

Labour Standards in Global Subcontracting Chains: Evidence from a Construction MNC

Prepared for the Global Labour University conference at the State University of Campinas, São Paulo, Brazil, 28-30 April 2008

This paper is a draft; please treat it accordingly!

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Abstract

In an increasingly globalised economy, the construction industry is distinctive in many ways. Whilst labour, materials and services are relatively mobile, the site of production is, by definition, fixed. With this constraint, global competitiveness has been particularly reliant on subcontracting, with resultant pressures on employment conditions and on trade union organising. At the same time, there are also includes cases where International Framework Agreements (IFAs) have been negotiated explicitly to address these problems. These IFAs (particularly in the domain of the Building and Wood Workers' International, BWI) often contain very strong provisions with regard to compliance with core labour standards and, specifically commit construction multinationals to enforcing compliance in the subcontracting chain. However, in the context of ever-changing configurations of subcontractors, the test of these agreements must be their success in promoting a sustainable local organisation that outlasts individual projects.

This paper uses an international comparison of practices in Hochtief, a German MNC, in order to evaluate the use and effectiveness of framework agreements at the national and local level. The case studies are based on an analysis of the IFAs and CSR policies, interviews with management and global union officers in charge of the implementation/coordination of monitoring, as well as interviews with trade union officers in construction unions in Brazil, Canada, Malaysia and Ukraine. It is these latter interviews that provide first valuable insights into the use and impact of IFAs in MNCs' subsidiaries and subcontractors in host countries.

The paper is organised as follows. A first section introduces the particular challenges for the social regulation in the industry (complex subcontracting networks and the use of informal labour). Then we outline the structure and operations of Hochtief and the place of the IFA within this. The following section provides a synthetic discussion of the national and local case studies. Here, particular emphasis is given a) to implementation and monitoring procedures, b) how grievances are resolved (whether they are resolved with reference to the IFA) and c) to what extent the IFA has opened up a space for trade union organising. The key concern is with the way trade unions in subcontracting chains are drawn into the remit of the lead MNC's industrial relations. A concluding section will discuss the findings of the case studies from an analytic point under the above headings.

The construction industry has not escaped the pressures of globalisation (e.g. ILO 2001a; EMCC 2005; Ofori 2003), however, it can be argued that the local and project-based character of construction - as opposed to the relative mobility of labour, materials and services - structured the impact of global markets in different ways than those observed in other industries. While similarities might be found in other service industries, the construction industry has globalised in a particularly selective way. Multinational enterprises (MNEs) have built on technological strengths in large-scale, high-end building and increasingly focussed on competitive advantages in project management and financing. While all projects are obviously subject to locally specific regulations and involve numerous companies in tiered subcontracting chains, particularly in the lower-end of the value chain, another aspect that has globalised in a significant way is labour. Over the last three to four decades the construction industry has become a major employer of migrant labour, overwhelmingly in informal employment. At various points in the 1990s, informal employment in construction in countries such as Brazil, India, Malaysia was put between 75-95 percent (Wells 2008; ILO 2001a). Equally, within the European Union the practice of subcontracting to companies based in countries with lower wages and weaker labour regulations who then 'post' their workers to sites across the continent (e.g. Lillie and Greer 2007), has led to significant labour migration in the sector as well as pressure on existing social and labour standards.

Against the background of the internationalisation of the market for construction materials and services, a number of MNEs have become a terrain for union efforts to establish transnational coordination networks, organise workers in those MNEs' subsidiaries and subcontractors, and establish social standards that address key problems within the sector. In this vein of strategies the Building and Wood Workers' International (BWI) has reached a number of International Framework Agreements (IFAs) with MNEs in the construction sector, focussing on the core labour standards embodied in the ILO's 1998 Declaration of Fundamental Rights at Work as well as a range of industry-specific Conventions. These agreements often contain very strong provisions with regard to compliance with core labour standards and specifically commit construction multinationals to enforcing compliance in the subcontracting chain. In this respect, IFAs in the construction industry, particularly in the context of highly fragmented inter-firm and employment contracts, constitute a good example to discuss global and national union strategies to organise and protect fundamental social and labour rights.

The global restructuring of the sector and its labour markets is intricately based on the changing national and global political economies which have been analysed, amongst others, in the literatures on societal effects, business systems (Whitely), varieties of capitalism (Hall and Soskice) or under the system, society and dominance effects (Smith). There has been less discussion, however, on the implications of these developments on labour's capacities and strategies to defend labour rights across company and national boundaries (Anner et al 2006...). For example, in the context of ever-changing configurations of subcontractors, of varying national regulatory frameworks of the employment relationship and trade union governance, as well as major differences in local labour regimes (Castree et al), important questions are raised as to how social standards can be implemented and protected along value chains. Going beyond the question of securing labour rights in subcontracting chains, a second crucial issue arises with regard to the sustainability of any advances made.

The project-based nature of construction in particular carries the threat that work in the areas of core labour standards, trade union organising, or corporate social responsibility takes on a Sisyphus-type character once the contract is finished and the parties involved move on. This set of questions concerns both the strategies and capabilities of trade unions and enterprises, at the global as well as local levels, in the formal as well as informal economy.

1 Argument and Methodological Framework

The extent to which IFAs have been tested at local level has only been researched to a very limited extent. Schömann et al (2008) have looked at the impact of IFAs through interviews conducted in MNE's headquarters, with home country trade unionists as well as Global Union officers. Regarding more extensive case studies, one still has to look to the early studies on Accor (Wills 2002) and Chiquita (Riisgaard 2005) which

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While IFAs' core tenet is compliance with fundamental labour rights, their actual functioning raises a number of more complex issues. There is an operational dimension relating to procedures of implementation and monitoring throughout the MNE and (often) its subcontractors and suppliers, as well as through which industrial relations mechanisms grievances are dealt with reference to the IFA. These issues, however, should not obscure the more fundamental question of power in transnational industrial relations arrangements: the guarantee of the freedom of organisation does not automatically result in an organised workforce and sound bargaining structures. It needs to be asked to what extent local trade union organisation can be an outcome of an IFA or to what extent the former needs to be seen as a prerequisite of the latter. The regulatory framework for capital and labour differs across national boundaries; in addition, the construction industry tends to be characterised by multi-level subcontracting (potentially from abroad), by temporary and irregular employment contracts, and by the use of a considerable informal workforce (migrant labour can also be recruited locally as well as from abroad).

These features present significant barriers for labour; they equally present complex methodological problems. While studies like Schömann et al's (2008) emphasised the effectivity of IFAs as a platform for emerging international social dialogue or industrial relations, we want to focus on the potential of IFAs to open up a space for trade union organisation, a space or an organisation which is sustainable. Any evaluation of the potential of the agreement, however, needs to analyse the actual use of the agreement or the respective union strategies in their national and local contexts. Furthermore, we need to pay attention to how transnational trade union cooperation has linked the local, national and global levels in pursuing the goals of the IFA. Thus, we explore labour's use of an IFA via a matched comparison of the divisions, subsidiaries and subcontractors of Hochtief, a German MNE who concluded an IFA with the BWI in 2000, in Brazil, Germany, Malaysia, Ukraine and the United Kingdom. It is only through such a design that labour strategies at different levels and in different countries can be separated from and analysed within the respective institutional context. The case studies are based on an analysis of the IFAs and CSR policies, interviews with management and global union officers in charge of the implementation/coordination of monitoring, as well as interviews with trade union

officers in construction unions in the home and host countries. It is these latter interviews that provide first valuable insights into the use and impact of IFAs in MNEs' subsidiaries and subcontractors in host countries. Within Hochtief, our findings show, the IFA has contributed to productive practices of social dialogue which, so far, has not resulted in a more systematic international industrial relations structure. With regard to the use of the agreement in subsidiaries and subcontractors, it can be concluded that its use is not very widespread, not integrated in local management-labour relations and only used in points to solve particular intractable disputes. Given the fragmented nature of inter-firm and employment contracts, given the absence of management structures along value chains, and given the absence of codified standards that give access to a value chain, we argue that any exercise of rights afforded by the IFA has to be part of a locally embedded strategy.

Cross-national research poses significant intellectual and logistical problems. Workplaces - particularly in construction - are fluid and the issues faced by workers and unions are not fixed or predictable. Partly as result of these challenges, most research on IFAs to date has tended to adopt broad focus: examining IFAs as a function of GUF strategy. This approach risks a misplaced emphasis on the documents themselves, rather than their practical interpretation and, as a consequence, tends to set up a 'straw man' argument that is almost inevitably at odds with the experience at the local level. A different approach is required to explore local reality, particularly to build an analysis that is more a "catalogue of diversity" (Hyman, 2001: 205). One recent example is the action research design utilised by Hale and Wills in the textile sector (2005).

This preliminary study involved an international network of researchers who are active trade unionists and are recent graduates of the Global Labour University. As well as being relatively cost-effective, this design ensures respect for societal differences in the industry, work and employment, political discourse and strategies and allows access to and integration of perspectives and views that are often marginalised in academic knowledge.

The paper is organised as follows. The next section introduces the particular challenges for the social regulation of employment resulting from industrial organisation (complex subcontracting networks) as well as segmented labour markets (the use of informal labour). Then we outline the structure and operations of Hochtief, its subsidiaries as well as the provisions of the IFA and CSR policies. The following section provides a synthetic discussion of the national and local case studies. Here, particular emphasis is given a) to implementation and monitoring procedures, b) how grievances are resolved (whether they are resolved with reference to the IFA), c) to what extent the IFA has opened up a space for trade union organising, and d) what forms of transnational trade union cooperation has developed under the umbrella of the IFA (how the local level has been linked to the global). The key concern is with the way trade unions in subcontracting chains are drawn into the remit of the lead MNC's industrial relations. A concluding section will discuss the findings of the case studies from an analytic point under the above headings.

2 Construction Subcontracting, Employment, and the Outsourcing of Local Labour Regimes

The construction industry is highly segmented in a functional as well as a spatial sense, which – in addition to the project-based character – seems to put a premium on technology, organisational, and relational rents (see Kaplinsky 1998; Gereffi 1999; also UNCTC 1989). While large segments in the industry, often the labour-intensive aspects of building construction, installation and completion, do have relatively low entry barriers, the latter are higher in materials supply, civil engineering services as well as general contract management. It is these areas where product and process technologies, quality control, and the management of intra- and inter-organisational relationships (just-in-time production) play an important role; and it is these areas that have seen a considerable expansion and internationalisation.

The large civil engineering segment shows a higher degree of internationalisation than markets for residential construction. Compared with other value chains, however, the construction industry is dominated by an extremely tiered structure which is driven by the general contractors and/or developers/clients at the downstream end of the chain. Geographical expansion seems to go along with consolidation and upgrading in materials, civil engineering services and contract management; another route has opened in recent years via the prefabrication of building elements (i.e. comparable to full-package supply as discussed in other industries).

Although value chains in the construction industry vary markedly according to the national context, it is possible to highlight a number of features and trends that characterise the industry from a global perspective¹. First, we can observe a polarisation within the global value chain: whereas the materials suppliers and civil engineering services have seen the consolidation and emergence of large MNEs (e.g. Lafarge, Hochtief), the building sector (installation and completion) is invariably dominated by small and medium-sized enterprises. (EMCC 2005, 6) What this picture captures in a historical perspective, second, is the rise and expansion of large national construction enterprises at international level, at the same time, as they move up the value chain into areas of civil engineering services, contract management as well as various forms of operation (PPP/BOOT, etc). Third, whether part of a global value chain or within a national segment, the industry is characterised by extensive subcontracting networks. Outsourcing over the last three decades meant that value chains were restructured considerably: as large companies tried to concentrate on management and coordination functions of construction projects or of servicing those projects and the finished buildings, there was an increase in the number of smaller companies that take on delimited and specialised parts of construction.

Fourth, the above developments had very significant implications for employment and labour. While the sector has grown considerably over the last decades, competitive pressures and regulatory opportunities led a large number of companies to outsource lower-end functions and shed labour. This lies at the core of the massive growth of the informal economy, particularly in developing countries but also in the industrialised world (Wells 2007; ILO 2001a; ILO 2002).

¹ The construction industry is subject to the GATS agreement of the WTO; the latter's Government Procurement Agreement is also relevant for a substantial part of the sector (see Lewis 2007).

‘If all of the construction workers who are employed on a casual basis, without regular contracts or any social protection, are included in the expanded concept of the ‘informal economy’, then it is clear that informality is now the norm, rather than the exception, in the construction industry throughout much of the developing world.’ (Wells 2007, 91)

In a number of countries informal and migrant labour, internal or international migrant workers, is hired and/or managed via intermediaries. Such labour markets structures and dynamics put constant pressures on wage levels, which often are below living and minimum wages, as well as employment conditions (e.g. working time, high rates of occupational injuries) and living conditions (reflecting exploitative and/or paternalistic settings). In this way, outsourcing, the development of extensive subcontracting chains and the emergence of a large informal economy constitute the basis for the key role large contractor and materials supplier MNEs play in global value chains.

In Malaysia, the employment in the construction sector almost tripled from 270,000 workers to 746,000 in 1997; in 1992 80% of the entire construction workforce was estimated to be made up of Indonesian migrant workers. Workers are recruited and supervised by intermediaries, so-called *kepalas*, who have established themselves as labour subcontractors. In 1992 the proportion of foreign workers that was employed by subcontractors was put at 80% (Abdul-Aziz 2001; ILO 2001a; Narayanan and Yew-Wah 2005) By contrast, the sixfold rise in the Brazilian construction workforce was fuelled by internal labour migration. While states like São Paulo and Rio de Janeiro recorded more than 90% of migrant construction workers in 1985, the overall proportion of migrants in construction has declined to 43% in 1996. In the same period though, the number and role of intermediaries (*gatos*) rose considerably and between 1981 and 1999 the number of unregistered and self-employed workers rose from 56.7 percent to 74.6 percent. (ILO 2001a). Even in the UK, the percentage of self-employed labour rose from under 30% in 1977 to over 60% in 1995 (ILO 2001a, 20).

The ILO (2001a, 24) recognises that outsourcing offers flexibility in the use of labour as demand for particular construction products varies and skills for different products are not homogenous. Another way of putting this advantage, however, is to emphasise the delegation of labour control and social wage issues, i.e. the ‘outsourcing’ and ‘delegation’ of factory regimes (Burawoy 1985). The performance of construction work is essentially embedded in local conditions of work and employment. Subcontracting informal labour, however, means that international construction materials and services providers can dissociate themselves from the forms of control as well as working and living conditions of the bulk of the local workforce (see also Castree et al). The question we try to address in the following sections is how unions can employ IFAs to counter the subversion of fundamental human, social and labour rights.

3 BWI and International Framework Agreements in Construction

Like other Global Union Federations (GUFs) the BWI has developed a strategy in the last two decades to engage with and counter the rising power of MNEs. The approach is accompanied by information, education and training in order to encourage affiliates 'to use framework agreements as a tool for organising' (IFBWW 2003, 3). With the signature of an IFA with IKEA in 1998 the BWI was amongst the leading GUFs to embark on this strategy and has since signed 14 IFAs in total, 8 of which were concluded with construction MNEs (see Table 1). What is particular to the development of BWI's IFAs is, first, that recent agreements tend to commit to a wider range of ILO Conventions that are particularly relevant to the sector, e.g. including wages (C94, C95, C131), the reduction of working hours (C1, C47, Rec116) and occupational health and safety standards relevant to the construction sector (C155, C161, C162, C167). Generally, there is explicit mention of the importance of establishing an employment contract, and some agreements contain strong language on living wages (Impregilo, Royal BAM, Veidekke, VolkerWessels). Further, a number of IFAs also refer to standards and tools such as the ILO Code of Practice on HIV/AIDS and the World of Work (Impregilo, Veidekke, Lafarge, Royal BAM, VolkerWessels), the ILO Guidelines on Occupational Safety and Health Management Systems (Veidekke, Lafarge, Royal BAM, VolkerWessels), as well as the ILO Code of Practice on Safety and Health and in Forest Work (Veidekke), ILO Code of Practice on Safety in the Use of Synthetic Vitreous Fibre Insulation Wools (Veidekke). Second, the agreements establish explicit responsibilities and routes of reporting, mostly via a reference/monitoring group which reports to the MNE's Executive Board. Third, these IFAs often contain strong provisions regarding the MNE's subcontractors and suppliers; in fact, Hochtief, Skanska, Impregilo, and VolkerWessels regard compliance as mandatory.

It has been recognised though that concluding agreements only constitutes the first step in a process towards labour rights, particularly given the challenges posed by the project-based character of construction, complex and changing subcontracting chains, as well as vastly differing labour market structures, employment regulations, and trade union capacity. However, some BWI affiliates have developed distinct ways of making use of IFAs. For example, a number of national and international trade union activities have been geared towards providing information about IFAs, training on organising, and constructing networks in such companies; equally, some affiliates organised their international projects to follow and monitor their home country MNEs and to support trade union campaigns, organisation and capacity building in foreign locations. The Dutch construction unions in particular have repeatedly monitored Netherlands-based construction MNEs in the Gulf region (BWI n.d.a., BWI 2007); Dutch and Swiss construction unions have used building projects for the 2010 football world cup in South Africa to monitor contractors and start a dialogue with FIFA (BWI 2008). A number of these initiatives and missions form part of the regular review processes of the respective IFAs. Visits by the reference/monitoring groups can provide a platform for fact finding in MNE's foreign operations, to address problems, as well as to create capacity for trade unions and social dialogue. A visit to review the Tanzanian Veidekke subsidiary Noremco, for example, resulted in an agreement that 'local management, Tamico [Tanzanian construction union] and field

branch committee will meet every 6 months to review the implementation' with basic information on health and safety, wages, education and training, working hours, and type of employment contracts to be provided by management (BWI 2007). Subsequently, a collective bargaining agreement was signed between Tamico and Noremco.

Another important function of framework agreements is that conflicts can be raised with central management at the headquarters. An IFBWW (2004) review, for example, mentions a complaint about organising a construction site of Hochtief's US subsidiary Turner, a conflict that was resolved after the intervention of Hochtief's home-country union IG BAU. In Skanska it was the monitoring group that dealt with complaints from Peru ('concerning the local management, salary scale, canteen and food, milk provisions, reemployment of staff'), Germany (on employment/dismissal of Polish workers), and the US (on unfair labour practices). While it reports on good management-union relations in Ballast Nedam's Ghanaian operations, it also states that 'due to the critical economic situation of the company and time constraints, there has been no monitoring group meeting or any follow-up of the agreement.' (IFBWW 2004, 14) Another protracted conflict in one of Lafarge's Korean subcontractors, however, shows the difficulties of enforcing the provisions not only of the IFA but also the decisions of the Labour Relations Commission in subcontractors. In March 2006, Woojin Industry, one of Lafarge Halla Cement's in-house subcontractors closed down after 21 of its 35 workers joined the Korean Chemical and Textile Workers Federation (KCTF). While workers who retracted their union membership were employed in other subcontractors of Lafarge, this was refused to unionised workers, even though the Regional Labour Relations Commission ruled twice that Lafarge, which is taken to have managerial control over Woojin Industry, has unfairly dismissed the workers. The KCTF members launched a campaign including a sit-down strike in front of their plant, sought mediation from the Ministry of Labour, engaged the Regional Labour Relations Commission and the National Contact Point dealing with the OECD Guidelines for Multinational Enterprises, and went on a visit to France to meet management at the Lafarge headquarters as well as home-country trade unions. In early 2007, two KCTF officers started a hunger strike in front of Lafarge's Seoul office. In March 2007, the National Labour Relations Commission has overturned the ruling of the Regional Commission; in reaction, the KCTF has appealed to the Ordinary Court (TUAC 2007, 39). Thus, although the Lafarge IFA commits the MNE and its subcontractors to the freedom of association and the same rights and conditions for migrant workers, the subcontracting structure provided the front for very different employment conditions for workers in Lafarge Halla Cement and its subcontractors, as well as Lafarge's claim of a lack of managerial power over its subcontractors.

'The real challenge for strategies built around Framework Agreements is largely one of monitoring and verification. The BWI sees the work of the reference or monitoring group, which is normally made up of BWI and management representatives, as that of exchanging and developing views on the management system and defined standards, and on their compliance or otherwise with the agreement. In some cases, the BWI and its partner companies pay visits to suppliers' countries in order to have some reference points regarding the level of standards and implementation.

Responsibility for the monitoring of company performance lies primarily with auditing and accounting companies, providing certification on a commercial basis. There are many problems with this process, such as the auditors' ignorance about labour rights issues or the realities of working conditions; the extraordinary scale of subcontracting chains in our industries, which would require an army of auditors to verify compliance with the standard; and the marginalization of trade unions in the representation of workers' interests. Some BWI Framework Agreements are verified by internal monitoring groups composed of union and company representatives, and by the unions nationally and locally. Currently, only a handful of unions are active in using the Framework Agreements. In any case, monitoring is expensive and time-consuming to organize, depending on the complexity of the company concerned.' (Hellmann 2006, 3-4)

Table 1: BWI Framework Agreements in Construction

	Sales (Mill USD)	Employees	Year	GUF	ILO Conventions	Employment	Wages	Working Time	Health & Safety	Training	Restructuring	Duration	Supplier relations	Implementation	Meetings	Trade union involvement (other than GUF)	Mediation/ arbitration
Hochtief	20,459.7	46,847	2000	BWI	,the following agreements of the ILO'	X	X	X	X			open	Mandatory	Report to Executive Board; officer appointed for application		IG BAU	Joint (IFA)
Skanska	18,325.5	56,000	2001	BWI	29, 87, 98, 100, 105, 111, 135, 138, 182; Rec 143	X	X	X	X	X		2 years	Mandatory	Report to Executive Board; officer appointed for application	Annual	FNV Bouw	Joint (IFA)
Ballast Nedam	1,728.3	3,701	2002	BWI	,relevant conventions and recommendations of the ILO'	X	X	X	X			open	Information/ influence	Joint application group dealing with compliance		EWC	Arbitration board to be determined jointly; decisions are binding
Impregilo	2,211.9	10,147	2004	BWI	1, 29, 47, 87, 94, 95, 98, 100, 105, 111, 131, 135, 138, 155, 161, 162, 167, 182; Rec116, Rec143	X	X	X	X	X		open	Mandatory	Consulting group	Annual	National unions	Joint (IFA)
Veidekke	2,634.1	6,351	2005	BWI	29, 87, 98, 100, 105, 111, 135, 138, 155, 167, 182; Rec 143	X	X	X	X	X		2 years	Criterion/ consequence	Senior mgt responsible for implementation; local rep training for monitoring	Annual	Fellesforbundet, Norsk Arbeidsmandsforbundet, Chief Shop Steward	Joint (IFA)
Lafarge	22,324.9	71,000	2005	BWI/ ICEM	29, 87, 98, 100, 105, 111, 135, 138, 155, 182		X	X	X	X		open	Criterion/ consequence	Reference group to follow-up and monitor	Annual		Joint (IFA)
Royal BAM	11,406.8	30,338	2006	BWI	29, 87, 98, 100, 105, 111, 135, 138, 155, 167, 182; Rec 143	X	X	X	X	X		open	Criterion/ consequence	Reference group to follow-up and monitor	Annual		Joint (IFA)
Volker Wessels	3,773.2	16,400	2007	BWI	1, 29, 47, 87, 94, 95, 98, 100, 105, 111, 131, 135, 138, 155, 161, 162, 167, 182; Rec 116, Rec 143	X	X	X	X	X		open	Mandatory	Monitoring group	Annual		Joint (IFA)

Sources: Hoovers; MNC web sites and annual reports; GUF web sites

4 Labour Standards in Hochtief's Global Subcontracting Chain

In the following we examine how responsibility for fundamental labour rights is implemented, monitored and outsourced in different ownership and subcontracting arrangements as well as local labour regimes across Hochtief's worldwide operations. This is discussed in the context of evidence from union activists from Hochtief divisions, subsidiaries and subcontractors in Brazil, Malaysia and Ukraine.

Hochtief

Hochtief describes itself as 'an international construction services provider' (Hochtief, 2007:2) - the world's third largest, and covers the entire value chain with its portfolio of development, construction, services as well as concessions and operations. Headquartered in Germany, it holds that it is the most international company in the construction industry. In 2006 its sales were Euro 15,508 million, 86.3% of which were realised outside Germany; total employee figures stood at 46,847 of which almost 80% work outside the home country, up from 74.5% in 2002.

The holding company is composed of five corporate divisions: Hochtief Airport, Hochtief Development, and Hochtief Construction Services in the Americas, Asia Pacific, and Europe respectively. At a cross-divisional level, Hochtief has two other business units, Hochtief Global One and Hochtief Insurance which act as service providers for all Group units. Over the last two decades the company has managed to cover the entire construction value chain and develop important positions in the higher end parts of the chain, for example in construction related services via public-private partnerships where it finances, builds and operates infrastructure projects, in facility management and real estate, in sustainable building in educational, healthcare and commercial real estate, or as airport operator and investor. Hochtief Airport, for example, manages a number of major international airports and has stakes in Athens, Düsseldorf, Hamburg, Sydney and Tirana airports. Within Hochtief Development, Hochtief PPP Solutions develops, finances and operates public infrastructure projects on a private finance basis whereas Hochtief Facility Management provides end-to-end technical, commercial and infrastructure services for managing properties and facilities.

The Americas division consists of the Turner Corporation in the US and Hochtief do Brasil. Turner is the leading general builder in the US, the world's largest construction market. Through Turner, Hochtief previously had an important position in Canada, with a large minority holding in Aecon which was sold in November 2006. However it bought US company Flatiron Construction in December 2007 (Euroinvestor, 2007). Flatiron is active in the US and Canadian civil engineering market. Specialising in constructing transportation projects, it is among the five largest bridge builders in the United States and has around 1,700 employees. It will operate as a separate subsidiary within the Hochtief Americas division. The Asia Pacific division has a strong position in Australia through its majority holding in the Leighton Group (through Leighton Contractors, Thiess, John Holland and Leighton

Properties) which spans the entire construction value chain. Leighton has also secured important positions in growth markets elsewhere with Leighton Asia as well as the Al Habtoor Leighton Group in the Gulf region. Leighton holds 45% in the latter which is mainly active in Dubai, Abu Dhabi and Qatar with a perspective to expand into new markets in the Middle East and North Africa. Al Habtoor Leighton has more than 2,000 projects under development in the Gulf region and employs around 30,000 people (Leighton 2007). Hochtief Construction Services Europe is active in Germany, the UK, Austria, Poland, the Czech Republic, and Russia.

Hochtief sees itself as pioneer in social responsibility and sustainability, arguing that it is the only company in the sector in Austria, Germany, and Switzerland, to publish a comprehensive report on the above issues (Hochtief 2007b). Its sustainability report follows the guidelines of the Global Reporting Initiative (GRI) and was audited by PricewaterhouseCoopers. The company is also listed on the Dow Jones Sustainability Indexes. Underlining the role of CSR in the Group, a CSR committee was established in 2007 which includes a range of representatives from corporate functions as well as the works council. The committee meets quarterly, is responsible for implementing 'CSR thinking' in all Hochtief divisions, and reports and formulates recommendations to the Executive Board (Hochtief 2007b). So far, there is no specific review or application group of the IFA, although the BWI, IG BAU and regularly meet union representatives in Hochtief subsidiaries.

At this level, however, an important selectivity how and where spaces for labour rights are provided needs to be highlighted. The Leighton Group, for example, publishes its own CSR report and it remains contested to what extent the IFA applies to Leighton. Further, different ownership structures not only result in separate CSR policies but also qualify the management authority of the centre vis-à-vis the subsidiaries which impacts on the implementation of the IFA (Interview). Hochtief has a well developed dual approach of corporate social responsibility, on the one hand, and industrial relations on the other. Whereas certainly the BWI, the home country union as well as the General Works Council have good access and a constructive working relationship with company headquarters, industrial relations remain concentrated in those divisions and countries where collective bargaining is part of traditional management-labour relations.

At the same time, though, this fragmented approach to social and labour rights does not mean that Hochtief has no managerial authority at all along the subcontracting chain. Hochtief operates a 'cross-divisional competence center for occupational safety and health and environmental protection (OSHEP center)' which is responsible for implementing and monitoring the OSHEP Directive, applicable throughout the Group. This centre has 20 staff and has so far overseen the external certification of more than 50% of Hochtief's corporate units² (Hochtief 2007b, 13). In this area, the company has developed strong compliance provisions for suppliers:

'In the future, via the new supplier extranet, we will also require contractors and suppliers to comply with a Code of Conduct which we have formulated. In this, we will, for instance, require compliance with international standards on ethical

² Certification according to SCC (Specialist Contractors Confederation), OHSAS 18001, AS 4801 (Australia) (Hochtief 2007b, 35)

conduct, respect for the basic rights of employees and guaranteed measures regarding safety and environmental protection. There will be a provision that we have the right to check, at any time and unannounced, whether subcontractors and suppliers are complying with this planned Code of Conduct. In the event of any breaches of this, Hochtief reserves the right to terminate the business relationship.’ (Hochtief 2007b, 21)

With regard to the fundamental labour rights contained in the IFA, however, the sustainability report states:

‘This represents an undertaking to adhere to the standards with regard to the rights of our own employees and the employees of our partners.’ (Hochtief 2007b, 21)

Implementation, Monitoring, Conflict Resolution

The International Framework Agreement between Hochtief and BWI (then IFBWW) was concluded in 2000 as the first IFA in the construction industry and takes up a number of the pressing issues facing work and employment in the industry. The General Works Council and IG BAU (the German Construction Workers’ union) were co-signatories. Hochtief commits to respect the ILO core labour standards as well as to other, more general, standards: ‘adequate’ wages, ‘reasonable’ working time, as well as ‘decent’ working conditions. There is no permanent reference group and the formal role of the unions in monitoring and review is only sketchily defined. In the event of contraventions, for example, the unions “will report this contravention to the Executive Board of HOCHTIEF. This body will examine and introduce suitable measures to remedy the issue”. As will be seen, however, in the absence of a properly resourced audit procedure, implementation is largely dependent upon union organisation and vigilance.

Similar to most other IFAs in the construction industry, compliance with these provisions is, ostensibly, mandatory for suppliers:

‘HOCHTIEF requires that its contractual partners shall support this Code of Conduct and shall also ensure that it is adhered to by any of their contractual partners who are in any way active in connection with the business activity of HOCHTIEF.’

However, this seemingly all-encompassing definition of ‘partners’ is subject to interpretation. Not only is there no systematic enforcement of the agreement in subcontractors; in effect, the terms of the agreement are applied differentially, or not applied at all, by Hochtief’s own regional subsidiaries. For example, reflecting societal characteristics of the countries in Asia and the Gulf region as well as ownership structures (Hochtief is majority shareholder in the Leighton Group), Hochtief excludes Leighton from the remit of its social responsibility strategy:

‘Due to the regional characteristics specific company guidelines and ethics guidelines apply to Leighton.’ (Hochtief 2007b, 4)

In the case of Malaysia, Leighton does not recognise the Union of Employees in the Construction Industry (UECI). This means that the union is limited to individual representation, either through the company's internal procedures or at Industrial Court, and UECI attempts to recruit on that basis. Organisers report that "at first sight", workers "were not keen to see Union people as they were too scared" (UECI memo, 2007). More particularly, the scope for organisation is limited by the structure of contracting and by national labour law.

In Ukraine, issues of governance are, in some ways more straightforward. Projects are managed through Hochtief's own European division and work on site is carried out by a relatively small number of major contractors. Sub-contracting tends to be limited to 'non-core' activities and the multi-level subcontracting seen in western Europe is a relatively recent import, associated with foreign ownership in the sector. For example, the largest Ukrainian project, the sports stadium at Dnipropetrovsk, involved fewer than 30 companies; (it is estimated that 1,000 contractual links may typically be involved, Stansbury, 2005).

This structure might be expected to facilitate communication of the company's commitments down the value chain. However, of four major contractors surveyed at the Dnipropetrovsk project, only one was able to report any knowledge of the IFA (Interviews, February 2008). The terms of the IFA were not included in contract documentation; in the one case where management had heard of the IFA, this had arisen in discussion with Hochtief in Ukraine.

Hochtief is well-established in the Brazilian market through its subsidiary, Hochtief do Brazil. The construction workers' union, CONTICOM, has affiliates which attempt to organise Hochtief sites in three Brazilian cities. In this case the task of disseminating the IFA is complicated by the growth of sub-contracting, much of it to small local firms (Villagarcia and Cardoso, 1999). An equally important constraint on CONTICOM is Brazilian collective labour law, which has prescribed city-specific unions. Of 500 construction unions, 90 are affiliated to CONTICOM-CUT.

In the case study Hochtief site in the state of Sao Paulo, the president of the local union was not aware of the IFA. The union does not represent any subcontracted workers, only Hochtief employees. Although the company claims that "the right of Hochtief employees to be members of a trade union is expressly welcomed" (2007:31), restrictions on organisation make it almost impossible to extend this welcome to contractors. All meetings with members or potential members have to be conducted off-site.

Effectively, then, Hochtief operates a four tier approach to the IFA. The first tier comprises Hochtief's direct workforce, where industrial relations reflects the strength of the IG-BAU. Second are the regional subsidiaries and joint ventures, which are allowed considerable latitude to capitalise on restrictive labour legislation. Third are the subcontractors. The evidence suggests that IFA terms are not routinely communicated and the Ukrainian case demonstrates that, even where relatively few contractors are involved, there is almost no awareness among managers of their obligations.

The fourth tier is the informal labour that makes up the bulk of the workforce in all three countries. The term 'informal' labour is used in a variety of ways to describe a range of worker statuses of varying vulnerability (Wells, 2007). The crucial point is that these are workers, such as undocumented migrants or those in enforced or bogus self-employment, for whom the 'standard' employment relationship does not exist and whose working lives are therefore largely unregulated. These workers constitute the end-point of the subcontracting chain. They are invisible in terms of labour law and the IFA does not claim to reach them. At the same time, their presence represents an existential threat to union organisation (Gallin, 2001). They are, at the same time, the workers who most need a trade union and also the biggest obstacle to organising the industry as a whole.

In Malaysia, 74% of the construction workforce does not have formal contracts. The vast majority of these (80%) are migrant workers. Although there is no longer a legal barrier to organising these workers, some "indirect restriction" is imposed (BWI, n.d.), that is to say that employer clauses in contracts may effectively prohibit membership (Piper, 2007). In Ukraine, an estimated 55% of GDP is the result of undeclared work; this may be an underestimate (Williams, 2007). Undocumented labour in construction is particularly associated with the growing private sector (Interview). In Brazil, the proportion of undocumented and self-employed workers increased from 56.7% to 74.6% between 1981 and 1999 (ILO, 2001: 18). Migration to the cities, whether foreign or 'internal', accounts for a significant proportion of this: an estimated 46% of construction workers were migrants in 1996 (cited in ILO, 2001: 11).

At the same time that 'lean construction' has hollowed out the role of major construction companies, the nature of work has also changed. In its domestic market, construction as such is now only one activity in Hochtief's portfolio, with a shrinking workforce. In its global operations, project management typically involves very small numbers of direct employees (for example, 40 non-union office staff in Ukraine): disproportionately these are skilled workers in relatively secure employment. Whilst the IFA might apply to this core workforce (although see note on Leighton above), the other tiers, who might be expected to benefit most, are effectively excluded.

Relevance for local organising

Union approaches to the IFA have been moulded by existing membership profiles, by national industrial relations systems and by unions' own traditions. In Brazil, where the unit of organisation has been the city, rather than the workplace or national level, this has put real barriers in the way of a company-specific strategy since neither local nor national level is well placed to provide bargaining support or leadership. The national confederation has been dependent on information from affiliates on Hochtief activities; without this national level data, dissemination of the IFA is problematic. Instead, affiliates rely on company channels. Here, the IFA might have a role: "If the [IFA] made it possible to organise at the workplace, then the company would have to open doors" (union president). However, in the absence of any facility to meet at work, or any knowledge of the IFA, this remains a "chicken and egg" problem.

Industrial relations in the direct workforce are “based on conflict”; the subcontracted and informal workforce is not represented.

Trade union structure in Malaysia is fragmented by industry, by occupation and by region. Faced with employer hostility and with extensive restrictions on membership and action, unions have focussed on the core ‘organisable’ workforce. The UECI stresses that progress on the IFA must be based on a good relationship with the employer. UECI’s core membership are technical and supervisory staff. For these employees, Leighton’s anti-unionism goes hand-in-hand with relatively high pay. Some attempt has been made to extend this scope to site workers, and the IFA has been part of this. A recruitment campaign during 2007 focussed on workplace safety, using the IFA as a benchmark of the type of labour relations elsewhere in the company. The campaign specifically targeted migrant workers, although it is also true that the most vulnerable – the undocumented – remain a significant proportion of the construction workforce.

Particularly given its weaknesses in parts of the sector, the union certainly sees the IFA, and company-wide unionism more generally, as a benefit in organising and bargaining. As a set of concrete commitments, however, the agreement has been found wanting. The BWI organised a workshop on the implementation of the IFA in Kuala Lumpur in 2006, which included board level representation as well as Malaysian management, together with the UECI and other unions. Leighton’s own senior management was not present: “They could not get Leighton around the table” (interview, BWI).

In Ukraine, the prospects for outsourced workers are held back by the legacy of soviet era unionism. The continuing role of unions as service providers for their core, state sector membership has largely marginalised attempts to organise outsourced workers (see Kubicek, 2004). But, as large, privatised, conglomerates are dismantled, union memberships have become fragmented and uneven.

Unions have remained strongest in the large, ex-state sector employers in the sector. *Ukrstalkonstruksiya*, formed in 1973, is the contractor responsible for manufacturing and assembling the steel structure for the Dnipro stadium project. Here, union density is high (reported as 98% in one of the company’s plants.) A union organiser sums up employment relations: “This company is a very good employer. They look after their workers. People don’t have any problems here”. From this position of paternalism and relative security, the IFA seems irrelevant to the permanent workforce: “Why would the union have to do with [the CSR] policies of a German company?” (interview). Meanwhile, Hochtief’s direct workforce in Ukraine, including 40 German and Ukrainian office-based staff, is not unionised and attitudes here reflect the image of unions in the country: “You just pay union dues and get nothing” (interview).

In other circumstances, it is clear that IFAs can at least serve as the catalyst for action. The Ukrainian construction workers’ union, UCBMIW used the Lafarge IFA successfully as part of the 2004 dispute over safety and working conditions at a cement works. Admittedly, the settlement in this case also required the threat of strike action – it was not enough to quote the terms of the agreement. Also, in contrast to construction, the Lafarge workforce was directly employed and 90% unionised.

However, the IFA did serve to mobilise members and to signal to the company that this was, potentially, a company-wide grievance.

This evidence might be that IFAs work best where they are needed least. While they can be a focal point for union action, it is only possible to utilise them where effective union organisation already exists. The right to organise is best achieved by organising. Yet the existence of a global negotiated agreement on freedom of association provides some foundation for local initiatives. As has been seen, though, opportunities are limited, not only by the structure of outsourcing, but also by existing patterns of union organisation. We should stress that the choice of case studies here should not suggest that these problems do not exist elsewhere. For Hochtief in the UK, for example, responsible for a total workforce of thousands, fewer than 30 direct employees are construction union members (interview).

This case, therefore, raises questions not only about international solidarity, but also about solidarity between workers within national construction sectors undergoing rapid change. The transnational 'horizontal' dimension of agreements has, understandably, attracted interest, but if this is to mean anything, unions also need to address the 'vertical' reach of IFA provisions. We suggest that this calls for renewed confidence and an escalation of scale.

5 Conclusion

On the basis of the above preliminary results on how the Hochtief IFA is used by management and trade unions at different levels, a number of points can be made. First, even seven years after the conclusion of the agreement the basic conundrum remains: whether to see the IFA as the foundation for organising or, rather, to see workplace organisation as the precondition for implementation of the IFA. In all three cases highlighted here, unions are faced with serious issues regarding recognition, regulation and organising at the workplace.

Second, although, access to, and dialogue with, Hochtief management seems to be good, the absence of a standing reference group to monitor and implement the IFA seems to constitute a serious disadvantage. Such a forum would be important in order to establish a continuous working programme on/with the IFA, provide an opportunity to establish systems and learn from other areas such as OHS monitoring and certification of Hochtief's suppliers. A reference group, third, could also offer a platform to build regular trade union networks with the BWI's national and local Hochtief subsidiaries.

Fourth, an important distinction can be made in trade union approaches to IFAs: whereas the Hochtief IFA seems to be acted on more on an ad-hoc basis, the IFAs with Dutch construction MNEs seem to be working on a more proactive level. At the moment, the main union actors in the Hochtief IFA - BWI, IG BAU, Hochtief General Works Council - rely very much on affiliates' reports on problems in order to activate any mechanism to resolve grievances. An ad-hoc approach to resolve grievances in fact pronounces the conundrum referred to above. This difference might stem from a home-country effect, i.e. resulting from the particular management-labour relations in the Dutch construction sector and/or the approach of FNV Bouw;

further, this could result from the existence of a reference group in the Dutch construction IFAs which facilitate a more systematic and continuous use of the agreement. This resonates very much with BWI efforts to back the signature of framework agreements with education and information activities

It needs to be recognised that transnational solidarity, of itself, cannot be the 'solution' because the most intractable problems in the industry are not primarily ones of international inequality. IFAs can play a part in building 'vertical' as well as 'horizontal' solidarity: not a new concept, but one that requires a focus on complementary strategies.

First, 'mandatory' IFA provisions require contractual status. This has been seen as unattainable in the private sector, but BWI dealings with the International Contractors Association on labour standards in public contracts sets a benchmark in this respect (see CICA, 2002). Second, given the fluid structure of contracting, organizing the value chain can only really be possible on an industry-wide basis. The International Organisation of Employers, for example, has recently put forward the prospect of international sectoral collective bargaining as something to be taken seriously: "companies ... should not feel pressurised into signing an agreement simply because a competitor has (IOE, 2007). If the agenda seems ambitious, unions might take hope from the way this is viewed by the employers.

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