

**GLOBAL AGREEMENTS: INSTRUMENTS OF TRANSNATIONAL  
COLLECTIVE BARGAINING\***

**ACORDOS GLOBAIS: INSTRUMENTOS DE NEGOCIAÇÃO COLECTIVA  
TRANSNACIONAL**

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**ABSTRACT:** Economic and social relations, related to the movements of transnational corporations as an important sphere of globalization, have generated a strong impact on the positive law of the states and, as a result, in the international legal system itself. All this has led to studies that point to a new role of the national state, which comes to live with international actors that create rules applied in the internal system of these states. These new rules have proven the inability to discipline and create social relationships, allowing the emergence of private regulatory regimes and a diversity of sources of law describing current legal pluralism. As a private standard of relevant social regulation at a global level, the object of this study is transnational collective bargaining, highlighting its definition, reasoning, legal frameworks, main difficulties of implementation and effectiveness.

**Key words:** International Economic Law; International trade law; new legal standards; Domestic law.

**RESUMO:** As relações econômicas e sociais, relativas aos movimentos das empresas transnacionais como uma esfera importante da globalização, têm

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gerado um forte impacto sobre o direito positivo dos estados e, como decorrência, no próprio sistema jurídico internacional. Tudo isso tem levado a estudos que apontam um novo papel do Estado nacional, que passa a conviver com atores internacionais que criam regras aplicadas no sistema interno desses estados. Essas novas regras comprovaram a incapacidade de disciplinar e criar relações sociais, permitindo o surgimento de regimes regulatórios privados e uma diversidade de fontes de direito que descrevem o atual pluralismo jurídico. Como um padrão privado de regulamentação social relevante em âmbito global, o objeto deste estudo é a negociação coletiva transnacional, destacando sua definição, raciocínio, quadros legais, principais dificuldades de implementação e eficácia

**Palavras-chave:** Direito Internacional Econômico; Direito internacional do Comércio; Novos Padrões Legais; Lei Interna dos Estados.

## 1. INTRODUCTION

Global agreements, or international framework agreements are idealized instruments since the 1960s, and that has generated a growing impact, especially from the beginning of this century, in the establishment of transnational standards, in the companies' scope, forming patterns in field social and employment to be observed and applied in labor relations established in the transnational corporations. (Platzer and Rub, 2014: 03)

Global agreements are an approach developed by the Global Union Federations (GUF), which operate in specific sectors, with the aim of using negotiations and agreements with the head offices of transnational corporations (TNCs) to implement specific components of labor relations at borders. (Platzer and Rub, 2014: 03).

Global agreements have essentially European origin, continent with a strong tradition of social dialogue, which is still held the vast majority of the mentioned agreements. But even face some resistance, there are already such agreements signed by British companies, Canadian, Japanese, South African, and also Brazilian companies, among the more than one hundred international framework agreements already signed by transnational companies, indicating an encouraging trend of expansion of these important trading instruments.

Through these agreements, transnational companies are committed to compliance and implementation (decentralized) of the agreed social standards, based on social human rights body internationally coded such that the core labor standards set by the ILO, present in most agreements signed. This commitment

also applies to branches of MNC's, and also, albeit somewhat diluted form, suppliers and partners. (Platzer and Rub, 2014: 03).

Such agreements have proved particularly useful to overcome the asymmetry generated by globalization, which is caused by the fact that, while the goal of the multinational companies' action is increasingly global, the terms and conditions of work of employees continue to be determined primarily at the national level, ranging greatly from one country to another. (Papadakis et al, 2008: 67)

By enabling the regulation and organization of cross-border labor relations by the interested parties, the global agreements can be seen as a practical test platform private governance, which can provide important clues to determine whether, and to what extent, a system of rules and rules can be effective in the implementation of social human rights as developed and implemented by a policy approach based on self-regulation by social actors. (Platzer and Rub, 2014: 03)

## **2. GLOBAL UNIONS**

Global Unions are international trade union organizations that work together with a shared commitment to the ideals and principles of the labor movement, and in order to defend human rights and labor standards worldwide<sup>1</sup>.

The collective signature meets the Global Union Federations are international federations of national or regional unions that organize and represent workers in a particular occupation or industry, and the International Trade Union Confederation (ITUC), an international organization of national trade union confederations, with over 300 member organizations of the most diverse

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<sup>1</sup> Available at: <http://www.global-unions.org/>

places in the world, with a total membership of about 176 million workers. (COTTON, 2012)

These unions are guided by a sense of solidarity that involves the commitment of members to support each other in the struggle with employers at the local level and at the international level, and in order to protect minimum labor standards to be applied to workers everywhere, they are motivated by the belief that the violation of any of the members is injury to all. (COTTON, 2012)

The increasing organization of the international trade union movement, and search of mechanisms to make itself more effective, is a response to the internationalization of the market and the labor and the growing power of multinational companies, which makes action at the national level insufficient to defense the workers' rights in the globalized market.

The recent MNEs's process of mergers and acquisitions has stimulated a more adjusted performance of global trade unions for the observance of a minimum list of fundamental rights of independent workers from the countries where they work. National unions alone do not have the ability to influence corporate policy without concerted international cooperation.

The internationalization of production and of the economic markets has increased the incentives for national unions cooperate globally, with greater coordination and promotion of joint actions. This cooperation has brought tangible benefits, such as increasing negotiating transnational agreements, in the form of international framework agreements, global agreements. (COTTON, 2012)

However, many are the difficulties to overcome. There are huge cultural, organizational and political differences between the unions that make it particularly difficult cooperation internationally. The language barrier is still quite significant at the international level, especially for trade unionists with a lower

level of education. Even with the current ease of transport and communication, it is still difficult for a union to understand the positions of other members, considering the fact that each one is inserted. (COTTON, 2012)

To play a significant role in the twenty-first century, trade unions need to organize in order to coordinate the different national labor interests. Workers need unions to unite themselves globally, promoting a supranational political identity that increases the power of these entities in negotiations with global corporations, not subordinate their interests to individual demands of one country or another. (Lerner, 2007).

Unions are important tools for social and economic justice, and should act to expand the human rights of the workers and democracy throughout the world, especially in the context of transnational corporations, whose activities and duties applied reach countries with different realities throughout the world.

Once well organized, unions assume the mission to counterbalance the negative social effects of the expansion of global corporations on the world scenario, a task that is not only up to States.

### **3. MEANING AND OVERVIEW OF GLOBAL AGREEMENTS**

According to the ILO definition<sup>2</sup>, the global agreement, or international framework agreement "is an instrument negotiated between a multinational enterprise and a Global Union Federation (GUF) in order to establish an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates."

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<sup>13</sup> ILO Press, 2007. Available at: [http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS\\_080723/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_080723/lang--en/index.htm) (author translation)

Although there is still disagreement among scholars about the nature of global agreements<sup>3</sup>, the concept presented by the ILO allows us to conceive of it as a concrete instrument of transnational collective bargaining.

Global agreements are worldwide agreements made directly between capital and labor<sup>4</sup>, between multinational companies and international trade union organizations representing workers at the global level, in which these entities are recognized by multinational companies as legitimate parties to through negotiations and dialogue, resolve conflicts and establish working conditions.

The main feature that differentiates them from other agreements from the social dialogue is the fact that multinational companies recognize the entity that represents the workers as a global actor, be it a global union federation or a global organization of employees, breaking a position historically adopted by companies, which refused to have any kind of interactions, even informal ones, with the trade unions of global scope, not to give them legitimacy. (Stavis, 2010: 5)

Originally global agreements arose as a result of the weakening of the nation-state (Hammer, 2008: 89) and as a response of workers to the growing influence of transnational corporations in industrial relations in the 1960s, through the three international trade secretariats (currently renamed international trade union federations), which wanted to avoid the existence of fragmentation of the labor movement in negotiations with transnational corporations. (Gallin, 2008: 16)

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<sup>3</sup> STAVIS, Dimitris. International framework agreements and global social dialogue: Parameters and prospects. **International Labour Organization**. Employment Working Paper No. 47, ILO.

<sup>4</sup> Idem



In this situation it is also highlighted the dominant role of the WTO, along with the World Bank and the IMF in the formation of the international architecture of trade and finance, which facilitated the process of globalization of the economy, without, at the international level, any balance that could challenge these dominant architectural elements have been able to establish itself institutionally in the areas relevant to social or employment policy, despite the social norms provided in global trade agreements, or even the ILO, not entirely fulfilled its aim of bringing a social dimension to globalization, despite several attempts undertaken since the 1990s (Platzer and Rub, 2014: 4).

Global agreements are voluntary agreements, not subject to any legal or regulatory requirement (Bourque, 2005: 13). Because of this, at first, few companies agreed to receive delegations of international trade secretariats to discuss issues affecting industrial relations and operations, and still retreating when they perceived that involved labor authorities expected some form of binding commitment and serious changes in corporate practices of the company. Thus, despite the persistence of the trade unions, and expansion of its organization and operations, there were no international framework agreements in the decades of 1960-1970. (Gallin, 2008: 25).

The first international framework agreement was signed only on 23 August 1988, the International Union of Food and Allied Workers' Association (IUF) and the transnational company BSN (now Danone since 1994) under the title of "common view point IUF/BSN" in a friendly atmosphere of mutual respect and trust, outside any context of conflict, providing, by mutual agreement between the parties, promoting coordinated initiatives throughout the BSN group on four issues: a) a policy for skills training in order to anticipate the consequences of the introduction of new technologies or industrial restructuring; b) a policy aimed at achieving the same level and the same quality of information on economic and



social fields in all locations of BSN's subsidiaries; c) development of conditions to ensure effective equality between men and women at work; d) the implementation of trade union rights as defined in ILO Conventions 87, 98 and 135. (Gallin, 2008: 26)

The mentioned global agreement, signed by Danone, including its subsidiary arrangements, set the standards for new international framework agreements with transnational companies, and stands out, even today, for its comprehensiveness and effectiveness (Gallin, 2008: 29).

The negotiation of global agreements usually occurs on the initiative of a national federation affiliated with a ITUC (International Trade Union Confederation) in the country where the multinational has its headquarters, through informal contacts with the human resources department of the company. The exchange of preliminary information between the ITUC and guidelines directed at multinational companies are also informal, and in many cases, are not retained due to the reluctance of the management of the companies to start formal negotiations with international trade union organizations, without there being a legal obligation to signing such agreements. (Bourque, 2005: 14).

After the first contacts, the ITUC's secretaries prepare a draft agreement, which is sent to the national federations or unions, and made the necessary modifications to that are addressed specific problems that unions face with the multinational company. Discussion and proposed changes are made mainly through the internet, by mail or by phone, if necessary, being prepared by the ITUC to which it is linked to a labor union new project agreement following the amendments made in the negotiations. The average duration of negotiations is six months, with registration cases have lasted up to four years. (Bourque, 2005: 14)

These global agreements provide for fundamental principles and rights at work, including the elimination of child labor, prohibition of forced labor, the elimination of all forms of discrimination, freedom of association and the provision of collective bargaining, making references to the main Conventions ILO. The other provisions vary from one agreement to another, and may refer to other issues covered by ILO standards relating to health and safety, wages and training, among other issues, through which has gained increasing prominence in the reference agreements the supply chain, even if the suppliers are not part of the agreement. Multinational companies have signed a commitment to inform all subsidiaries and suppliers about the conditions signed the Agreement, recommending the adoption of the agreed measures, and following the adoption of these measures, through the agreements compliance control mechanisms, or impose them as contractual obligations (Muller et al, 2008: 5.).

The content of the latest international framework agreements has also covered issues that go beyond the labor law field, including new issues related to workers' living conditions, their families and other people affected by the activities of the company. A growing number of global agreements have included AIDS-fighting policies. As they become part of the corporate social responsibility strategies of the company, the agreements often have also addressed environmental issues such as environmental protection, which allows even a broader role of the unions in the conduct of these issues. (Sobczak, 2007: 123)

To ensure the validity and effectiveness of agreed standards, mechanisms for implementation and monitoring procedures are key elements that deserve special attention.

With the conclusion of a global agreement, the companies undertake to comply with certain minimum working conditions. From the point of view of the ITUC, is of the company, therefore, the greatest responsibility for the

systematic application of the agreement and compliance with it, because they become responsible for integrating the content of the agreements in corporate policy and ensure its implementation through the system existing management. For ITUC, two conditions are essential for the successful implementation of an overall agreement: first the translation of agreements for all languages that are relevant to each business establishment; secondly, ensuring that all company employees will be informed about the content of the agreement - including employees of subsidiaries, suppliers and subcontracted. (Platzer and Rub 2014: 11)

The publication, notification and distribution procedures of the agreement's contents in all locations where the company operates include: publication of the Agreement on the company website and social and sustainability reports, distribution of pamphlets and posting ads at all the company's facilities. In some cases, more complex procedures are employed as regular meeting with the management of all branches. Alongside these measures taken by companies, GUFs also contribute to the distribution and publication of the content of the agreements, organizing seminars and regular workshops for implementation of the agreements with union representatives and workers from different regions of the world and encouraging affiliated unions to inform employee representatives about the content of the global agreements on all local and national meetings. (Platzer and Rub, 2014: 11)

Another crucial point from the point of view of the GUFs is the creation of effective mechanisms for monitoring the agreement, central challenge in implementing a global agreement, and what can be done through different approaches. One of the procedures used is the monitoring by means of external certification, audit, or similar bodies, which is not well accepted by employees and labor unions. First, due to the complexity of the production chain, this complicates

the monitoring of all suppliers by external agents. Another reason is the lack of experience and know-how of external agencies to monitor compliance with social and labor rights. Finally, there is the danger that the union representatives and workers are excluded from the supervision of international agreements process, and that companies hired external agencies retain exclusive control over the monitoring process. Thus, GUFs tend to only accept external oversight as a complementary tool to monitor complex and extensive network suppliers and only in cases where there are clear agreements on the concrete follow-up process and use of the results generated by these agencies. (Platzer and Rub, 2014: 11)

For GUFs, the only effective system to ensure "independent supervision" is monitoring in place by employees and their unions, although lack the resources to do so, since the monitoring in this way would require the presence of independent trade unions in each the headquarters of the company and its suppliers. In this scenario, most GUF focus their efforts on part of the development of monitoring procedures developed by companies continually informed and consulted during this process. (Platzer and Rub, 2014: 12)

The creation of effective mechanisms for the resolution of conflicts addressing violations of the provisions of an international framework agreement represents an important step in the practical implementation of these agreements. The resolution of conflicts between companies and workers become easier when unions and companies develop before, and independently of any particular disputes, a specific and efficient process for dealing with possible violations of agreements with its forecast of sanctions in the event of not being mitigated the violations. (Platzer and Rub, 2014: 12)

Several IFAs (International Framework Agreement) define special procedures that allow workers to register complaints when the rights provided in the agreements are not respected. Usually the local representative of the workers

meets with local management. In case of no resolution of the problem, workers or unions can contact the national union of the company. If it still does not issue resolved, the issue must be discussed directly by IFA signatories. (Sobczak, 2007: 124)

In its vast majority, IFAs establish a regular monitoring, either by CER, or by a special committee of signatories. It is usually held an annual meeting between the company's management and the part that represents the workers to discuss about the actions taken and the difficulties faced in the implementation of the agreement, but also to make changes in the original text and assess the impact of IFA (Sobczak, 2007: 124)

Among the objectives pursued by the International Federations through the conclusion of international framework agreements, stands out the guarantee of minimum labor standards in all locations where it operates the covenanting transnational company, its suppliers and subsidiaries in order to improve the general conditions of job; establish an ongoing relationship of dialogue and negotiation with transnational company and its directors and regional and national managers, since these companies recognize these unions as legitimate representative of the workers in the signing of a global agreement; use international framework agreements to collaborate with the trade union's structures organization at the sites operated by multinational companies and their suppliers; as well as use them to create an international union network related to transnational companies in order to improve cooperation between the trade unions, since an effective structure of representation of union at the local level, and union cooperation in the global sphere they are essential for a lasting process of continuous improvement of working conditions in the international field.

On the other hand, it is clear, on the side of MNC's, that a good portion of that signed global agreements showed openness to social dialogue with the unions previously at the local, national, or international scope. In other cases, however, multinational companies have been negotiating such an agreement with the clear order to restore its corporate image tarnished by allegations of public business practices or irregular work (Bourque, 2005: 13).

However, it is noticeable that, although developed in a conflict environment, does not covering all possible content, and even if there are difficulties in dissemination and implementation, global agreements, from the simple to the complex, will always have the important role to promote social dialogue between business and workers, which is the first step towards more equitable and fair social relations.

#### **QUANTITATIVE EVOLUTION AND QUALITATIVE ANALYSIS**

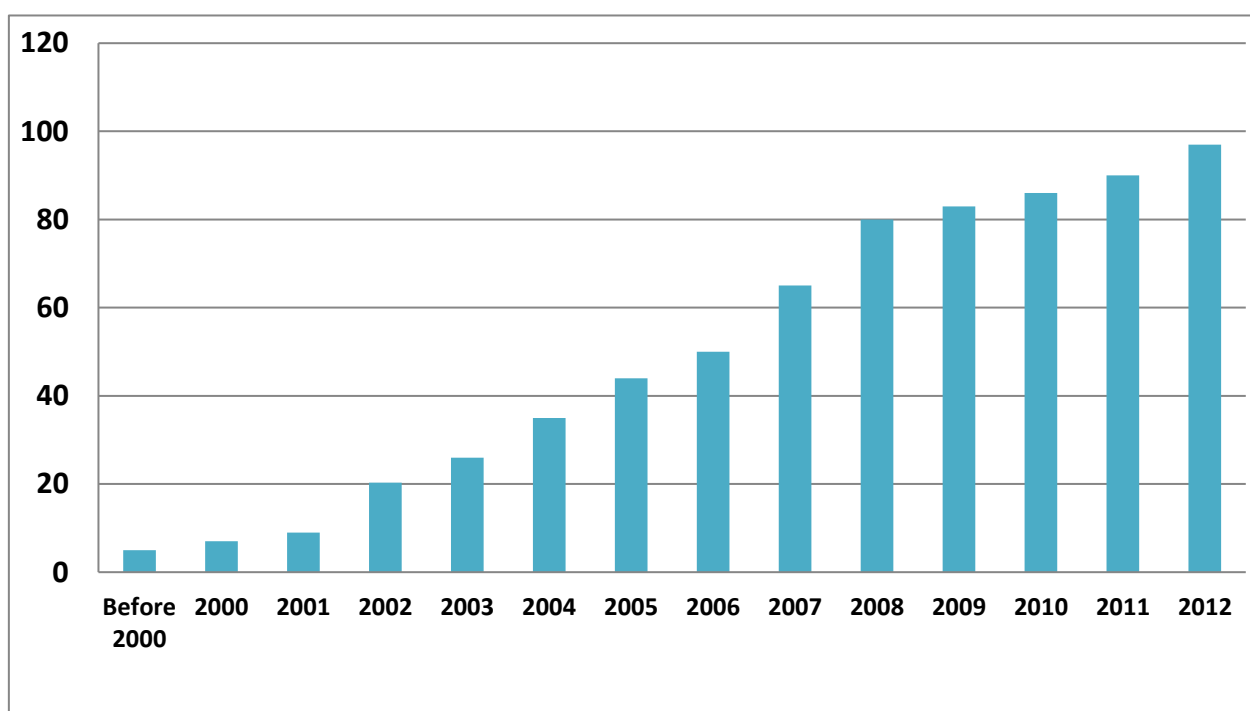
The growing of social vulnerability resulting from the process of economic globalization has led to a tendency to responsible corporate citizenship, opening a window of opportunity that has been used by transnational syndicates to impose its new policy based on bilateral agreements with companies, which in turn, have given increasing importance to corporate social responsibility practices (CSR). (Platzer and Rub, 2014: 6)

In the current architecture of global governance, international framework agreements are useful, and even indispensable, for the establishment of minimum social standards generally applicable to companies operating internationally. (Platzer and Rub, 2014: 6)

Since 2000, an increasing number of IFAs has been negotiated in the field of CSR among multinational companies, mainly European, and the International Federation of Trade Unions (IFTU). The development of this form of regulation, aiming to set labor standards for companies, their subsidiaries and

sometimes their subcontractors, is facilitated by two converging elements. On the one hand, the companies intend to increase the legitimacy and credibility of its strategies in the CSR field by transforming its unilateral commitments on strategies and negotiated terms. On the other hand, the unions recognize that such trading strategies can complement the existence of instruments of national and international social regulation existing instruments that are inadequate to meet the challenges of globalization (Sobczak, 2007: 115).

The table below shows the quantitative evolution of Global Agreements from 1994 to 2012:



Source: Hessler, 2012: 326 *apud* Platzer and Rub, 2014

Among the main factors that contributed to the multiplicity of global agreements in recent years, the following stand out: a) the response of the trade union's movement to the challenges of globalization through a series of mergers in 1990-2006, in order to lead to transformation of international trade secretariats

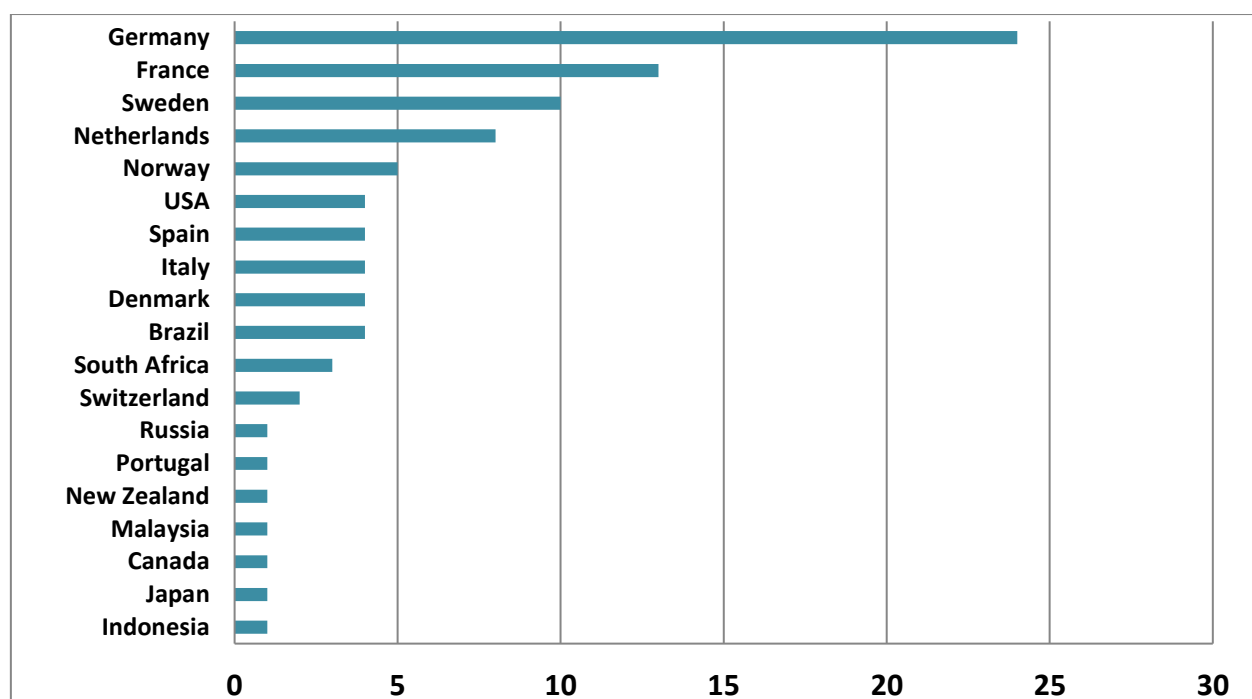


(ITS) global union federations (GUFs); b) the strengthening of regional integration efforts, especially in Europe, favoring the creation of a supranational level of social representation; c) a parallel movement of employer groups negotiations for negotiations with single employer. It should be noted that although the IFAs are transnational instruments, relate to a single employer and not to an entire sector of activities. d) the emergence of a new generation of representatives of companies and workers, accustomed to a broad framework of innovative practices under the influence of globalization. In particular, the structure of the modern MNCs have become increasingly organized around national production units globally integrated, there has been a consequent need for harmonization between the national and global levels from the point of view of both the company and workers' unions. (Papadakis, 2008: 6)

It is important to highlight that the strategies individually developed by the Global Union Federations largely depend on internal factors of the unions. The GUFs are entities that organize national unions, which, according to their national traditions and structures of labor relations, have different approaches to global agreements. Trade unions from countries with labor relations characterized by voluntariness, marked by conflicts (such as the US and Britain) tend to view global agreements as a union tool, while the unions of countries that have greater social dialogue tradition (as in Europe and especially in Germany, Sweden and the Netherlands) see global agreements as a first practical step in the development of an ongoing relationship based on dialogue with business and how solving concrete problems on the international level. (Platzer and Rub, 2014: 9).

This position adopted by the unions also reflects in the territorial distribution of the global agreements signed in the world.

Territorial distribution of AQI: FIGURE 2



Source: Hessler 2012: 326 *apud* Platzer and Rub, 2014

Nevertheless, one can notice the increasing number of signed global agreements in the world, it must be emphasized that quantitative strategy initially adopted by GUF after completing the maximum number of global agreements, has been replaced over the years by a qualitative strategy, with greater emphasis on the establishment of effective enforcement mechanisms. While in the 1990s and in the first decade of the new century, the focus was to reach a significant

number of agreements in order to increase the pressure on reluctant companies and political institutions, over time, the qualitative aspects have become increasingly important. Enhance in the regulatory content of the global agreements, as will be shown, is an expression of this change in strategy occurred in recent years, at cost of a future decrease in the number of agreements. (Platzer and Rub, 2014: 10).

The regulatory content of global agreements was analyzed by Platzer and Rub (Platzer and Rub, 2014: 10), from various other studies and data collection, forming an overview on the main topics covered in the agreements already signed:

The vast majority of global agreements include the four core labor standards of the ILO. Generally, they also refer to one or more sets of international regulations, including, for example, the Global Compact, the UN Declaration on Human Rights, or the OECD Guidelines for Multinational Enterprises;

Many agreements go beyond the core labor standards and also include topics such as health protection in the workplace, fair wages and continuing vocational training;

Almost half of the signed agreements include clauses on working hours and overtime;

Most signed agreements include provisions related to institutionalized procedures for monitoring the agreement and arbitration as a means of conflict resolution;

Much of the agreements, but not all, establish procedures to communicate the content of agreements with suppliers and trading partners, with considerable differences in the binding force of commitments.

In this last point, a distinction between three different approaches can be made. One approach consists in the supplier have been informed of the existence of the agreement and demonstrate the intention to support the implementation of commitments. The second approach puts the fulfillment of the agreement as a criterion for establishing business relations. And the last is to

enforce compliance with the agreements as a fundamental requirement for the establishment of trade relations and may occur interruption of trade relations in the case of an ongoing violation of the assumed commitments (Platzer and Rub, 2014: 10)

Hammer highlights that agreements at a more advanced level of social dialogue also refer to private standards such as ISO 8000, ISO 14001 International Organization for Standardization or the Joint Statement on Corporate Social Responsibility between Euro Commerce and UNI-Europa Commerce. (HAMMER, 2008: 98)

The local implementation of these agreements is fundamental to its effectiveness, and depends, on the one hand, on the implementation of activities arising from the company's management and operations of GUF, as the publication of content and audits, and on the other, the behavior of local actors. (Platzer and Rub, 2014: 13)

Studies conducted in Brazil, India, Mexico, Turkey and the USA (Fichter et al 2012 apud PLATZER, 2014: 13) on the implementation of IFAs show the following:

Specific sectorial factors in each country are important in the implementation of the internationally framework already set. Child labor, for example, only plays a significant role in the implementation of an international framework agreement in specific sectors (such as textile and food industries) in certain countries (such as China, India and Bangladesh).

Substantial problems are involved in the implementation of IFAs, among which stands out: (a) the inadequate publication and communication of the terms of the agreement that prevents the information reaches all employees, unions and the management of branch offices; (b) even with satisfactory disclosure of IFA, often local actors are not aware of the possibilities that exist for the implementation of the Agreement; (c) the implementation of IFAs may be hampered by labor unions or local companies' management as occurred in Turkey and Mexico, where labor unions hindered the implementation of the agreement in order to ensure their union privileged status in the factories. In other cases, the national or local government companies have prevented the implementation of an IFA,

simply ignoring the provisions that it contains; (d) the implementation of an IFA in the suppliers' chain can be particularly difficult, bumping, in some situations, insurmountable barriers when these chains become very complex, involving subcontractors who often do not have any communication channel with the signatory company of IFA.

The international framework agreements have generated impact on labor relations within transnational companies. Even if its implementation often still occurs in an inconsistent or selective way, limiting specific measures.

A case worth mentioning, as an example of the implementation of an IFA, is the one signed by Faber Castell. In this case, compliance with the provisions of the agreement is monitored by means of a three-phase system. In the first phase, social checklists are used for local management in all outlets of the company to regularly inform to the central's management of the company about the implementation and observation of IFAs. In the second phase the representatives of the central's management and those responsible for quality control of the company cooperate with conducting internal audits in the various establishments of the Faber-Castell around the world. In the third phase, all the establishments of the Faber-Castell are inspected every two years by a monitoring committee consisting of two representatives of the local management and central management of the company and representatives of labor and union strength. The objective is to verify the result of internal audits and the implementation of the global agreement. (Fichter et al 2012; 2012 Hessler apud PLATZER, 2014: 13)

There is, therefore, a continuous quantitative and qualitative increase in the development of global agreements. There are still many difficulties, especially in its implementation and monitoring. However, new and efficient mechanisms have been developed by transnational corporations socially responsible to ensure compliance with these agreements and give them more effectively, thereby promoting a contribution to the improvement of industrial relations at the global level.

## **LEGAL DIMENSION AND EVALUATION OF THE IMPACT OF GLOBAL AGREEMENTS**

International framework agreements have been proving to be effective instruments in the harmonization of interests and private social regulation, although there is no international legal framework to legally protect them and give them the necessary legal certainty for its full effectiveness and dissemination.

Even if they emerge from social dialogue and be in accordance with the European social model, the IFAs do not find legal support at national and international levels, nevertheless suffers the impact of national and international legal environment to which they are intended. They correspond, thus, to a new form of social regulation, created by social actors, without a specific legal framework. In this sense, its legal analysis concerns not only the social signing partners of these instruments, as well as to international organizations, which can play an important role in the development of a legal framework for IFAs, and in general manner, for the transnational collective bargaining. (Sobczak, 2007: 116)

In case of IFAs do not have any support from, or institutional connection to, a particular legal system, they start to confront the difficulty of having their legal nature set in a classic legal perspective.

However, a sociological perspective of international law, known as "sociological objectivism", allows an understanding of the legal dimension of the IFA from the theory that the law is not restricted to a form from a top-down state's regulation, but it should be understood as a means to solve a need of social organization in the context of increasing cross-border activity generated by globalization. (Papadakis et al, 2008: 82)

According to George Scelle, the main proponent of this approach, the objective of the rules, including private agreements, is to meet the social needs

of individuals and their groups and organize social relations, including labor relations, in the context of a global society resulting from the interpenetration of peoples through international trade, in which individuals are at the center of the international legal order. (Scelle, 1932, 1934 apud Papadakis et al, 2008: 82.)

The innovative feature of IFAs as instruments for creating spaces for dialogue and interaction between social actors (global unions and MNEs) within this sociological perspective of law, makes these agreements are seen as a supra-national phenomenon arising from a social need to organize global interactions between the management of MNEs and their workforce in the era of globalization. The IFAs reflect the result of the interaction between these social actors who need discipline their relations and, in fact, build your own legal framework in the transnational level, following the momentum created by the international investment and trade. The legal framework emerged from this interaction could coexist with other legal systems, including collective bargaining signed by the social partners at local, national or regional level, which may include the IFAs as part of the initiatives that reinforce each other to institutionalizing a framework of global labor relations. (Papadakis et al, 2008: 82)

However, until this framework be built by the social partners, the IFAs are still being signed without legal support at the international level, which makes that those who want to adopt them as a way to regulate their social relations suggest new solutions for its effective implementation.

One of the problems to be faced is the legitimacy of the signatories of IFAs with regard to the representation of all workers in the production chain, by the labor unions, and all subsidiaries, and even to suppliers and subcontractors, to which obligations are imputed through these global agreements.

On the companies' side, one or more representatives can sign the IFA. Thus, remain to them the responsibility for compliance with the agreements.



When these agreements provide for commitments to be met by the subsidiaries too, there is a problem of representation. Although the procedure adopted reflects the reality of the economic power within the group, each of the subsidiaries has its own legal personality, which is independent of the integration of the economic group. This weakness of representation turns more evident when the IFAs defines rules for subcontractors and suppliers who do not participate in the negotiations, and whose legal personality is impediment for the management of a signatory company negotiate agreement for them. (Sobczak, 2007: 117)

To make the negotiation and signing of the IFAs by the MNC's management on behalf of its subsidiaries and subcontracted possible, would be necessary for such to create a mandate with powers to negotiate commitments that be legally binding. A mandate of this nature, with fulcrum in the relevant legislation, would consolidate the legal value of the IFA and would confer to the parent company a certain responsibility to ensure compliance with the agreements. (Sobczak, 2007: 117)

On the part of employees, it also should be examined the question of the legitimacy of a signatory part to represent all workers in the production chain, around the world, which keeps link work with the company with which the IFA is signed. To mitigate this weakness, there are already IFA traded in an innovative way, including representatives of national unions of all countries where the company operates. This approach facilitates the effective implementation of the IFA rooted in local social dialogue, and reflects the principle of subsidiarity, while maintaining the fundamental social rights that apply to the entire group defined by IFA, and stimulating decentralized negotiations at other levels, considering the different nationals' contexts. (Sobczak, 2007: 121)

Taking into consideration the different national contexts in which they are subsidiaries and subcontracted affected by IFA, it is necessary that these

agreements make reference to national laws and collective agreements to be observed locally. In many States, the government does not have sufficient means to monitor the compliance with labor law, and even if exist legally binding social standards, these, often are not effective. So when the IFA provides for compliance with national legislation, the effectiveness of these rules may be extended, including through the implementation mechanisms and monitoring the agreement. (Sobczak, 2007: 123)

Being global agreements understood as "soft law", because they do not constitute legal instrument provided for in positive law, a way to give them legal effect is to integrate them with other legally binding rules. Many companies include your IFA contracts with the subcontracted. Companies can also refer to the IFA in collective agreements carried out in each country, or collective agreements entered into by each branch, which strengthens the participation of local actors in the implementation of signed agreements. These measures give the IFA the legal effects of a collective agreement under national labor laws, increasing legal certainty for global agreements. (Sobczak, 2007: 125-126)

The courts may recognize the legal effects of an IFA as well, even if it is not incorporated into other laws, if the contract has been applied over a certain period of time. In many national labor laws, customary rules guarantee workers that social benefits cannot be removed unless the observance of specific procedures for such. (Sobczak, 2007: 126)

The lack of specific legal provisions about the IFAs, although remains the possibility to see any legal value on them, cause legal uncertainty to the representatives' trade union of workers and enterprises. It is important that the unions show that their participation in negotiations and agreements contribute to the creation of concrete benefits for its workers at the local level, and that the non-compliance of the IFA can lead to penalties. Otherwise, the unions may be

used in this process as mere social marketing strategies of companies. On the other hand, the lack of legal certainty is also a problem for companies. A company that has signed an IFA may fear adverse judgments if an action is brought against it because one (or more) of its subsidiaries or subcontracted failed to meet the IFA, even if the company itself has used its economic power to try to force them to act in accordance with the terms of the agreement. It is important for companies to assess the legal risk of signing an IFA. It is also essential that companies that sign an IFA and do not comply with it be penalized to avoid the discredit of all global agreements of this nature. (Sobczak, 2007: 127)

To ensure greater legal certainty to global agreements, the establishment of a legal framework for transnational collective bargaining is necessary. This framework should name the legitimate negotiators of both represented parties, employers and employees, and may impose the social partners a certain minimum content, as well as provisions concerning the scope of the negotiated rules and monitoring process, leaving the parties a wide margin of freedom as the definition of procedures and other content to be negotiated. Finally, the framework should define the legal value and the impact of global agreements, presenting itself as the most appropriate solution to forecast the requirement of IFA be adopted in each country in accordance with national laws of countries where the company has branches, either through unilateral management decisions, or through collective agreements. (Sobczak, 2007: 128)

Despite the absence of legal security necessary for their full and effective implementation, the IFAs have generated significant impact on improving labor relations and in the guarantee of social rights at transnational level. The research Platzer and Rub point out that the empirical evidences on these issues are still incomplete, but allow the following conclusions (Platzer and Rub, 2014: 15-17):

Global agreements are, in terms of growth and current number, the most dynamic element of the tools used in social relations at transnational level;

This is an ideal instrument to be developed in a flexibly way, which can adapt to a wide range of conditions in different companies and sectors with huge potential to ensure minimum social standards from it, if systematically implemented, overcome the difficulties of limited union's resources available in the areas of implementation and monitoring;

The signing of IFAs denote the official recognition of GUFs as dialogue partners and negotiations at global corporate level, which reinforce the organizational potential of GUF, that now occupy an independent role in the definition of the field of global social standards, perfecting union's representation at the global level;

The IFAs contribute to the maintenance and renewal of the discourse around social human rights, in order to ensure the implementation of these rights, highlighting the legitimacy of these standards, and recognizing social rights as an obligation, also, to private governance, and how a fundamental commitment of social policy;

The empirical results available on the application and observable effects IFAs show examples of positive impacts, but specific, limited to problem areas in certain and selective places.

Platzer concludes his analysis by observing that, due to its voluntary character, and because there are still limited in number, IFAs should be seen on a global scale as an additional tool in the strengthening of social human rights. The IFAs cannot replace the political and legal solutions, or may themselves be replaced in the role of reinforce and require these policies and legal solutions geared to social human rights. After all, global agreements create an additional channel for communication, implementation and monitoring of social human rights, the time set preconditions for this social impact, promoting international coordination of the unions and contributing to the regulation of transnational labor relations in corporate level. (Platzer and Rub, 2014: 17)

#### **4. CONCLUSIONS**

Economic and social relations, related to the movements of transnational corporations as an important sphere of globalization, have generated a strong impact on the positive law of the states and, as a result, in the international legal system itself. All this has led to studies that point to a new role of the national state, which comes to live with international actors that create rules applied in the internal system of these states. These new rules have proven the inability to discipline and create social relationships, allowing the emergence of private regulatory regimes and a diversity of sources of law describing current legal pluralism. As a private standard of relevant social regulation at a global level, the object of this study is transnational collective bargaining, highlighting its definition, reasoning, legal frameworks, main difficulties of implementation and effectiveness.

The collective signature meets the Global Union Federations are international federations of national or regional unions that organize and represent workers in a occupation or industry, and the International Trade Union Confederation, an international organization of national trade union confederations, with over 300 member organizations of the most diverse places in the world, with a total membership of about 176 million workers.

The structure of the modern MNCs have become increasingly organized around national production units globally integrated, there has been a consequent need for harmonization between the national and global levels from the point of view of both the company and workers' unions.

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