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Labour in a Borderless Market^{*}

Isabelle Vacarie

Regardless of the nature of the legal system, types of employment have always been diverse: paid employment, self-employment, casual work, outsourced work, but also informal work. Changes in the scale of markets has introduced a new factor to be taken into consideration. The internationalization of both supply and production chains, as well as services networks, reveals that the spatial perimeter of corporations no longer matches that of the States. The resulting effect, in such borderless market, is the increasing trend toward the use of the most flexible and less costly employment types; and consequent challenges to the protection afforded to salaried employment.

Reasons explaining these changes are manifest. On the one hand, by contributing to the removal of physical distances, technological advances have enabled networked work at global level. On the other hand, free movement of capital and goods has fostered a new organization of work, indifferent to national borders: production units have been relocated, the practice of outsourcing and offshore service provision have escalated. The combination of these two phenomena have created the scope for corporations, at a global scale, to select the most advantageous legal frameworks. Cheap labour, in such context, has thus become a competitive advantage, completely against the spirit of labour law according to which competitiveness ought not to impinge on the protection afforded to workers.

A new question is thus emerging at both national and international level: how do we guarantee the respect of social rights in a context of generalized competition?

Amongst proposed answers, two solutions are particularly attractive as they have for ambition to ensure the achievement of decent work, regardless of modes of productions and employment types. The first is at the top of the principles adopted by

^{*} This paper is based on a presentation made at the 21st World Congress of the International Society for Labour and Social Security Law (Cape Town, 2015); Paper translated from the original French version by Thierry Galani Tiemeni, LL.B. (Yaoundé II); LL.M., LL.D. (UWC); Research Associate, Social Law Project, University of the Western Cape.

the Conference of the International Labour Organisation (ILO) in its 'Declaration on Social Justice for a Fair Globalization' of June 2008.¹ The 'Guiding Principles on Business and Human Rights' adopted three years later (June 2011) by the United Nations Human Rights Council establishes the second.² Whereas the ILO underscores what should be the objectives of both Members States and social partners in a context of global economic integration: namely the universalisation of social rights; the UN suggest a mechanism for the implementation of this objective: to extend the responsibility of the transnational corporation to all entities within its value chain.

§6.01 THE UNIVERSALISATION OF SOCIAL RIGHTS

Beyond the fundamental rights which have to be guaranteed to all workers, the ILO Declaration identifies social protection measures as one of its primary global strategic objectives: 'the extension of social security to all, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes'. The ILO stresses the prior necessity to establish an institutional and economic environment in which 'individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being'. This principle deserves attention for a double reason. First, due to its purpose: to guarantee the freedom of labour, as in the ability to act, to work; and second due to its universality.

Second significant element: the respect for fundamental rights is less expected from Member States' commitment to improve their national legislation than from the involvement of transnational corporations.

§6.02 EXTENDING CORPORATE RESPONSIBILITY TO THE VALUE CHAIN

Having established that the duty to respect human rights is a general norm of conduct that is expected from all corporations, in all their activities and anywhere they operate, the UN text specifies that such responsibility requires from the corporation to put in place mechanisms that prevent the occurrence of incidents with negative impacts on human rights arising from its trade relations or its organization as a group of companies. These mechanisms have to be extended to the entire 'value chain' on which the corporation has a capacity for action, or in other words, to all its 'influence

1. The ILO Declaration on Social Justice for a Fair Globalization of June 2008 (http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf).

2. The UN Guiding Principles on Business and Human Rights of June 2011 (http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

Report of the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie, unanimously adopted by the United Nations Human Rights Council in June 2011 (http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf).

zone'. Only such extension will enable it to exercise the 'due diligence' to which it is obligated (Articles 11 and following).

Even though lacking binding force, these two instruments have left unconcerned neither the States nor corporations. In France for example, following the vote in 2014 of a legislation designed to fight against unfair social competition, a second legislation on the due diligence of parent companies and outsourcers is under discussion. Internationally, the tragedy of the collapse of the Rana Plaza in Bangladesh has led, first to the signing, under the auspices of the ILO, of two agreements, one European, and the other American (June 2013), and then, a few weeks later, to the conclusion of a tripartite pact between the European Union, the Government of Bangladesh and the ILO (July 2013). Also, several multinational groups of companies have adopted global (or international) framework agreement.³

When considered together, the advent of these various legal instruments suggest that the protection afforded to workers, in international supply and production networks, may take new forms. What exactly is the situation?

[A] Findings

- Due to both their number and diversity, these instruments, first of all, indicate a decline of the international convention model to the benefit of a wide variety of 'unidentified legal instruments': declaration, pact, recommendation, voluntary international standard, etc. This movement, according to Benoît Frydman, is intertwined with the decline of states' involvement in the creation of international norms to the benefit of private entities: transnational corporations, international trade unions, non-governmental organizations, or standards-issuing institutions. Legal scholars are thus invited to 'come out of the cave of national sovereignty' in order to analyse yet another form of international regulation.⁴
- A reading of their headings provides a further perspective on the vision met by this succession of instruments. Emphasis was first placed on pursued objectives: 'social justice for a fair globalisation' or 'the protection of human rights' in a borderless market. Then on how to achieve these objectives. Objectives statements, sometimes, underscore the leading role – and the corresponding

3. Various international instruments on corporate social responsibility (CSR) are to be added to this list:

- The OECD Guidelines for Multinational Enterprises, 2011 Edition (<http://www.oecd.org/corporate/mne/48004323.pdf>).
- The UN Global Compact, launched in July 2000 by then UN Secretary-General Kofi Annan (https://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf).
- The International Standard ISO 26000:10 *Guidance on social responsibility* (2010) (<https://www.iso.org/obp/ui/fr/#iso:std:iso:26000:ed-1:v1:en>).

4. Benoit Frydman, *Petit Manuel pratique de droit global*, Bruxelles, Académie royale de Belgique, 'L'Académie en proche', série 'L'économie de marché est-elle juste?', tome 4, Bruxelles, 2014, 128 p.

responsibility – played by multinational enterprises in the global economy. Titles then refers to their ‘social’ responsibility or, broadly, to their ‘societal’ responsibility.

Sometimes the drafters of these instruments rather prefer to highlight the legal mechanism able to fulfil such responsibility. The ‘joint’ dimension of responsibility is then emphasized.

- Should one finally pay attention to the provision themselves, one notes that the concept of due diligence is the cornerstone of these instruments. ‘A duty of vigilance’ is conferred to parent companies and outsourcers. Correlatively, in addition to those of workers, methods of action available to various ‘stakeholders’ are envisaged: legal action for trade unions, associations and non-governmental organizations (NGOs); the establishment of warning system and the legal protection of whistleblowers.⁵ Could the concept of due diligence be the sign of ‘a solidaristic legal framework in which civil society is established as a community responsible for itself?’⁶

It then becomes necessary to closely analyse how each of these instruments involve the corporation in the establishment and protection of social rights. Only such analysis will reveal whether corporate responsibility has the means to achieve the goals set by the ILO and the United Nations.

[B] Analysis

If, in a context of market globalization, the idea of ‘joint’ responsibility is attractive, only the examination of the following two questions may lead to an assessment of its value:

- Which social rights are protected?
- What responsibility is specifically attributed to the parent company and the outsourcer with respect to other companies?

[1] What Social Rights?

‘The violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage’.⁷ In line with this ILO principle, the guidelines developed by IndustriALL Global Union, the global union federation,

5. Protection of whistleblowers, Recommendation CM/Rec (2014) 7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 ([http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2014\)7E.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2014)7E.pdf)).

See Marie-José Gomez-Mustel & René de Quenaudon, ‘Alerte professionnelle’ in the *Dictionnaire de la responsabilité sociale des entreprises*, edited by Nicolas Postel & Richard Sobel, Presses universitaires du Septentrion, 2013.

6. Charley Hannoun, ‘Pour un dispositif de vigilance mesuré et efficace’, *Revue de droit du travail*, no 7-8, July 2014, p. 441. (Translated from the original French version).

7. ILO Declaration on Social Justice for a Fair Globalization, Article A-iv.

indicate what is the minimum content of a global framework agreement for the federation to agree to sign it.⁸ Any such agreement has to confer to all workers of the relevant industrial group the fundamental rights enshrined in the ILO Declaration of 1998: freedom of association and right to collective bargaining, the group's commitment to not use forced or child labour, non-discrimination in employment and occupation. Three significant clarifications are made. The IndustriALL Global Union indicates that, in their essence, these rights matches those provided for by 'ILO conventions and jurisprudence.' When there is a conflict between national legislation and international standards resulting from such agreement, the norm that is most favourable to workers will apply. Finally, with regard to the scope of the agreement, once it is concluded at group level, it applies to all companies in the group and 'across the globe'. In addition to this scope, it has to 'include a firm and unequivocal commitment of the multinational in question to ensure that its suppliers and subcontractors do adopt these standards for the benefit of their workers.'

While not underestimating the value of this category of framework agreements, their provisions do omit, nonetheless, to include various social rights considered to be essential by the ILO Declaration ten years later (2008): Protection of health and safety at work, worker participation in the benefits of growth or social protection measures.

A reading of the most recently concluded agreements indicates that these other rights are currently being progressively asserted. To take but one example, the Global Agreement concluded in Davos, 22 January 2015, by the oil company Total devotes four articles respectively to the:

- Equality between men and women;
- Protection of health and safety in the workplace;
- Life Insurance; and
- Social measures in anticipation and support of organizational changes initiated by the group. However, a distinction as to its beneficiaries is attached to this expansion of rights. If, on all sites, health and safety protection measures also apply to employees of service providers companies, the application of the remaining provisions of the agreement is reserved for group employees, the group including, as per the agreement, those affiliates in which Total SA holds, directly or indirectly, more than 50% of the share capital. (Article 1 of the Agreement).⁹

In addition, as indicated by their name (International Framework Agreement – IFA) international agreements are framework agreements.¹⁰ Several issues are referred to decentralized bargaining. And there lies not only their advantage, but also their

8. IndustriALL Global Union's Guidelines for Global Framework Agreements (GFAs) (http://www.industriall-union.org/sites/default/files/uploads/documents/GFAs/industriall_gfa_guidelines_final_version_exco_12-2014_english.pdf).

9. Corporate social responsibility, Total Global Agreement, 22 January 2015 (http://www.total.com/sites/default/files/atoms/files/total_global_agreement_va.pdf).

10. Isabelle Daugareilh underscores the uncertainty that surrounds the nature and legal effects of an IFA. It could be considered as 'a unilateral commitment of the employer, an agreement, a sui generis contract, a gentleman's agreement, but probably not as a collective agreement' ('Accord

limitations. Advantage because such mechanism enables the establishment, for each rights and country by country, of implementation procedures adapted to the diversity of national systems. Thus the Total Agreement stipulates that the terms and conditions of its life insurance system is to be determined in each company within the Group and 'adapted to social laws and customs in the country'. Limitation for that for employees, the effectiveness of their rights is dependent on the results of negotiations within the subsidiary that employs them. In case of conflict, agreements usually provide for an internal procedure for conflict resolution. It is however to be noted that such procedure remain basic.

This justifies the current interest for provisions destined to establish a principle of joint responsibility applicable to organizations with multiples subsidiaries and affiliates.

[2] Which Corporate Responsibility?

A consensus emerges from a reading of all international instruments so far mentioned: transnational activities of corporations presupposes a new form of corporate responsibility, that of ensuring the respect of social rights by all entities in their supply, production or distribution chain. Various countries have already adopted legislation or have jurisprudence going in such direction. The main issue then is to capture the meaning and scope of the notion of vigilance.

[a] The Notion of Vigilance

French legislation is emblematic of the different ways of conceptualizing vigilance. Two instruments make reference to this obligation but do not attribute it the same reach. The one merely imposes on the instructing corporation obligations related to the actions of its direct or indirect subcontractor, while the other imposes on the instructing corporation the obligation to identify the risks for, and prevent the occurrence of, human rights and fundamental freedoms infringements:

- (1) The first law, dated 10 July 2014, intends to fight against unfair social competition between subcontractors or service providers.¹¹ Transnational secondments of low cost labour are specifically targeted. In order to combat

cadre international' in the Dictionnaire de la responsabilité sociale des entreprises, *supra* note 5). (Translated from the original French version).

On the topic of IFAs, see also Marie-Ange Moreau, 'Négociation collective transnationale: réflexion à partir des accords-cadres internationaux du groupe ArcelorMittal', *Droit social*, no 1, January 2009, p. 93; Isabel da Costa et Udo Rehfeldt, 'Les négociations collectives transnationales: dynamiques des accords-cadres européens et mondiaux', *Revue de l'Institut de recherches économiques et sociales (IRES)*, no 71, 2011/4, p. 115.

11. Act no 2014-790 of 10 July 2014 on efforts to combat unfair social competition (<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029223420&fastPos=1&fastReqId=299159535&categorieLien=id&oldAction=rechTexte>).

organized fraud, three duties are imposed on the instructing corporation or the contracting entity:

- to ensure, during the conclusion of an outsourcing agreement, that its co-contractor has effectively registered all employed or seconded workers with the labour administration;
- during the execution of the contract, to instruct the co-contractor to put an immediate end to any labour law violation it becomes aware of;
- the third duty points to control services, they must be informed if the subcontractor does not respond to the instructing corporation instructions.

With respect to employees, non-compliance with these obligations makes the instructing corporation jointly liable for the subcontractor infringements. The purpose of this provision is to impose a responsibility on the corporation that ultimately financially benefits from observed irregularities, such irregularities being at the origin of a decline in the price of rendered services. The ultimate beneficiary of such *dumping* cannot hide behind the smokescreen constituted by the legal autonomy of legal persons.¹²

- (2) In the wake of the UN Guiding Principles, another instrument, currently under discussion, focused more and broadly on parent companies and outsourcers. In a first (and unsuccessful) version this French legislation endorsed ‘fundamental principles’ established by the UN instrument;¹³ a second version, adopted on first reading by the National Assembly, merely borrowed its ‘operating principles’, namely the implementation of a due diligence process that takes the form of a ‘vigilance plan’.¹⁴ This legislation provides that such plan has to be drawn up, be disclosed, and be effectively implemented.¹⁵

A similar vision of the notion of vigilance underpins both versions: ‘identify and prevent the realization of risks resulting either from a corporation own activities, or the companies it controls or with which it has business relations’. The list of risks involved

12. Gwenola Bargain, Pierre-Emmanuel Berthier, Tatiana Sachs, ‘Les logiques de la responsabilisation au cœur des évolutions récentes du droit social français’, *Droit ouvrier*, no 797, December 2014, p. 784.

13. Proposed legislation no 1519 (National Assembly) of 6 November 2013 on the duty of due diligence of parent companies and outsourcers (<http://www.assemblee-nationale.fr/14/propositions/pion1519.asp>).

14. Proposed legislation no 2578 (National Assembly) of 11 February 2015 on the duty of due diligence of parent companies and outsourcers (<http://www.assemblee-nationale.fr/14/propositions/pion2578.asp>) adopted on first reading by the National Assembly, 30 March 2015 (<http://www.assemblee-nationale.fr/14/ta/ta0501.asp>).

See Olivier Favereau’s position on the topic in the following paper, RDT, no 7-8, July-August 2015, pp. 446-450.

15. Disclosing a vigilance plan should be achieved via the publication of the non-financial report major companies are required to publish under the terms of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (JO-EU of 15 November 2014, L 330).

is broad: risks of human rights and fundamental freedoms infringements, health and environmental damages, and active or passive corruption. Nonetheless, each of these risks have a very different implication for corporate liability. In the first case, the responsibility of the parent company or instructing corporation is engaged unless it proves not to have been able, despite its vigilance and its efforts, to prevent the occurrence of these infringements. In the second case, the same liability is subjected to a double evidence: evidence of the inadequacy of the vigilance plan and evidence that such inadequacy has contributed to the damage.

It is to be added that, although the duty of vigilance is broad and thus applies to all businesses, a due diligence process may only be required from specific businesses.¹⁶

[b] The Scope of Vigilance

‘The responsibility to respect human rights requires that business enterprises seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.’ Having established this principle, the UN text clarifies the notion of business relationship. It refers to relations a corporation maintains ‘with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services’. The ISO standard ISO 26000: Guidance on corporate social responsibility prefers the notion of ‘sphere of influence’. This concept refers to ‘a domain, political, contractual or economic relationships through which a company can influence the decisions or activities of other companies or individuals’. This alternative concept has the advantage of being adapted to a proactive approach to compliance as it requires companies to play a positive role, as established by the OECD Guidelines: ‘Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a “demonstration effect” on other enterprises should not be overlooked’.

One thing is certain: regardless of the version that is ultimately chosen, judges will have to give it a meaning that allows for it to produce a useful effect, for the effectiveness of this principle and for the consequent effectiveness of social rights depends on it.

[c] Judicial Remedy

When referring to groups or networks of corporations, the term ‘joint responsibility’ denotes the fact that the parent company or the instructing company is to be jointly liable in the event that the actual employer, be it one of its subsidiary, a subcontractor or a supplier has not met its duties as an employer. For example, French legislation provides that the instructing company is to be ‘jointly liable, with its co-contractor, for

16. That is the position France is currently following: in the proposed legislation currently under discussion, only very large enterprises are imposed a due diligence process (Article 1 of the draft law).

the payment of remuneration and allowances payable to employees'.¹⁷ The instructing company is also required to take responsibility for employees' collective accommodation when the subcontractor fails to fulfil this obligation with respect to seconded workers.¹⁸

The progressive establishment of a duty of due diligence in respect of various entities present in the value chain now provides a solid legal basis for joint responsibility within transnational corporations. One nevertheless needs to highlight conditions that need to be met for employees to be able to effectively benefit from the application of this principle:

- (1) Legal action: Employees whose interests have been adversely affected naturally have standing for legal action. However, because employed by a network of subcontractors, geographically remote from the headquarters of the instructing corporation, they will be unable to personally bring their matter before the competent court. Hence the need, either to provide them with the means to act collectively or to confer to trade unions the capacity to act in their name and on their behalf.
- (2) Burden of proof: Is it for employees to prove that the corporation has not been diligent or is it for the latter to establish that it has properly fulfilled its duty of diligence? Only the second solution can provide employees with a real jurisdictional guarantee considering it is common knowledge that a negative proof is always difficult to report. The precautionary principle supports such position, as it determines responsibility via an assessment of due diligence exercised in order to prevent the damage.
- (3) The international dimension of the dispute: the duty of due diligence specifically coincides with the advent of a borderless market. Can we therefore ignore the fact that, generally, disputes do involve extraneous factors and a conflict of laws is always possible? Having this in mind, the authors of the French instrument currently under discussion suggest that judges should approach it 'as a mandatory law so that the French legislation, when it provide more protection to the weaker party, can take precedence over the foreign legislation normally applicable to the contract':

Even if the judge resorts to the notion of public order, other difficulties will persist as the subsidiary, the supplier and the subcontractor will remain beyond the scope of the territorial competence of French courts, in the absence of a treaty relating to the execution of court decisions, while the lack of capacity of the judiciary in the other country may allow them to enjoy impunity.¹⁹

17. Labour Code, Article L. 3245-2.

18. Labour Code, Article L. 4231-1.

19. Nicolas Cusacq, 'Le devoir de vigilance des sociétés-mères et des entreprises donneuses d'ordre', *Recueil Dalloz*, 2015, p. 1049.

An alternative judicial approach is closely linked to the principle of anticipation. In order to prevent any infringements of employees' rights, a judge may be asked to order that a corporation implements a due diligence process. The French legislation currently under discussion thereby provides that 'any person with a standing to act may request that the competent court orders, if necessary with the imposition of a penalty, that a company has to establish a vigilance plan, ensure that such plan is communicated to the public, and report on its implementation.' It is to be noted that this legal recourse is open to a broad category of persons, including trade unions, associations and non-governmental organizations. In addition to the payment of a penalty, the judge may also order the payment by the company of a fine that is non-deductible for tax purposes. Finally, all convictions handed by the judge are to be posted on a dedicated website.

[C] **Lessons**

The decline of international conventions to the benefit of 'unidentified legal instruments' called for a move beyond a model based on agreements between States in order to explore other forms of regulation. The advent and rise of the concept of joint responsibility now points to the perspective from which they have to be analysed: namely in terms of their ability to confer a binding force to the duty of vigilance in the organization of transnational companies:

- (1) Issues relating to how multinational groups should structure both their societal and business relations have never been overlooked by international instruments on corporate social responsibility (CSR). The OECD Guidelines urge them to 'develop and apply effective management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate'. A similar approach is recommended by the UN Global Compact and the international standard ISO 26000. In their presentation of these different sets of standards and principles, each institution emphasizes the competitive advantages a corporation is likely to gain by implementing them: reputational benefits and better risk management. These instruments nonetheless remain voluntary. Corporations freely decide to follow the recommendations of the OECD, join the Global Compact or implement the ISO 26000 standard. For companies, this results into a sustained offering of norms, standards and principles that seeks to convince them that they have the option to choose the instrument that best suits them. Alain Supiot has demonstrated the limits of such normative self-service afforded to corporations: 'without organisation likely to demand accountability and without third party to whom to answer, this responsibility is clearly not one'.²⁰

20. Alain Supiot, 'Du nouveau au *self-service* normatif: la responsabilité sociale des entreprises', pp. 541-558 in *Études offerte à Jean Pelissier. Analyse juridique et valeurs en droit social*, Paris, Dalloz, 2004, 632 pp. + XVIII.

- (2) Deviating from such normative self-service, various multinational groups have opted to sign agreements with one or more global union federations. A reading of these agreements reveals a twofold commitment from multinationals: to comply and enforce compliance across the globe with a specific set of rights and obligations.

In the Total agreement for example, several provisions deal with the relations between the group and its suppliers and service providers.

The group expects that these companies:

- ‘- Adhere to fundamental principles and rights at work;’
- ‘- Make sure that their own contractors respect principles equivalent to the above;’
- ‘- Comply with the legal and contractual provisions laid down in labour and social security law and with existing collective labour-management agreements.’
- ‘If the principles are not respected, the Group will take the necessary action, which may go as far as terminating the contract’ (Article 2.5 and Article 4.5).

The shortcomings of this agreement are clearly highlighted by the spirit and letter of its provisions: namely the lack of formalization of the group’s collective duties. The agreement is clear on what the group expects from its co-contractors but remains silent on how it intend to enable them to meet these expectations.

This however was the purpose of the transnational negotiation that was initiated in the aftermath of the tragedy caused by the collapse of the Rana Plaza in Bangladesh.

- (3) Unassuming in its presentation (seven pages in total), the Bangladesh Accord on Fire and Building Safety, signed in Geneva on 13 May 2013, is in many ways exemplary.²¹ It primarily is a manifestation of the collective response to the collapse of a building located in the outskirts of Dhaka, where several thousand people were employed in the manufacture of cheap clothing. The toll was dramatic: over a thousand dead and more than two thousand injured. During the following months, negotiations opened across the entire textile sector, under the auspices of the ILO, and an agreement was reached between international trade union covering the sector (IndustriALL and Uni Global Union) and a number of major international clothing brands. Besides these first signatories, the agreement so far includes two hundred companies, eight trade unions from Bangladesh and four NGOs. It covers 1,585 manufacturing plants. It is also exemplary due to its purpose: ensure health and safety

21. Accord on Fire and Building Safety in Bangladesh of 13 May 2013 (http://www.industriall-union.org/sites/default/files/uploads/documents/2013-05-13_-_accord_on_fire_and_building_safety_in_bangladesh_0.pdf).

See Alain Supiot, pages 385 à 400 de *La Gouvernance par les nombres. Cours au Collège de France (2012-2014)*, Paris, Fayard, 2015, 520 pages. Alain Supiot notes that this agreement provides a legal definition of the type of relationship created by corporate networks: namely ‘bonds of allegiance’.

protection for workers who, right at the source of international supply chains, manufacture fabrics and sew clothing. That is to say, those who are the first victims of the shopping practiced by corporations in the national rights' supermarket. Finally, the approach taken in order to ensure its implementation ought to be highlighted.

The principle of loyalty in contracts requires that each party in a contract does everything in their power to allow the other party to perform their own obligations. This agreement implements this principle by listing the obligations of the manufacturers, and subsequently list those of the instructing corporation:

- Manufacturers undergo inspections commissioned by the consortium of instructing companies, implement collective safety measures prescribed by the inspectors, implement safety training programmes for employees, and acknowledge employees' right to withdraw from a dangerous work situation and – individually and collectively – voice concerns relating to their working conditions. Manufacturers failing to respect these obligations may face an 'economic ban'.²² The agreement indeed provides, as a punishment, for the exclusion from the market constituted by the combination of corporation parties to the agreement.
- For their part, instructing corporations have to ensure that manufacturers are financially able to meet their various obligations. This calls for the creation of long-term economic relations. Such support can also take the form of financial assistance either directly granted by the instructing corporation or by a funder (Articles 22 and 23). Article 14 provides that all corporations linked by this agreement should make reasonable efforts to enable workers having lost their jobs due to their employer being side-lined to continue their activities with another manufacturer 'in good standing'. If necessary by promoting hiring preferences. Workers should not have to suffer from the 'ban' of their employer.
- The agreement finally implements a mechanism for a pool funding of its provisions: each member company will contribute in proportion to its turnover in Bangladesh (Article 24).

Without underestimating the challenges facing its implementation, the benefits of this agreement nonetheless are twofold. On the one hand it establishes rules designed to guarantee the respect of fundamental rights at various stages of the production chain. On the other hand, it imposes a set of common rules on corporations operating in the same sector.

Coming to the end of this review of instruments providing for corporate responsibility, it is to be noted that neither the law nor the agreement have disappeared. The fact still remains that the international dimension of markets has expanded their topics: from labour relations to the relationship between different entities within production

22. Alain Supiot, *supra*, p. 393.

and distribution chains, from the employer's liability to that of dominant companies or companies at the head of value chains.

Such expansion is the expression of a progress in attitudes toward the protection of social rights: from multipartite organizations and the power they yield, the power to distribute activities, to confer them specific legal forms, to outsource and relocate. This certainly should be viewed as 'the first steps of what might effectively become social law for organisation'.²³ Such law, in turn, reframes and enhances the power of organizations. It reframes it by outlining what are the duties attached to it. It enhances it by making the formulation of standards designed to induce the implementation of these duties a component of such power. Thus one may need to revisit, from this perspective, an issue that currently still generates much discussions: namely that of the nature and the legal impact of IFAs.

23. Elsa Peskine & Stéphane Vernac, 'Pouvoirs et responsabilités dans les organisations pluri-sociétaires', pp. 119-133 in *Licenciements économiques et restructurations: Vers une redistribution des responsabilités* (edited by Georges Borenfreund & Elsa Peskine), Paris, Dalloz, 'Thèmes et commentaires', 2015, 154 p.