers' and employers' organizations together account for half of the voting rights at the International Labour Conference, the other half belonging to member States. This and other institutionalized participation rights make it almost impossible for the ILO to adopt policies that do not have at least tacit support from *both* trade unions and employers' associations, the corollary being that blocking particular policies is relatively easy for either group. The combined opposition of employers and neoliberally oriented governments, then, may well explain why the strong emphasis on freedom of association, collective bargaining and tripartism that characterized ILO policy in the 30 years after the Second World War seems to have lifted at the beginning of the 1980s (Hepple, 2005). Although collective industrial relations are often encouraged "on the ground", particularly via Decent Work Country Programmes, no ILO Conventions specifically promoting collective bargaining have been adopted since 1981.²

The policy blockage within the ILO needs to be seen against the backdrop of a more general decline in the capacity of the established system of public international governance to resolve political disagreement and conflicts of interest. As Hale and Held put it, "The traditional tools of interstate cooperation – intergovernmental organizations and treaties – have ... proven inadequate" in the face of globalization and increasing interdependence (2011, p. 3). The sheer intractability of system blockages on trade regulation, social and environmental sustainability, security issues and so forth has directed attention to the actual or potential significance of an emerging range of new forms of transnational private regulation (TPR), by which we mean any voluntary system of rules and/or standards promulgated principally by non-State actors, whether those belonging to the commercial private sector or to civil society.

Private regulation is appealing because it sidesteps the institutional blockages in the international governance system, offering businesses corporate certification or product labelling in return for their compliance with packages of social and environmental regulation that may be more demanding than formal international norms require. Corporations get the reputational

2. Collective Bargaining Convention, 1981 (No. 154).

advantage that going beyond legal requirements brings (Gjølberg, 2009), while the application of more effective regulation of corporate behaviour appears to be no longer dependent on major political developments at the international level.

Leaving aside for the moment the question of its effectiveness from a worker perspective, there can be little doubt that TPR is now a significant element of local contexts of action in the developing world. The integration of “global South” economies into production and commodity networks has vastly increased the economic importance of conformity with transnational regulation, applying both to products and to production processes. Although, as Hale and Held point out (2011, p. 10), even a rough quantification of the extent of application of TPR has so far proved elusive, it is clear that a significant and probably increasing proportion of enterprises in developing economies are now complying – or attempting to comply – with technical, social and environmental standards developed, monitored and enforced by private rather than public actors.

Different TPR schemes are concerned with different ethical or sustainability problems, but even those that are not specifically concerned with work frequently also include labour standards conditions. In these systems, reference to the ILO’s fundamental Conventions is almost universal.³ The question we want to address is whether the inclusion of freedom of association and collective bargaining rights in private regulation has had or might potentially have a positive effect on workers’ capacity to organize and take collective action in pursuit of improvements in pay and working conditions. We base our answers on two types of research: qualitative case studies of successful trade union engagement with three different types of private regulation; and a largely quantitative survey of a broader sample of businesses participating in one of these schemes, the International Finance Corporation’s “performance standards” system.

Success stories: Unions using private regulation as an organizing and bargaining tool

A series of case studies was carried out in collaboration with trade unions in East and Southern Africa that are affiliated to the Building and Wood Workers International (BWI), the global federation of trade unions organizing workers in the construction and wood and forestry sectors. BWI has long experience of engagement with private regulation schemes, notably that

3. Systematic information on TPR is difficult to find, particularly information about supply chain codes of conduct, but of the 124 voluntary standards systems listed on the International Trade Centre’s “Standards Map” database, 77 list “Work and labour rights” as a main social sustainability theme.

of the Forestry Stewardship Council, and its officers were closely involved in the campaign to persuade the IFC to adopt some form of labour standards conditionality in its lending. The case studies are based on accounts given by national and international trade union officers and workplace representatives. Interviews were carried out in Ethiopia, Switzerland and Uganda between July 2013 and September 2014.⁴ The studies suggest that where unions already have a degree of industrial and political leverage, private regulation – including the IFC scheme – can be a useful addition to their armoury.

The IFC performance standards in Uganda

The International Finance Corporation (IFC) is part of the World Bank Group and describes itself as “the largest global development institution focused exclusively on the private sector in developing economies”. It invests directly in private-sector businesses, most frequently in the form of loans or equity investments. Although as part of the World Bank Group IFC is a public international organization, it competes for business with private-sector lenders and operates on a fully commercial basis. Most importantly, its regulation system is applied directly to firms without passing via the State.

In the late 1990s and early 2000s, the IFC came under pressure from civil society actors, including most notably certain Global Union federations, who were concerned that it was taking too little account of the potentially negative impact of its investments on workers, the community and the environment. The IFC’s response was to develop a comprehensive set of “performance standards” covering everything from labour standards through pollution reduction and biodiversity conservation to the protection of cultural heritage and the rights of indigenous peoples. The standard on labour and working conditions was developed with input from a range of different labour organizations and was widely considered to mark a turning point in the policy stance of the international financial institutions as it explicitly recognized workers’ rights to freedom of association and collective bargaining (see the Annex for the text of the relevant paragraphs).

Since 2006, loans and investments have been provided to client businesses on the express condition that those businesses either already comply with these standards or are willing to take steps to come into compliance. Compliance with the performance standards is written into finance contracts, giving the IFC the right to withhold funding or to withdraw from investment relationships entirely if it is not satisfied that the standards have been met.

4. Eleven formal interviews as well as a number of less formal conversations were carried out over two field visits. Directly cited interviewees are identified here via numbers: I1, I2, I3, etc. Where a direct citation is given, the point in the interview at which the statement was made is indicated as a time in minutes and seconds from the beginning of the interview.

When the performance standards system was introduced, the BWI looked for a “test” case, searching the IFC’s public information database for a major investment project in the construction sector where there was the potential to organize a significant number of workers. The Bujagali hydropower project, involving the construction of a major hydroelectric power station on the Victoria Nile river about 80 kilometres east of Kampala in Uganda, seemed to be a good fit. BWI had a good relationship with its local affiliate, the Uganda Building Construction, Civil Engineering Cement and Allied Workers’ Union (UBWU), which although small (2,500 members) was nevertheless effective, with experienced professional officers and good contacts in government (Murie, 2009). It had also successfully organized a road construction project undertaken by the European construction contractor that would be leading the construction work on the power plant. A decision was taken to take an active interest in the project and a work plan was drawn up in collaboration with UBWU.

A period of intense activity over about eight months starting in the spring of 2007 ended with the signing of a collective bargaining agreement (CBA) between UBWU and the principal contractor on 7 January 2008. This agreement marked the formal beginning of a successful bargaining relationship between the principal contractor and UBWU that lasted for the duration of the project, which was largely complete by late 2012. The terms and conditions set out in the CBA were exemplary for the region and sector and were improved in two further agreements. Membership density was very high, with around 3,000 members among the 4,000 workers employed on the project at its peak. Worker representatives interviewed on the site had a highly positive view of the relationship between the union and the contractor, emphasizing the central role of dialogue in the resolution of problems (I12, I13).

The question that interests us here is to what extent the existence of the IFC’s performance standards system and the associated monitoring procedures were influential in the establishment and subsequent conduct of the relationship between UBWU and the Bujagali construction contractor. Two aspects of the history of the project stand out in this respect. First, both the client (the private company granted the concession to develop the project and the direct beneficiary of the IFC’s financing) and its principal construction contractor were initially reluctant to meet the union. The client in particular seemed to view its commitments with respect to workers’ organizations under the terms of the performance standards system (PS) as falling under the general heading of stakeholder relations rather than constituting a specific and separate type of relationship. However, it seems that pressure from the IFC investment officer responsible for the project eventually led to the client agreeing to meet the union. Nevertheless, despite the client being ultimately responsible for the implementation of the performance standards, it remained reluctant to facilitate contact with the contractor.

Second, the eventual agreement of the contractor to meet with UBWU and the subsequent decision to recognize the union and negotiate a collective agreement seem to have been the result of two factors. First of all, UBWU and BWI, the Labour Ministry and the responsible IFC investment officer carried out what amounted to a coordinated campaign to pressure the contractor into recognizing the union. The second factor seems to have been a gradual realization on the part of the contractor – encouraged by contact between project managers and colleagues in the same business who had worked with UBWU on the road construction project – that there were significant bottom-line advantages to working with the union.

Beyond what actually happened and the relationships that developed, it is interesting to note what did *not* happen. Over the course of the project, the IFC's formal supervision process ignored the union entirely. While the responsible investment officer had been very present at the beginning of the project, before the union won recognition from the principal contractor, the officers of UBWU told us that they never met or heard from the member of the IFC's social and environmental compliance department who was responsible for monitoring the project. Nor did they ever meet or hear from either of the two members on the panel of social and environmental experts appointed by IFC to report on compliance. Of the ten reports produced by the panel, none mention the union or the collective bargaining relationship. One of the two members of the panel confirmed in an interview that he and his colleague indeed had not had any contact with union representatives in the course of their work (I4).

In sum, then, the influence of the PS system was limited, although it did add some weight to the union's claims to a right to be heard and to be given access to the project site. Nevertheless, without the work of the BWI and UBWU, it seems unlikely that any collective employment relationship would have existed. As a BWI officer put it to us, "Really, it's just a door-opener, the standards ... all those standards do is allow the union to get in. After that it's down to collective bargaining" (I3, 37:45).

China International Contractors Association *Guide on social responsibility in Namibia*

The Namibian construction workers' union has used a private code of conduct as part of a strategy to bring Chinese construction contractors into the existing industrial relations system (see Annex).

Chinese businesses are significant economic actors in many African States but are frequently reluctant to participate in local institutions. In Namibia, a number of construction contractors involved in major projects did not join the established employers' association and were the subject of many complaints about labour law violations. The construction union developed a

strategy to address the problem, using political networks to lobby the office of the President, but also conducting public campaigns on the issue. This campaign seems to have brought some results in the shape of action against certain companies by the Ministry of Labour and a public instruction from the Chinese ambassador to Chinese businesses to respect national law, which in the Namibian case requires them to participate in the established industrial relations institutions.

However, the union's most concrete results came after the discovery, via contacts with other construction unions also affiliated to BWI, that the China International Contractors Association (CHINCA) had produced a code of conduct for its members that includes an obligation to engage with workers' organizations to the extent that local law demands (see Annex). The CHINCA code is the softest possible form of private regulation, containing no monitoring or enforcement procedures of any kind. However, knowing that many of the Chinese construction companies operating in the country were state-owned, the construction union went to three companies known also to be members of the industry association and said, as a union official put it to us, "Why are you not complying [with your own code]? Your government is telling you to comply" (I7, 11:20). The same official told us that not only did this result in more or less immediate improvements in labour law compliance, it also led to certain companies approaching the union seeking to open discussions about recognition. The official was clear that being able to refer to the code was useful: "Of course now we know the information [about the code]. We did not know before. We were fighting in the air" (I7, 11:45). At the same time as recognizing the value of the code of conduct, however, she insisted that political action and lobbying, participation in national tripartite institutions and – most importantly – industrial action remained the core elements of union effectiveness. "At the end of the day, if you are fighting and you are toothless nobody's listening to you" (I7, 16:30).

Forest Stewardship Council in Kenya

The Kenyan construction and forestry workers' union (Kenya Building Construction, Timber, Furniture and Allied Industries Employees Union – KBCTF & AIEU) has used private standards in a different way again but, as with the unions we spoke to in Uganda and Namibia, the standard is used as a normative point of reference within *existing* processes of deliberation and political exchange and not as a means of making claims against non-compliant enterprises.

The Forest Stewardship Council (FSC) is one of the oldest and best established multi-stakeholder sustainability standards organizations. Founded in 1994, its main activity is the development of systems for the auditing and certification of forest management with a view to ensuring that forestry is,

to use the Council's own terminology, environmentally appropriate, socially beneficial and economically viable. Certification proceeds on the basis of detailed national codes developed on the basis of a set of globally applicable principles and criteria. As is typically the case with standards of this kind, FSC standards include clauses on labour and working conditions.

In the Kenyan forestry sector, the Kenyan construction and forestry workers' union engages in industry-level bargaining that includes both large and small enterprises. While the terms and conditions of employment in place in many of the larger enterprises are in line with the draft national FSC code, this is less frequently the case for smaller enterprises. The union uses the principles and standards in the FSC system as a means to ground the reasonableness of bargaining claims applying to the sector as a whole. As one union officer we spoke to put it, "We have borrowed from [the FSC draft standard] on many occasions to advance our case when we are negotiating ... I use that agreement as an eye-opener" (I11, 6:05; see Annex for the text of the standard). The FSC standard has increased the union's leverage in the regulatory process, but only very modestly. Like his Namibian colleague, the union officer made it clear that while it was useful, pursuing the interests of his members turned principally on worker organization and a willingness to take industrial action.

The view that TPR schemes such as FSC certification are insufficient in themselves was supported by comments made by a headquarters officer of BWI. This officer explained that the official FSC complaints mechanism is only ever a last resort and that wherever possible violations are dealt with via informal discussion and negotiation. "FSC has an official complaints mechanism but we don't use it that much because it's not in the interests of workers if the company loses its certificate because then it loses its market and people get laid off. If we need to pressure we use the informal process. I call the director of FSC and I say 'so this company high up in the FSC structure is giving us this and this problem, can you help us?', and then the unofficial way of mediation and negotiation starts" (I2, 11:22).

A closer look at IFC's performance standards system

For all that case studies such as these can provide useful indications of how private regulation operates, the evidence remains anecdotal and is difficult to generalize. However, given the large number of TPR schemes that currently exist, their typically sector-specific focus and the tendency for regulation to vary from State to State even within a single scheme, a more comprehensive study would be very difficult to design. In this light, the IFC's regulation system, applied as it is in the same form across different industrial sectors and different national contexts, looks like a good candidate for a research project that would take us a step closer to generalizable conclusions while remaining

logistically viable. This intuition was the origin of the study reported here, which aimed to assess the impact of the performance standards provisions on workers' organizations on union membership and recognition in a sample of IFC client businesses.⁵

The research team at the University of Lausanne identified a sample of 145 IFC-funded enterprises in four regions: Brazil, Turkey, the East African Community (EAC) – Kenya, Burundi, Rwanda, United Republic of Tanzania and Uganda – and in India the neighbouring states of Gujarat and Maharashtra. Researchers in each region were charged with gathering information on as many of these client businesses as possible. In the event it proved to be more difficult to get access to these businesses than we had anticipated. The businesses themselves were reluctant to talk to our researchers, still less to grant them unsupervised access to workers. The IFC declined to ask its clients directly to help us, although it did offer to write to client businesses vouching for the academic credentials of the project team. However, this offer was later rescinded without explanation. Nevertheless, our researchers were able to carry out in-person interviews with 297 workers from 53 different businesses, 34 union representatives from 30 businesses and 18 management representatives from 18 businesses. Altogether, information was gathered from 55 businesses. Our analysis, then, is based on the information made publicly available by IFC on the initial 145 businesses, together with survey data gathered in 55 of these. Our sample of 55 client businesses is clearly neither a random nor a representative sample but there is little reason to believe that it is systematically skewed in such a way as to affect our overall conclusions.

Our research strategy was to proceed via a “triangulation” of opinions on the same subjects from different types of respondent: ordinary workers, union representatives and managers. To this end, three separate but linked questionnaires were developed. Certain questions were included in all questionnaires, with appropriate variations in phrasing, while others were specific to each type of respondent. The questionnaires were designed to permit the most realistic possible assessment of the reality of freedom of association within each enterprise and to allow us to relate that situation to action taken in response to the IFC's performance standards.

In terms of data to serve as a baseline for estimating whether IFC client firms differed from non-client firms, the principal source of cross-nationally comparable firm-level data on businesses in developing economies is the World Bank Group, which has been conducting establishment surveys since the 1990s. The Bank's Enterprise Surveys website now claims to provide data on 130,000 firms in 135 countries. Data are collected by private contractors in face-to-face structured interviews with business owners and senior

5. The “Governance by Contract” project was carried out between January 2013 and February 2015 and was funded by the Swiss Network for International Studies (www.snis.ch).

managers for the main survey and up to ten individual employees for the related employee survey (where this is included). Firms are selected according to a stratified sampling methodology (World Bank, 2009). The coverage of labour and employment issues in these surveys is limited, but up to about 2008–09 they consistently included the simple question, “What percentage of your workforce is currently unionized?”

Research questions and results

The fact that the IFC feels it necessary to include protections for independent worker organizations in its standards system means that it recognizes a risk that its client businesses may take illegitimate steps to deter unionization or to resist participation in collective bargaining, and that legal remedies for workers may be inaccessible or ineffective. If there is a risk of this kind, then there is a corresponding probability that an underlying workers’ preference for collective industrial relations is not being satisfied in a certain proportion of cases. If the provisions in IFC Performance Standard 2: Labor and Working Conditions (PS2) are effective, we would expect to find that this probability is significantly reduced across the population of IFC client businesses and, as a consequence, that the incidence of collective industrial relations is higher on average in these businesses than in similar non-client businesses. This reasoning points to four research questions about the impact of the performance standards at the firm level.

Do IFC client businesses actually comply with the performance standards?

The first question simply concerns the conformity of IFC client businesses with the paragraphs on workers’ organizations in the performance standards. Our survey data provide prima facie evidence that despite the performance standards, violations of freedom of association and collective bargaining rights are far from unusual in IFC client businesses. Workers were asked about management attitudes to trade unions and whether they knew of any circumstances in which union membership or activity had been punished or non-membership rewarded.

- 73 workers employed in 25 different businesses reported that their employer was opposed to unionization. This represents 33.8 per cent of responses other than “don’t know”. Fifty-one workers responded that their employer was in favour of unionization and 93 that it was neutral on the issue.
- 42 workers employed in 17 different enterprises reported that they knew of cases in which employees had been punished or threatened for union membership or activities. This represents 22 per cent of all workers responding

either yes or no to this question rather than “don’t know”. When asked to specify what kind of reprisals workers had suffered, 24 respondents reported that they knew of cases of firing, five reported demotion, denial of promotion or obligatory transfer to an inferior post, while ten reported other types of harassment or intimidation.

- 20 workers employed in nine different businesses reported that they knew of cases in which workers had been rewarded for not taking up union membership or not engaging in union activities. This represents 12.3 per cent of all workers responding either yes or no to this question rather than “don’t know”. When asked to specify what kind of rewards workers had been given, 13 respondents reported that they knew of cases of promotion, seven knew of wage increases and two of transfers to better positions.
- 50 workers employed in 13 different businesses reported that they knew of cases in which their employer had taken some kind of action to prevent workers from participating in strikes.
- Overall, 71 workers in 22 businesses reported one or more of the three types of violation. A violation was reported by an average of 55 per cent of workers in each business where at least one worker reported a violation.

Change in IFC client businesses: Effect of “mitigation measures”

The second question concerns the effect of action taken by businesses in response to explicit IFC requirements. Unless the risk of non-conformity is thought to be negligible, IFC publishes an “environmental and social review summary” (ESRS) for each client business. This is a summary of the results of the compliance review carried out either by IFC internal experts or consultants hired specifically for the task. The ESRS sets out the performance standards identified as applicable during the review together with the measures that the client has agreed will be taken to mitigate any problems with compliance. For each of the 135 enterprises in our sample for which an ESRS has been published, we coded the mitigation measures specified with respect to PS2 (excluding occupational health and safety measures) according to seven non-mutually-exclusive possible actions. Table 1 sets out these actions together with their incidence in each region.

As the table shows, the most common mitigation measure is the development or updating of a formal human resource management policy, by which the IFC means a set of written procedures accessible to all employees that set out the principles of management the business will follow, the basic terms and conditions of employment and the practices and procedures that will be applied with respect to recruitment, maternity leave, training and so forth. The next most frequently mentioned measure is the establishment of a formal grievance redress procedure. Together, the formalization of human

resources (HR) policy and the establishment of grievance procedures make up 70 per cent of the PS2-related mitigation measures we were able to identify (not including measures related to occupational health and safety).

There are only ten businesses (out of a total of 64 where any measure is specified) for which mitigation measures contain some explicit reference to freedom of association and collective bargaining rights. One of these businesses recognized a union and took part in collective bargaining, and another reported that there were union members present in its workforce but that it did not recognize any unions. The others were not unionized. For all ten businesses, the inclusion of freedom of association and collective bargaining rights in written, PS2-compliant HR policies is specified. In three cases, businesses also committed themselves to informing workers about these rights, for example via the provision of information in local languages.

In only two cases was any more specific action required. One (non-unionized) business committed itself to correcting an unspecified difference in treatment between white- and blue-collar staff with respect to freedom of

Table 1. PS2-related mitigation measures

	Brazil	EAC	India	Turkey	Total
Total number of client businesses in each country	42	32	40	32	146
No ESRS (risk category C project)	6	1	2	1	10
Number of businesses in which no PS2-related mitigation measures are specified (excluding OHS)	20	21	18	13	72
Number of businesses in which PS2-related mitigation measures are specified (excluding OHS)	16	10	20	18	64
Percentage of businesses in each region in which PS2-related mitigation measures are specified	38.1%	31.3%	50%	56.3%	43.8%
Incidence of mitigation measures					
Formal written HR policies/procedures/practices to be developed or reviewed and brought into line with PS2 where necessary	12	8	13	10	43
Freedom of association and collective bargaining rights to be incorporated into formal HR policy	4	0	1	5	10
Formal employee grievance redress procedure to be established or reviewed and brought into line with PS2 where necessary	9	2	8	4	23
Extension of normal HR practices to include contractor or temporary employees or correction of other differences of treatment between directly and indirectly employed workers	1	1	3	0	5
HR policies/procedures/practices to be communicated (or communicated more effectively) to employees	4	1	3	1	9
Information specifically about freedom of association and collective bargaining rights to be communicated (or communicated more effectively) to employees	2	0	0	1	3
Non-union elected employee representative structures to be established or reviewed and brought into line with PS2 where necessary	0	0	0	2	2
Average number of PS2 mitigation measures per business	2.00	1.40	1.40	1.28	1.48

association and collective bargaining rights. Another business reported that “historic anti-union activity” had been alleged, but claimed that a third party audit had found “no evidence of suppression of freedom of association”.

Change in IFC client businesses: Effect of business attitudes

The third question concerns the indirect effect of businesses’ adherence to the performance standards. The existence of the performance standards ought in principle to give a certain legitimacy to workers’ organizations and to processes of social dialogue. On the assumption that the content of the performance standards is widely known – an assumption that demands empirical confirmation – the performance standards system may in itself provide an impetus for industrial relations change by reducing the perceived risk of taking collective action.

However, the data collected by the researchers show that the content of the performance standards system is *not* widely known. Just 18 per cent of the workers interviewed were aware that the IFC had invested in their business and only 6 per cent (18 workers out of 297) knew that the performance standards system exists and that it contains guarantees about freedom of association and collective bargaining. With such a small proportion of workers aware of the performance standards and their content, it would be wholly unrealistic to expect there to be any kind of effect on the perceived legitimacy of unionization and collective bargaining.

Union officers were rather more aware of the performance standards, with ten out of 33 respondents (30 per cent) reporting some knowledge of the PS requirements. However only two of these officers dealt with workplaces that were not already unionized. Notably, none reported having been given information about the performance standards by the employer itself.

It may be the case that management attitudes change independently of worker pressure in response to a declaration of adherence to the performance standards. If this is the case, workers may notice a change in attitude regardless of whether they are aware of the performance standards. The workers we surveyed were asked whether they thought the attitude of management in their workplace to trade unionism had changed over the last three to five years; 227 workers gave a response other than “don’t know”. Of these, 28 reported that managers in their workplace had recently become more favourable to trade unionism. However, 29 reported that managers had recently become less favourable.

Do IFC client businesses have more union members?

The final question we addressed was whether IFC client businesses are different from similar non-client businesses in terms of the level of unionization among workers. In considering this question of union membership density

we need to bear in mind that there are problems with data quality. The World Bank firm-level data we have available about union density are for the most part based on employer estimates and take the form of a single percentage figure with no information about the basis of calculation. We do not know, for example, whether part-time workers, workers on temporary contracts or agency workers are included. It would be impossible to use this kind of data as the basis for calculating robust cross-nationally comparable sectoral, regional or national average levels of union density.

Nevertheless, it would be unreasonable to assume that firm-level employer estimates of union membership tell us nothing at all. Where an employer reports 100 per cent union membership this is almost guaranteed to be wrong, but it still says something important about relationships within the business. The figure can be interpreted as an opinion about how important and present trade unions are in a firm that is closer to an ordinal than an interval measurement. From this perspective, a reported 100 per cent union membership is higher than 50 per cent membership, but the “higherness” is what counts rather than the 50 percentage point difference.⁶

A simple inspection of table 2 shows that there are some major differences between IFC client and non-client businesses. The table shows the percentage of IFC client and non-client businesses whose union density scores fall into each interval.

Table 2. Trade union density in IFC and non-IFC businesses (percentages)

Density	Not IFC client	IFC client
0	69.2	50.7
1–33	8.0	19.2
34–66	5.1	17.8
67–100	17.8	12.3
Total	100.0	100.0

Note: Because of rounding, totals are not in all cases the exact sum of the parts.

At first glance, our findings suggest that the application of the performance standards has had a positive effect on union density, as IFC client businesses appear to have higher density scores than similar non-client businesses. However, our analysis of mitigation measures suggests that the likelihood of the IFC requiring its clients to take any kind of action that will promote or encourage unionization is extremely small. Even in those cases where some kind of action was required it remained largely at the level of written policy or, in three cases, the provision of information. Beyond measures required by the IFC, we found no evidence that employers spontaneously changed their

6. For a more detailed discussion of the technical statistical issues and tests applied, see Cradden, Graz and Pamingle (2015).

practices in response to the performance standards. Freedom of association violations were reported by a significant minority of workers and only 6 per cent of workers were aware that their employer had committed itself to respecting the performance standards on workers' organizations. In short, there is no good reason to believe that becoming an IFC client has any significant effect on unionization. As a result, the higher level of union membership among IFC clients than in similar non-client businesses must be due to the IFC client selection process rather than to any change in practice related to IFC supervision of performance standards compliance.

Conclusions: Governance by contract?

What we have seen in this article is that the voluntary commitment of businesses to respect certain labour standards can be a useful lever for workers and unions. However, we have also observed that the cases in which unions are able to take advantage of the opportunity offered by private regulation are far outnumbered by those where workers either lack the capacity to act collectively or are simply unaware of the commitments made by their employer.

The IFC's performance standard system, like all private regulation systems, extends no new rights to workers because they are not parties to the private contract that provides the means by which compliance is enforced (if, like the IFC and FSC schemes, it includes enforceable commitments). Rather, the parties are the regulator and the client business. The weakness of this "governance by contract" lies in the fact that compliance enforcement depends on a third party's willingness to take action to enforce contractual conditions that affect relations between workers and employers. In the case of the performance standards system, the IFC's capacity to decide whether or not to enforce its contractual rights against its clients is almost unlimited, with no template for compliance and no independent process for the evaluation of claims of non-compliance.

This raises the question of power. Our case studies show that the successful enforcement of private labour standards is a question of political organization and action rather than of triggering a process of regulatory intervention. Whether or not the public normative commitment involved in agreeing to comply with a standard results in a change of management attitude or behaviour depends not only on the capacity of workers to collect information about standards violations and to communicate this to the regulator, but also on their ability to create the kind of political and industrial pressure that would outweigh the regulator's commercial and reputational interest in *not* sanctioning its existing clients.

However, in the particular case of freedom of association and collective bargaining, the rights supposedly guaranteed by private labour standards are precisely those that provide workers with the capacities that make political

action possible. Our study showed that the IFC takes few if any proactive steps to enforce these rights. It also found no case in which the standards contributed to the organization of a previously unorganized workforce without the intervention of an existing union. When it comes to the enforcement of freedom of association rights, workers who are not already well organized are caught in a “catch 22”: they need to *already* possess the collective capacity to take political action in order to enforce the rights that would give them that capacity.

Although we cannot assume on the basis of our survey and case study data that the IFC’s passive stance on workers’ collective rights is shared with other private regulators, if this were to be the case it would go some way to explaining the generally low impact of private regulation on workers’ capacity to take collective action. From the perspective of national and international trade union organizations, then, the best strategy for exploiting the opportunities offered by private regulation would be to take the kind of proactive approach adopted by the BWI and its affiliates.

In the first instance this involves a focus on information: both the *transmission* of information about private regulation to workers and unions (so that they are aware of the employer’s commitments) and the *collection* of information from workers and unions about potential violations. This implies that international unions and national union centres need to devote resources to monitoring the information released by regulating organizations as well as establishing some means of following up violations. The second possibility for increasing the impact of private regulation is related to the interpretation of workers’ collective rights. We saw in the Bujagali case that employers may dispute whether private regulation obliges them to sit down with union representatives. To pre-empt this kind of argument, national and international union organizations could approach private regulators with a view to agreeing what freedom of association and collective bargaining rights mean in practice for both unionized and non-unionized workers in terms of rights of access and audience for representatives of existing unions, recognition thresholds, access to capacity-building activities for new workers’ organizations, and so forth.

Despite the ubiquity of reference to the ILO’s fundamental Conventions in transnational private regulation, the wide diffusion of TPR has not led to an overall increase in respect for workers’ collective rights. Nevertheless, some unions have been able to exploit the opportunities for worker organization that it provides and there is clearly a great deal of scope to expand this kind of activity. Key to making the best use of TPR from a workers’ perspective is reaching out to unorganized workers for whom, in the absence of union support, this regulation is almost entirely ineffective.

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International Finance Corporation performance standard 2

(...)

9. In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the client will comply with national law. Where national law substantially restricts workers' organizations, the client will enable alternative means for workers to express their grievances and protect their rights regarding working conditions and terms of employment.

10. In either case described in paragraph 9, and where national law is silent, the client will not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and bargain collectively. Clients will engage with such worker representatives. Worker organizations are expected to fairly represent the workers in the workforce.

China International Contractors Association ***Guide on social responsibility***

(...)

HR20. Establish employer–employee negotiation mechanisms in accordance with local laws and practices, and support employees' participation in management.

HR21. Respect employees, establish two-way communication channels and mechanisms between the enterprise and employees, and learn and respond to employees' expectations and claims.

FSC draft standard for Kenya

(...)

4.2. Forest management should meet or exceed all applicable laws and/or regulations covering health and safety of employees and their families.

4.2.1. The forest owner or manager provides employees with information about the remuneration and benefits due to employees.

4.2.2. The forest owner or manager provides training on occupational safety for the employees and provides information on potential health risks for all forest operations.

4.2.3. The forest owner or manager shall ensure all workers have all appropriate safety equipment and clothing such as helmets and boots.

4.2.4. The forest owner or manager keeps records of accidents and demonstrates a good record of safety.

4.2.5. The forest owner or manager has ascertained the risk to workers of particular tasks and equipment and taken all reasonable measures to reduce or eliminate such risks.

4.2.6. Forest workers have access to appropriate health facilities.

4.3. The rights of workers to organize and voluntarily negotiate with their employers shall be guaranteed as outlined in Conventions 87 and 98 of the International Labour Organization (ILO).

4.3.1. The forest owner or forest manager shall provide information to the employers' membership about the employees' rights in regard to membership in labour unions.

4.3.2. The rights of workers to organise and voluntarily negotiate through unions or other worker representative groups as defined above and in the relevant national legislation are recognised.

4.3.3. All relevant labour code/regulations that include prohibition of child labour are applied.

4.3.4. Wages and social benefits are comparable to national norms.

Value chains, underdevelopment and union strategy

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The dynamics of international trade within industries is best captured by the expression “global value chains” (GVCs).¹ The old notion of international trade as trade in finished goods – for instance, British cloth against Portuguese wine, as in David Ricardo’s (1817) famous example – is no longer a valid point of reference. Production processes in the field of manufacturing and services have been divided into numerous and different tasks, which have become tradable internationally. Looking at traded goods by stage of processing, intermediate goods now have the largest share of overall trade with a value of US\$7 trillion, followed by primary goods at US\$4 trillion, consumer goods at US\$3.8 trillion and capital goods at US\$2.7 trillion. Almost 50 per cent of intermediate goods come from developing countries (UNCTAD, 2015a). Developing countries are increasingly integrated in the world economy through the global value chains (Milberg and Winkler, 2013).

In this article, we ask whether international trade, and specifically trade within GVCs, leads to better working conditions and social and economic improvements in countries in the global South. We find that markets do not automatically lead to better working conditions and social and economic advancement; rather, the opposite is generally the case: unregulated markets have the tendency to push developing countries towards a socio-economic position that reproduces underdevelopment. The increasing integration of developing countries in GVCs has not changed this in any meaningful manner.

The union strategies discussed here should therefore combine two elements. First, unions should fight for decent working conditions (see ILO, 2008). But decent working conditions are insufficient if a country is not able to catch up in skill levels, technology and finally real GDP per capita. Economic improvements, measured as increasing GDP per capita, do not automatically lead to social progress; but without economic growth, social advancements in developing countries tend to be limited. Unfortunately, the market mechanism, including international trade and capital flows, does not lead to an endogenous process of catching up in almost all cases. This means that unions should also care for policies which go beyond decent working conditions. In the second section of this article the mainstream arguments for free trade and capital flows are briefly discussed. The third section focuses on GVCs and compares their two main pillars: foreign direct investment (FDI) and subcontracting. Section four presents strategies for decent work and development from a union perspective.

1. Global production networks are broader than GVCs. We use the term GVCs to show the hierarchical character of integrated global production processes.

Traditional analysis of trade and international capital flows

Value chains,
underdevelopment
and union strategy

Free trade is almost universally embraced by mainstream economic analysts as a sure-fire way to maximize the welfare of all nations, including developing countries. The basis of this thinking can be found in the theory of comparative advantage, as formulated by David Ricardo (1817), where all nations can benefit from international trade. In the original formulation, two countries, England and Portugal, under the assumption of capital and labour immobility and full employment, produce both cloth and wine. Due to given hypothetical productivity levels, England needs more workers than Portugal to produce a certain amount of cloth and wine. However, it is assumed that the productivity deficit in England is greater in wine than in cloth production. The basic idea is that both countries should specialize according to their comparative advantage – England in cloth and Portugal in wine. England would then import wine from Portugal, and Portugal cloth from England. Both countries benefit from the international division of labour in the form of increasing output and consumption, even though England is less productive in all industries in comparison to Portugal. Hence, even less developed countries can increase their standards of living if they choose free trade.

The main criticism of the theory of comparative advantage is that the gains from trade are only static.² Dynamic gains from trade, such as technological improvement, are not integrated into the theory.³ However, endogenous technological progress and productivity growth (e.g. due to learning by doing, or concentrating on high-tech production) characterizes industrial production. Such gains, being a result of trade, should be included in a theory of international trade. Chang (2002) has shown that developed countries such as Germany, the United Kingdom and the United States did not adopt the rationale of comparative advantage and its corollary of trade liberalization in their “catch-up strategies” but rather applied protectionist policies to restrict international trade and support their infant industries.

In the long run, free trade leads to underdevelopment, as countries with a low productivity level concentrate on labour-intensive low-tech production and, compared with developed countries which produce capital-intensive

2. There are other essential inadequacies in the theory of comparative advantage when it comes to the underlying assumptions used. It is not plausible to assume the absence of capital and labour mobility, both of which have increased substantially in recent decades (United Nations, 2013; Lund et al., 2013). If there is no full utilization of labour and capital, international trade is not necessarily beneficial because output, employment and consumption can all be influenced by free trade. Free trade also has distributional consequences within countries, and these are not analysed. Also, it is an open question, especially in developing countries, whether the assumed real exchange rate mechanism smoothly balances the current account (Schumacher, 2013).

3. Heckscher (1919) and Ohlin (1933) assumed that the trading countries had the same level of technological development, but countries differ in their relative stocks of capital and labour. Productivity differences then are based on different factor endowments.

and high-tech products, have a much lower chance of increasing skill levels and technology. Imbs and Wacziarg (2003) found that successful countries did *not* specialize in their development phase, as Ricardo recommended. The opposite is the case: a high diversification of production and industries seems to be the precondition for catching up. Obviously, diversification allows broad learning and synergy effects, which are vital for development. Diversification and industrial policy are two strategies of successful development (Rodrik, 2004).

Traditional trade theory assumes trade of finished goods, wine against cloth. This does not coincide with empirical reality, as during the last few decades the most important type of international trade has become trade in intermediate goods. Due to technological progress, global transactions have become less costly and the benefits to companies of vertical integration have decreased. Make or buy decisions are based on a comparison between transaction costs within the firm and transaction costs over the market. If the latter are relatively higher, vertical integration is beneficial. Such a transaction cost theory does not comprehensively explain offshoring and outsourcing of tasks. For example, power relationships within GVCs are not taken into account in spite of the fact that they can shape GVCs.⁴ This has led to new trade theories, which stress diversified production of different brands and economies of scale to explain international trade (Krugman, 1979). Such developments have led to the analysis of GVCs on which we focus in the next section.

Singer (1949) and Prebisch (1950) developed an important critique of the conventional trade argument. They argue that free trade leads to the erosion of the terms of trade of developing countries that produce primary commodities and simple manufacturing goods. This leaves developing countries in a trap they cannot overcome by focusing on free trade, even if it leads to industrialization. Both Singer and Prebisch recommend diversified industrialization, import substitution, industrial policies, and skill upgrading to trigger development (Singer, 2003). Below, it will be shown that the Prebisch–Singer thesis is further strengthened when taking into account the new role of GVCs.

The Washington Consensus, developed in the 1990s by Washington-based institutions such as the International Monetary Fund, the World Bank, the US Treasury and some research institutes, became the nucleus of policy recommendations on how developing countries could induce economic development. Williamson (1990, p. 18) summarized the consensus as “prudent macroeconomic policies, outward orientation, and free-market capitalism”. Free trade, privatization, liberalization and deregulation were indeed of paramount importance in the Consensus, which was first imposed on Latin American countries in the 1980s and 1990s. As it did not

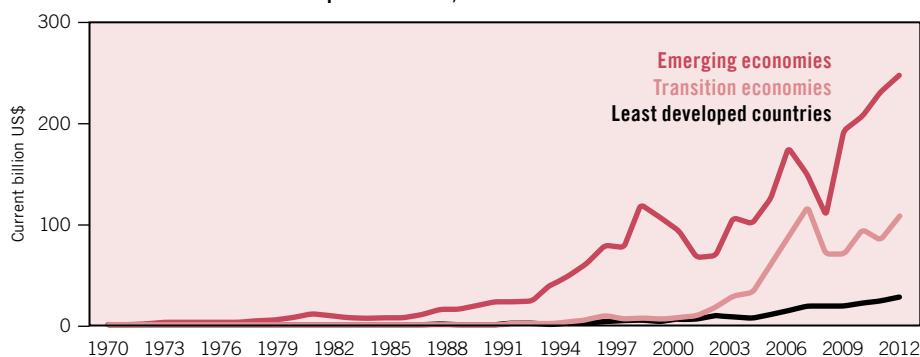
4. Additionally, neoclassical explanations of offshoring assume full employment and shock adjustments via exchange rates and wages (Milberg and Winkler, 2013).

show the expected results, a so-called “augmented” Washington Consensus came about, with additional requirements such as policies to improve labour market flexibility and corporate governance, to fight corruption and establish poverty reduction targets. However, the old components of the Washington Consensus were kept in place (Rodrik, 2006; Herr and Priewe, 2005).

Openness of FDI is one of the pillars of the Washington Consensus and is considered by mainstream economists and international organizations to be an important engine for globalization and a source of economic growth, industrialization and technological transfer, especially for developing countries. Indeed, FDI to the global South has exploded during the last few decades (see figure 1). FDI to developing countries became one of the major channels of GVCs, as will be analysed below.

One consequence of high FDI inflows to developing countries, among other capital inflows, is high current account deficits in parts of the developing world. According to mainstream development theory, sustainable current account deficits are considered to be important for catching up. Easterly (1999), for example, makes it clear that current account deficits do not lead to development, whether from a theoretical or an empirical perspective. An import-oriented development strategy is no more convincing than the Washington Consensus in general. Current account deficits strongly rely on the willingness of creditors or investors to transfer funds to a developing country. In a situation of long-lasting current account deficits, over-indebtedness of a country is much more likely than development. A period of current account deficits is less likely to lead to a “taking-off” of a developing country than to a debt crisis and economic stagnation, leaving the country in a trap of underdevelopment.

Figure 1. FDI inflows in transition and emerging economies and least developed countries, 1970–2012



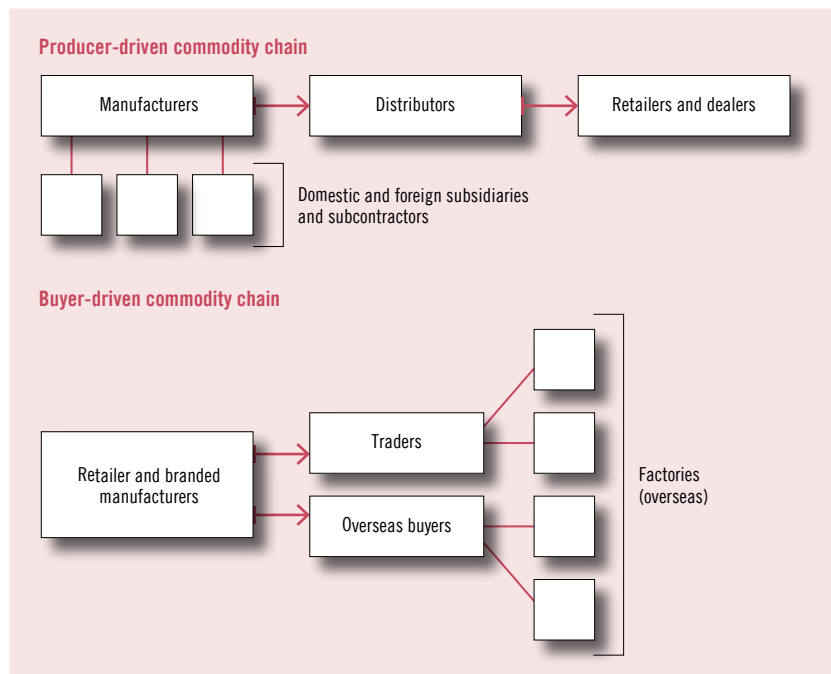
Source: UNCTAD (2015b).

Global value chains

The history of outsourcing goes back to the Industrial Revolution, but the rise of multinational corporations (MNCs) and the creation of GVCs gained momentum in the 1960s. A new dimension of globalization, also referred as the “second unbundling”, started to develop in the 1990s due to the revolution in information and communication technology (ICT), the reduction in transportation costs and the implementation of Washington Consensus policies in both developed and developing countries, leading to radical market policies and an opening up to international trade and capital flows. These developments allowed MNCs to break down their production process into different stages and outsource them to other countries to a much greater extent than before (Baldwin, 2013). The fragmentation of different production stages to different countries gave MNCs various opportunities to choose their suppliers. Basically, outsourcing refers to developing a supply source that is located outside a parent company which is in charge of producing final goods or services. In other words, suppliers provide raw materials, tools, spare parts, components, equipment and semi-finished products that need to go through other production stages to become final goods (UNCTAD, 2010). Cost reduction is the main motive for outsourcing activities to other countries. In addition, the search for natural resources, the management of inventories, and flexibility in adjusting to changes in demand and the search for high-quality inputs, especially from industrial countries, are other important factors explaining outsourcing (Andreff, 2009).

Based on the nature of the lead firms’ supply chains, GVCs can be subdivided into “buyer-driven” and “producer-driven” chains (Gereffi, 1999). In the case of buyer-driven value chains, the lead firm focuses on designing and marketing functions while the manufacturing process is outsourced to an independently owned subcontractor producing under strict specifications by the buyer. This is the case of labour-intensive industries such as the apparel and footwear industry. Producer-driven supply chains are typically led by MNCs in which technology plays a pivotal role (automobiles, computers and heavy machinery). Lead firms coordinate a complex transnational network of production with subsidiaries, subcontractors and R&D units, whereby the assembly lines of the final product typically remain under the direct control of the producer. While producer-driven value chains are usually led by the firm controlling the technology and the assembly lines, buyer-driven value chains are typically more labour-intensive and are driven by the retailer or the brand name company. While in this case the lead firm or the branding firm controls the key governance functions of the production chain (pricing, designing, marketing), manufacturing and assembling stages are outsourced to external subcontractors. Figure 2 illustrates the two cases.

Suppliers can be either domestic firms such as domestic subsidiaries of parent companies or other domestic suppliers based on market relations;

Figure 2. Producer-driven and buyer-driven commodity chains

Source: Authors' illustration adapted from Gereffi (1999).

or companies in other countries such as foreign subsidiaries of a parent company (FDI) and other foreign suppliers. In this article, we focus on international outsourcing for both FDI and international subcontracting. FDI involves the full or partial ownership of production units in the foreign country, whereas subcontracting is based on arm's-length relations. In the latter case, a domestic firm asks an outside firm to produce a specified product or component for which it can, if needed, supply the inputs and also transfer technology and technical assistance to the producer (Webster, Alder and Muhlemann, 1997).

When do firms choose FDI and when do they choose subcontracting? According to Dunning (1977), higher than average tangible and intangible assets of foreign companies force them to open a subsidiary in host countries to protect their patents and technology – because if they choose franchising, licensing or international subcontracting there are high levels of risk that local companies will obtain access to their technology and patents, produce the same goods and become competitors (Peng, 2009). Furthermore, gaining access to local markets or to natural resources are elements that may encourage firms to choose FDI.

Foreign direct investment

There is a rich literature about the effects of FDI on the industrial development of host countries (Balasubramanyam, Salisu and Sapsford, 1996; Borensztein, Gregorio and Lee, 1998; Alfaro et al., 2004; Hansen and Rand, 2006; Basu and Guariglia, 2007; Kurtishi-Kastrati, 2013). However, there is no consensus on positive effects of FDI on host countries' industrial development.

In general, there are two types of FDI – horizontal and vertical, each typically having different effects on technology spillover and working conditions. Horizontal FDI occurs when a company produces a product with the same production line and value chain in host countries as it does at home. For the most part, this takes place in mature markets when companies merge or acquire another company in a host country. However, in recent years, the amount of horizontal FDI in emerging economies such as China has begun to increase due to improving income levels and large domestic markets. Vertical FDI occurs when a company wants to optimize its production cost by fragmenting each part of the value chain in countries with the lowest costs. Since the 1990s, this type of FDI has become increasingly popular among MNCs (Peng, 2009).⁵

Access to managerial skills and advanced technologies are motives for host countries to attract FDI. Indeed, foreign-owned companies often have higher technological standards, and can train local staff or secure export channels. Furthermore, local firms can benefit from the technological and managerial skills of foreign firms through joint ventures, reverse engineering and hiring workers who have been trained through working there. Foreign firms can also benefit local companies by developing supply chains in host countries and forcing the local firms to increase their quality and standards as well as helping them to increase their managerial skills (Alfaro et al., 2010).

Companies seeking access to local markets may establish R&D centres in host countries in order to meet specialized customer demand in the host country via product localization. In so doing, foreign companies typically work with domestic experts and universities, which allow them to use their expertise on the tastes and preferences of domestic consumers. Local experts also benefit from working with new technologies and participating in the processes of research and development and the production of new goods. Their experience can be used later in domestic companies (Damijan et al., 2003).

Another factor affecting technology spillovers is market structure. If host country markets have high entry barriers, for instance high tariffs or the presence of a dominant domestic market player, foreign investors have

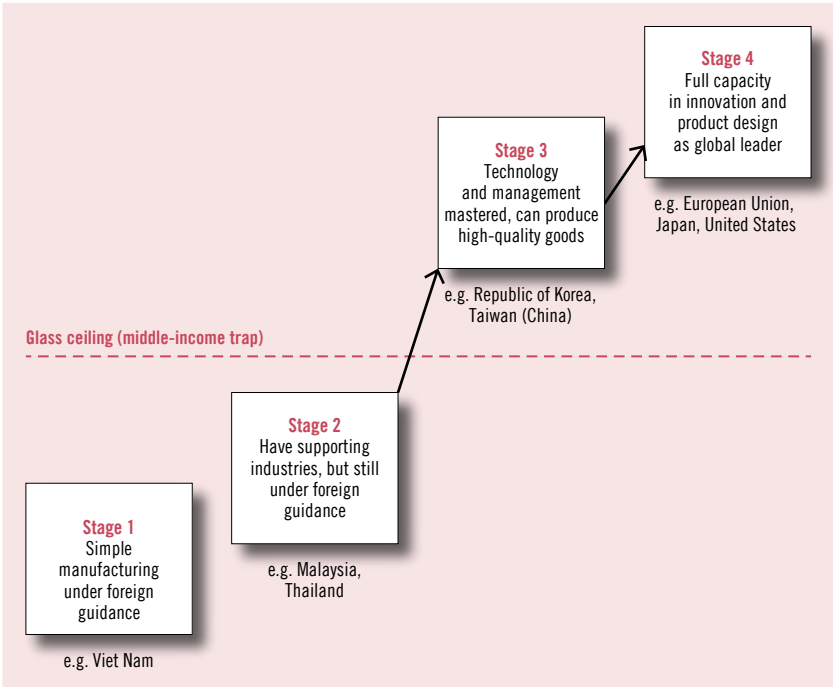
5. Although it is very difficult to statistically define differences between horizontal and vertical FDI, by using an enterprise-level database on 650,000 companies Alfaro and Charlton (2009) found that vertical FDI is the dominant type among MNCs (more than 60 per cent).

to enter with a large amount of investment and relatively high technology in order to be competitive. However, benefiting from positive technology spillovers of FDI depends on various factors. First, technology spillovers are highly dependent on the development level of the host country. If local firms do not have relatively high technological and educational levels, FDI will not only not lead to positive technology spillover but may also crowd out local firms due to their inability to compete for talent with the better endowed foreign companies (Singh, 2011). Furthermore, if foreign companies invest in host countries only to export low value added goods, such investments are unlikely to have any major positive effects on technology transfer. Second, the type of FDI (e.g. wholly owned, joint venture, or through mergers and acquisitions) is an important factor. For instance, if foreign firms invest through mergers and acquisitions, the level of technology spillover will be very low, as the new foreign owner can usually keep employees and production lines unchanged; only the management changes. In addition, in many cases foreign firms only invest to benefit from cheap labour and other costs as well as from government incentives, and do not bring any positive technology spillover. The third, but most important factor, is government policies. If governments of host countries do not design and implement sound industrial policies in order to absorb preferable and favourable FDI, a positive technology spillover is unlikely to happen (Azarhoushang, 2013).

In horizontal FDI the probability of positive technology spillover is higher than in vertical FDI, as most production stages are outsourced to host countries which can thus benefit from higher value added production stages such as design and R&D. Although most horizontal FDI is within developed countries, some developing countries also benefit: Volkswagen in China is one successful example. But the fact that China was able to dictate to a large extent the conditions for FDI should be borne in mind (*ibid.*). Also, horizontal FDI in developing countries, even including R&D centres, does not mean that a foreign company will bring the newest technology to the developing country. Key competencies tend to be kept in the country of the lead firm, generally in the global North.

Vertical FDI, which is prevalent in developing countries, does not show such positive technology and skills spillover, as it typically focuses on low-tech specialized tasks in a few industries. Technologically very underdeveloped countries with very low skill levels can benefit from vertical FDI, but only to a certain extent: after some upgrading of technological and skills levels there is no incentive for lead firms to improve them further. There is a middle-income trap, or a glass ceiling, for market-based development even with a high level of FDI (Ohno, 2009; see figure 3 for Asian countries). FDI can thus lead to industrial upgrading in some developing countries to some extent under certain conditions, but even in such an optimistic scenario market mechanisms will not lead to the same income level as in developed countries. In

Figure 3. Stages of industrial upgrading



Source: Adapted from Ohno (2009).

order to escape the middle-income trap, governments in developing countries need to support industrial upgrading not only by high investment in education, research and infrastructure, but also through an extended and comprehensive industrial policy.

Following Washington Consensus policies implies that developing countries provide flexible labour markets as one of the preconditions for attracting FDI. Foreign companies lobby hard to exercise virtually unlimited power in setting their employment policies such as extra hours, job benefits and job conditions. Empirical studies show that FDI can have negative effects on trade union density in host countries (Radulescu and Robson, 2008). FDI or the attempt to attract FDI therefore tends to weaken unions and deregulate labour markets. However, any change in labour market institutions has major effects on social justice and the social well-being of the majority of population (Stiglitz, 2002).

In almost all developing countries FDI has had negative effects on wage dispersion (Schmerer, 2011). Since foreign firms have access to better technology, they prefer to employ relatively high-skilled workers in developing countries and they have the financial means to do so. On the other hand, domestic companies may also try to keep or employ high-skilled workers to improve or defend their competitiveness.

International subcontracting is one of the major ways of outsourcing production stages through arm's-length transactions with independent companies in other countries. In a new wave of globalization during recent decades, international subcontracting has become one of the principal activities of MNCs. It includes the transfer of certain tasks at all stages of the supply chain – from design, bookkeeping, R&D and fabrication to after-sale services. Some MNCs, such as Nike and Apple, carry out only the design part themselves, outsourcing most of the remainder of the supply chain to subcontractors. There are two main differences between international subcontracting and traditional arm's-length transactions. First, international subcontracting is of a long-term nature as MNCs prefer a longer relationship with accountable suppliers; second, the level of information the parent companies provide for suppliers, such as detailed instructions and specifications for the task at hand, is much higher than in the case of normal market interactions (Grossman and Helpman, 2002).

In *capacity and cost-cutting subcontracting*, the main contractor does not have enough capacity and/or it is not profitable for the company to undertake the fabrication of the specific component or carry out a specific service to produce its product. This type of subcontracting is known as vertical specialization. In *specialist subcontracting*, the main contractor does not have the technology, skills and special machinery to undertake certain production tasks. This type of subcontracting is referred to as horizontal specialization (de Crombrughe and Cuny, 2000). Specialist subcontracting can mainly be found within developed countries with high technological and skill levels. In the following paragraphs we discuss cost-cutting subcontracting, which dominates outsourcing between developed and developing countries.

Due to low value added and the relatively low technological level of cost-cutting outsourcing, local companies cannot benefit much from technology spillover. Of course, as in the case of FDI in very underdeveloped countries, subcontractors can improve their labour productivity as well as their technological level to a certain extent. Lead firms can transfer new machinery to suppliers, give them technical support for working with them as well as some consultancy work in managing inventories, production planning and quality testing (UNCTAD, 2001). However, these positive effects remain at a relatively low level. The lead firm has no incentive to transfer substantial knowledge to arm's-length subcontractors. Overall, positive technology and skill spillover must be considered even lower in the case of subcontracting than in the case of FDI.

The main motivation for this type of outsourcing is to cut costs, and MNCs will do everything possible to achieve this. So long as it does not destroy their reputation or the quality of their products they will support all measures to bring costs down, including wages, working conditions

and ecological standards. One of the incentives for international subcontracting is to gain flexibility in case of demand fluctuations. MNCs can use international subcontracting as a hedge against fluctuations in demand; in other words, lead firms can externalize this risk. The risk of underutilization of capacities in times of lower demand and high fixed costs, as well as the hiring and firing of workers, are transferred to the subcontracting firms (Verra, 1999).

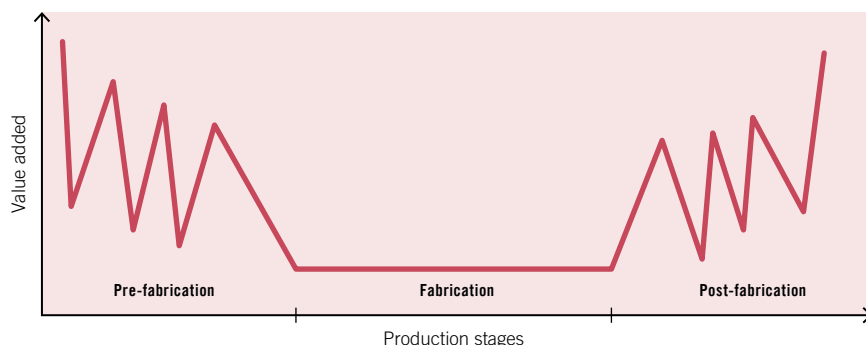
Asymmetries in the value chains

As mentioned above, cost reduction is the most important motivation for MNCs to outsource in developing countries. While the low value added stages of production are outsourced, the higher value added stages either stay in the parent company's country or are outsourced to other developed countries in specialist subcontracting. The uneven distribution of value added between developed and developing countries through supply chains is the main feature of the second unbundling (Ohno, 2009). This phenomenon can be expressed in the so-called "exploitation curve".⁶ Figure 4 shows the exploitation curve and the distribution of value added at different stages of production.

According to the exploitation curve, the upstream and downstream part of value chains, which include R&D, design, marketing and after-sales service, have the highest value added and are largely kept in developed countries. However, low-value activities in these areas are transferred to developing countries. Regardless, most outsourcing can be found in the fabrication stage, which is not the core competency of MNCs. This stage can be outsourced to other less developed countries in the interests of cost reduction and also gaining flexibility. The newest wave of outsourcing increasingly covers services, indicating that future low value added activities may be outsourced at all stages of production.

Furthermore, the exploitation curve shows a new version of the Prebisch–Singer thesis. This can be exemplified in Ricardo's cloth and wine example. In his vision of trade, all wine is produced in the less productive country and all cloth in the more productive. In the exploitation curve model, introducing GVCs implies that the more productive country produces both goods and outsources all low value adding activities to the less developed country. Productivity levels and terms of trade in the less developed country become even lower than in the Ricardian example.

6. The exploitation curve is the modified version of the "Smile Curve" designed by Stan Shih, CEO of Acer (Everatt, Tsai and Cheng, 1999), to illustrate the distribution of value added through GVCs and obviously showing the "smile" of MNCs.

Figure 4. Exploitation curve

Source: Authors' illustration.

The high market power of MNCs allows them to choose the location with the lowest factor costs, taking into account that many developing countries are willing to offer various incentives to attract foreign investors even for low value added production stages. This is the reason behind the MNC strategy of recent years in shifting outsourcing locations from the East Asian “tigers” – Hong Kong (China), Japan, Republic of Korea, Singapore, Taiwan (China) and recently mainland China – to other developing countries such as Bangladesh, Cambodia and Viet Nam. When wages increased in the first group of countries, MNCs started to outsource their activities to countries with lower wages.

Since companies in developing countries generally do not have high asset specificities (technology and skills), they do not have the market power to increase their mark-up, and hence must stay in the low value added stages of production. It is therefore the lead firms that decide which tasks are outsourced to developing countries, which ones stay at home and which ones are outsourced to developed countries. Their strategy and competitive pressure lead to a form of development where all high value added stages in the value chain stay in developed countries while low value added tasks are shifted to developing countries to save costs. From a microeconomic perspective, a monopsony constellation exists: the lead firm with a demand monopoly and suppliers fiercely competing with which each other. Suppliers will then earn a very low profit and will try to cut costs whenever possible to stay in the market. Moreover, even if an MNC transfers technology to developing countries via FDI and/or international subcontracting, its main motivation is still to cut costs, so it will not transfer the newest technology (Baldwin, 2013). Developing countries are thus locked in the low value added stages of production (the middle-income trap) and are exposed to an even more exploitative model. First, if developing countries can participate only in low value-adding stages, the contribution of GVCs to GDP and the technology spillover will be limited. Second, even if high profits are created in MNC subsidiaries, they

will most likely be repatriated via direct transfer or by manipulating export and import prices within the enterprise. Third, the negative environmental impacts and social effects in the absence of an efficient regulatory framework supported by MNCs lead to poor working and living conditions in developing countries. And last but not least, the “footlooseness” of GVC activities increases the vulnerability of local firms and of developing countries in general, which face high levels of external shocks (UNCTAD, 2013a and 2013b).

Global value chains and trade union strategies

In the face of the GVCs, what are the strategic options of trade unions? What instruments can they use to promote a more equitable development of the value chain? Is there enough room for manoeuvre in organized labour to improve working and social conditions? Are there strategic alliances being built between organized labour and non-governmental agencies promoting labour and human rights?

In developing countries, inflows of foreign investment in labour-intensive production stages, although initially welcomed as an opportunity to improve the local economy, have been often associated with reduced labour rights and worsening working conditions. Some recent high-profile cases, such as the series of suicides in the Chinese establishments of the electronics manufacturer Foxconn and the collapse of the Rana Plaza building in Bangladesh are just two examples of the numerous cases revealing that international firms and brands are responsible for the exploitation of labour, including the violation of human rights. The fact that famous international brands exploit low labour costs and poor working conditions in supplier firms to increase their price competitiveness has opened a major debate between international institutions, trade unions and civil society associations. If the international subdivision of production along highly specialized value chains is to increase production efficiency and offer opportunities for modernizing economies to rapidly upgrade their industrial system, there must be some governance of GVCs for the purpose of delivering wage growth, better living conditions and higher technological and skills transfer.

The interest of trade unions in the internationalization of capital and trade is not recent. It goes back to the debate on the role of multinational corporations in the late 1960s when large conglomerates originating in Western countries were seen as exploiting the workers and natural resources of less developed nations (Bair and Ramsay, 2003). In more recent times, with the increasing role of GVCs the need for unions to develop strategies to cope with MNCs has become even more urgent. Trade unions must rearrange their strategies from negotiating with a single employer in one country to facing multiple bargaining levels. Furthermore, international subcontracting has reduced the accountability of international firms for the

labour standards adopted by partner subcontractors, again posing a new set of challenges for organized labour.

Trade unions have demanded stronger accountability from MNCs, with better standards of corporate governance and adequate supervision of corporate conduct from all stakeholders, including labour. Trade union responses include the promotion of social partnership and dialogue through the establishment of international framework agreements (IFAs). IFAs represent social agreements, complementary to national collective bargaining, within which MNCs commit to international labour standards and to the free activity of trade unions along the entire supply chain. Another key response has been the creation of trade union networks within global production systems. In this context, trade unions must avoid a potentially catastrophic “race to the bottom” between workers in developed and developing countries under the threat of offshoring and outsourcing (Schmidt, 2007). Another important initiative that would allow employees and their representatives to respond effectively to global corporate strategies is the construction of a network of labour representation, in the style of a “shop-floor” world works council that embraces the entire production chain in all geographical regions in which the company operates (Rüb, 2002).

An important point of reference in trade union responses to globalization is ratification of the core ILO Conventions embodied in the 1998 Declaration on Fundamental Principles and Rights at Work. The Declaration supports the principle of equality of opportunity for workers in all operations and branches of MNCs, including freedom of association, the abolition of every form of compulsory labour, and the elimination of child labour and discriminatory practices. It also encourages the provision of training policies that meet the general development goals of the country in which the firm operates (ILO, 2011).

Successful experiences of trade union responses to the new modalities of globalization have come from Brazil. Brazilian trade unions have assisted in bringing about a strong reorientation of the goals of MNCs and have developed counter-initiatives to respond to these challenges (Mello e Silva, 2008). These include the participation in regional union networks of Brazilian trade unions, which have been active in regional trade blocs since the early days of the negotiation round for the establishment of the common Latin American market (Mercosur). They helped to establish the Coordinator of Trade Unions for the Southern Cone (CCSCS) whose mission is to promote the social aspects of production in the agreement concerning the establishment of the common trade area. A specific proposal put forward by the union committee of the metallurgical sector included the creation of a social fund to support training and re-skilling policies targeted to those workers whose jobs would have been displaced as a consequence of the common trade area (*ibid.*).

Another strategy adopted by Brazilian trade unions has involved the creation of union networks or “committees” in MNCs with the scope of

monitoring social clauses along the entire supply chain, including compliance with labour standards. The effectiveness of these networks has been proven in cases where the union was successful in pressuring companies to cancel their orders from a supplier accused of having taken an anti-union stance (*ibid.*).

In the context of GVCs, an understanding of the chain structure enables trade unions to prepare effective responses to the international organization of capitalist production. Due to the varying structure of GVCs, the implications for organized labour also vary (see Riisgaard and Hammer, 2008). The functional position of the lead firm in the value chain as well as the presence of well-recognized brands define the sphere of action for trade unions: the lead firm's position, i.e. buyer or producer, determines the leverage point through which unions can exercise their influence. In producer-driven value chains, where production is vertically integrated and controlled by MNCs, trade unions have the opportunity to affect production processes, especially in the most sensitive linkages of the production chain. The dependence of the producer on its suppliers makes producer-driven value chains sensitive to trade union actions. Trade unions can either direct their strategic actions to the lead producer, interrupting the production of the final goods, or to one or more sensitive points in the production network. To develop an effective strategy, trade unions need to establish strong linkages in terms of transnational cooperation among the various production sites along the supply chain.

In buyer-driven value chains dominated by large brands, especially in the apparel and footwear industries, trade unions are less powerful. The low technological content of intermediate production allows the buyer a great degree of flexibility in selecting and replacing its suppliers in case of a disruption in the value chain. However, the existence of a well-recognized consumer brand puts the buyer in a highly sensitive position with respect to consumer campaigns. Trade unions and non-governmental organizations (NGOs) can put pressure on the buyer through consumer actions aimed at raising awareness of the working conditions in the supplier firm. Given its strategic position, the leading firm can easily impose respect of labour standards on its subcontractors.

The strategic role of NGOs in buyer-driven value chains emerges as the key factor pushing for an effective improvement of working conditions in international subcontractors of well-known international firms and brands. Studies have shown how major brands in the fashion industry are more sensitive to consumer campaigns and more inclined to improve wages and working conditions of their suppliers along the value chain in comparison to the apparel retail chains (Pines and Meyer, 2005). Due to increasing competition, large retail chains are more sensitive to price changes and less likely to push for an effective improvement of working conditions in their supplier manufacturers. It is also difficult to set up effective consumer campaigns in the case of price-sensitive consumers. If the price is a discriminating factor

in cloth consumption, it is less likely that consumers will be able to exert some sort of economic pressure on the company (*ibid.*). In this case only joint action by NGOs, trade unions and governments can push for a real improvement of working conditions in suppliers to buyer-driven value chains.

A recent report by the NGO Human Rights Watch (2015) covering labour rights abuses in the garment industries in Cambodia analyses the working conditions in subcontracting firms of some major international brands in the fashion industry (H&M, Gap, Marks and Spencer, Joe Fresh, Armani, Adidas). The study highlights the responsibilities of these firms in the violation of labour rights and has managed to push some of them to adopt monitoring techniques of working conditions in their suppliers.

Achieving better working conditions is only one aspect of overall economic and industrial progress. For this reason, the goal of trade unions should also be to push for industrial policies and economic and social advancement that enable the creation of additional and better jobs.

Long-term strategies for development

To overcome underdevelopment, the union strategies discussed above play an important role, but they are not sufficient. Additional policies and more fundamental changes are needed to allow developing countries to reach a stage comparable with developed countries. To guarantee decent working conditions and their enforcement, or freedom of association, or to build a social safety net, are duties of the State. Developing countries should not be allowed to escape their responsibility to implement the legal and financial conditions for decent living and working conditions. International institutions and governments in developed countries could give developing countries more freedom to follow their own policies beyond the Washington Consensus. Mercantilist developed countries such as Germany could strive for balanced current accounts to increase the export opportunities of developing countries.

Economic upgrading, as one of the conditions of social upgrading in developing countries, implies the increase of productivity and the establishment of high value-creating industries and production processes in these countries. Government support for research and development and investment in education, as demanded by the New Growth Theory, is important but not sufficient. A more direct industrial policy is needed to support strategically important industries or even key companies. FDI can support development when it is integrated in industrial policy. Regulations such as local content clauses or transfer of technology should become preconditions for FDI. Successful industrial policy crucially depends on the creation of a process of conditional support by government to selected promising industries, which seeks to avoid rent-seeking and is phased out when it is no longer

needed (Rodrik, 2004). Unions could become one of the groups involved in the implementation of industrial policy. Industrial policy in both developing and developed countries also needs to contribute to a form of technological development which allows ecologically sustainable economic development. During the last few decades, patent law has moved away from the principle of knowledge as a free good to the principle of knowledge as private property. This should be reversed. Developing countries should be granted free access to the most important patents, especially those for medicaments for major illnesses. In addition, they should be allowed to follow one-sided protection policies of infant industries.

MNCs have to be regulated in a much more comprehensive way. In the present situation, they can play States off against each other and follow a strategy of regulatory arbitrage. Corporate governance can be improved by giving other stakeholders a larger influence; global work councils are an example of this. But other stakeholders from civil society could increase their influence on MNCs. Last but not least, MNCs acting on a global level need an international legal framework, including international courts, which enforce a global competition policy or allow legal measures to be taken against MNCs if, for example, they do not follow international regulations on decent work or violate ecological standards. Furthermore, global tax regulations for MNCs are needed to prevent unjustified profits from rent-seeking (Stiglitz, 2006).

Conclusion and options

Unregulated markets lead endogenously to the reproduction and deepening of underdevelopment. The increase of global trade has not increased opportunities for social or economic catch-up among the least developed nations. Developing countries are increasingly integrated in the global economy via vertical low-cost-seeking GVCs. In the logic of the Prebisch–Singer thesis, this has led to a new dimension of dominance through a new global exploitation model where high-value activities are concentrated in the developed world and low-value activities in developing countries.

Value chains are characterized by power asymmetries, with lead firms in the dominating position and dominated firms mainly in developing countries which compete worldwide to take over certain tasks in the production process of goods. The competitive pressure to produce at low cost in low value adding segments of a GVC increases the pressure for low wages and poor working conditions. Firms in developing countries and governments that push for industrialization often act in concert to either prevent decent working conditions or not enforce them. Industrialization in the low-value segment can increase productivity and living standards to a certain extent in very economically underdeveloped countries, but in the end the allocation of production in GVCs prevents any true catching up – developing countries are caught in

the so-called middle-income trap. Vertical GVCs based on subcontracting typically lead to very low value added, low technological spillover and the worst working conditions. Vertical GVCs based on FDI are on average more advantageous, but without government rules and interventions they are not a ladder to eventually joining the group of developed countries.

The policy conclusion we draw is that a two-pronged approach is needed. There is no doubt that decent working conditions have to be established at all levels of value chains. Trade unions can play an important role in organizing international solidarity and, together with NGOs (especially in buyer-driven value chains), can put pressure on firms and change their behaviour at all levels of the value chain, improving working conditions and social protection. In addition, unions should support and take part in creating more democracy in MNCs and push for an economically and socially fairer investment and subcontracting policy which strengthens training and technological transfer.

In parallel to this, a development process that does not follow the Washington Consensus but intervenes in many dimensions of the market is needed.⁷ Developing countries should be jointly motivated, for example, to implement labour-friendly institutions, laws and social safety nets. Developing countries should play a larger role in international institutions and should have more room for experiments to find their own way. The role of the State should not be minimized, but geared towards economic and social development (Stiglitz, 2008). Free trade and free capital movement are of no intrinsic value and should be regulated to support development. Unions can play an important role in industrial and other policies which are important for catching up. Finally, unions can support initiatives to form global regulations and sanctions for MNCs; they can fight for policies that allow developing countries to make one-sided interventions in markets; and they can support the transfer of technologies.

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INTERNATIONAL JOURNAL
OF LABOUR RESEARCH

ISSN 2076-9806