

# The Social Diplomacy of Multinational Corporations

*by Marieke Louis*

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**Just as an international treaty on the social responsibility of multinational corporations is being negotiated at the United Nations, Marieke Louis reveals how corporations are involved in the arenas of global governance, and highlights the ambivalent relationships between states and multinational corporations.**

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Talking about the diplomacy of multinational corporations may at first sight seem paradoxical. And indeed, the field of diplomacy is usually considered to be the preserve of the state. But as Susan Strange has excellently demonstrated in her pioneering works on international political economy, politics is not (and may never have been) an activity restricted to its official representatives<sup>1</sup>. Just like many other non-governmental organisations, corporations have become key players in the shaping of the diplomacy between states and of the institutions of global governance<sup>2</sup>. As such, what does this diplomatic activity consist of and what relationships exist within this context between multinational corporations and national governments?

This essay will examine an aspect of the international activity of multinational corporations that is seldom studied, and which we will call “social diplomacy”. This term here refers to all of the activities carried out by such corporations in the field of the social regulation of their economic activity: this might for example cover negotiations regarding

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<sup>1</sup> S. Strange, *The retreat of the state. The diffusion of power in the world economy*, Cambridge University Press, 1996.

<sup>2</sup> L. Badel, “Milieux économiques et relations internationales : bilan et perspectives de la recherche au début du XXI<sup>e</sup> siècle”, *Relations internationales*, vol. 1, no. 157, 2014, p. 3-23; A. Guilbaud, *Business Partners : firmes privées et gouvernance mondiale de la santé*, Presses de Sciences Po, 2015.

their employees' working conditions or, more recently, debates around corporate social and environmental responsibility, in an environment defined by the proliferation of social, sanitary and environmental scandals involving multinationals. We would like to examine two aspects of the issue of the social diplomacy of multinational corporations. The first views multinationals as both objects and subjects of social regulation<sup>3</sup>. The second deals with the (dis)organised representation of multinational corporations at the global level by interrogating the connection between the fragmentation of this representation and the unstable nature of the regulations that are in place.

## States and Corporations: Who Regulates Whom?

### The 1970s: Multinationals as Objects of International Regulation

While it is reappearing with particular acuity today around the regulation of the “GAFA” (Google, Apple, Facebook, Amazon), the idea of regulating the practices of multinational corporations, especially where social issues are concerned, isn't new. The 1970s were a pioneering decade, which saw the setting up, at the international level, of institutional and regulatory frameworks that are still relevant today. This international system was set in motion by both external and internal causes. Among the external causes, we should in particular mention the pressure exerted by certain players from civil society, and in particular the strong rallying of international trade unions, who used naming and shaming, and in particular the publication of “blacklists” of companies, as the main way of drawing the attention of citizens and governments to the failure of multinational corporations to respect labour rights. Among internal causes, we should mention the role of recently decolonised countries, which put multinationals on the agenda of certain international forums, in particular those connected to the UN: the General Assembly, the Economic and Social Council (ECOSOC) or the United Nations Conference on Trade and Development (UNCTAD). Created in 1964, this latter institution would soon become the assembly favoured by developing countries for denouncing certain practices of multinational corporations that they consider to be interferences in and abuses of their national sovereignty. In 1974, following several scandals, including one which involved in particular the American multinational *International Telephone and Telegraph*, which was accused of interfering in Chilean politics, the United Nations Centre on Transnational Corporations was created in order to draw up a code of conduct aimed at multinational corporations, not without the reluctance of Western countries, in particular the United States<sup>4</sup>.

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<sup>3</sup> By using a typology that was put forward in particular by Morten Ougaard and Anna Leander, *Business and Global Governance*, London, Routledge, 2009.

<sup>4</sup> S. Beroud and T. Hajduk, “L'OCDE et les bonnes pratiques. Une histoire inséparable”, in C. Laporte, A. Klein and M. Saiget (ed.), *Les bonnes pratiques des organisations internationales*, Presses de Sciences Po, 2015, p. 61-77.

Of the international organisations that got involved (for various reasons) in these debates, two would progressively come to stand out in the establishment of rules aimed at regulating the practices of multinational firms in social terms: the Organisation for Economic Co-operation and Development (OECD)<sup>5</sup> and the International Labour Organization (ILO)<sup>6</sup>. In 1976, the OECD, which first considered the issue of multinational corporations from the perspective of investment and tax-related challenges, before taking an interest in social issues, published the OECD Guidelines for Multinational Enterprises. The concept of “Guidelines” is in particular deemed to be less restrictive than that of a “Code of Conduct” preferred by the UN. One year later, the ILO for its part issued a Declaration on Multinational Enterprises and social policy, the tone of which was more critical about the increasing power of corporations (compared to that of governments in particular); this declaration focussed more explicitly on the working conditions and repercussions of the economic activity of these corporations in terms of employment and unemployment. These two texts, which come from organisations with different mandates and memberships, nevertheless have in common the fact that they both emphasise the opportunities offered by multinational corporations in terms of investment and employment, before urging such corporations to ensure that their economic activities are compliant with the human rights and national social legislations.

### **Mobilised and “Norm-Setting” Corporations**

Far from being passive, multinationals are also taking action to resist (or even preempt) regulations that they deem too restrictive, and to condemn government interventions that might threaten their existence. In the 1970s, expropriation, in particular through nationalisation, was regularly mentioned by company managers and employer organisations as one of the threats that corporations must guard against<sup>7</sup>. As well as resorting to international law and lobbying, which they are able to aim directly at governments, they can also use their business representatives within international organisations (see box below) in order to monitor the contents and reach of any regulations with which they may need to comply. On top of the resistance of Western countries to overly restrictive regulation, this indirect lobbying of corporations partly explains why the OECD and ILO declarations of 1976 and 1977 were rather moderate. In addition, far from being merely reactive, multinational corporations demonstrate their proactivity by, in certain cases, initiating regulations: either by drawing up their own codes of conduct, or by negotiating the standards with which they will have to comply with international organisations and governments.

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<sup>5</sup> <http://www.oecd.org>

<sup>6</sup> <https://www.ilo.org/global/lang--en/index.htm>

<sup>7</sup> L. Glynn, *Multinationals in the World of Nations*, New York, United States Council of International Business, 1983.

Corporations that get involved in such multilateral initiatives, or who even publish their own codes of conduct, expect to draw numerous benefits from these actions:<sup>8</sup> avoiding potentially costly (both financially and symbolically) legal proceedings, and preserving or even conquering new markets through the improvement of their reputation with an increasingly informed and vigilant general public. We thus observe, over the past thirty years, a booming of initiatives in which multinational corporations have, often just as much as governments, become genuine “norm setters” in an extremely varied and often non-hierarchical range of fields, from the prohibition of child labour to the protection of the environment or from improved transparency to fighting corruption. Some of these initiatives deserve to be mentioned here.

Launched in 2000 by the General Secretary of the United Nations at the time, Kofi Annan, and promoted in particular by his Special Representative John Ruggie, the *Global Compact*<sup>9</sup> is a direct and voluntary partnership between the UN and all kinds of corporations and organisations (be they private or public, small or large)<sup>10</sup>. The *Global Compact*, which was negotiated by including a wide range of stakeholders from civil society and the business world, defines principles deemed to be universal in terms of human rights, international labour standards, environmental protection and combating corruption, which corporations – with a particular emphasis on multinationals – are expected to comply with within their respective fields of activity and spheres of influence. Nevertheless, states are still considered to be the main players responsible for ensuring that these rights are respected, hence the calls, repeated in particular by John Ruggie himself, for a strengthening of governments’ capacities for supervision within the multilateral and multipartite framework established by the *Global Compact*<sup>11</sup>.

Alongside the UN initiative, a private organisation, the International Organization for Standardization or ISO, has also been written about extensively. In 2010, it adopted the standard ISO 26000 on the social responsibility of corporations and organisations (in order to avoid only targeting multinationals), following a process which, here too, was intended to be particularly inclusive, both in terms of civil society and of business<sup>12</sup>. This standard, welcomed (among others) by the Chamber of Commerce and Industry<sup>13</sup> which viewed it as the “reference standard” and the “first genuine international standard” in terms of corporate social responsibility, clearly overshadowed the initiatives launched in the 1970s, in particular by the ILO. Although the ILO declaration is regularly updated and accompanied by an anonymous

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<sup>8</sup> J. Arevalo and D. Aravind, “Strategic Outcomes in Voluntary CSR: Reporting Economic and Reputational Benefits in Principles-Based Initiatives”, *Journal of Business Ethics*, vol. 144, no. 1, 2017, p. 201-217; S. A. Aaronson et I. Higham, “Re-righting Business’: John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms”, *Human Rights Quarterly*, vol. 35, n° 2, 2013, p. 333-264.

<sup>9</sup> <https://www.unglobalcompact.org/>

<sup>10</sup> Around 8,000 corporations and 4,000 non-corporate organisations have been listed to this day.

<sup>11</sup> J. G. Ruggie, “Business and Human Rights: The Evolving International Agenda”, *The American Journal of International Law*, vol. 101, no. 4, 2007, p. 819-840.

<sup>12</sup> C. Ruwet, “La RSE négociée : règles du jeu et contenus. Le cas d’ISO 26000”, *Négociations*, vol. 2, no. 18, 2012, p. 93-108.

<sup>13</sup> <https://www.cci.fr/web/developpement-durable/norme-iso-26000>

and free online helpdesk aimed at businesses (the *Helpdesk for Business on International Labour Standards*)<sup>14</sup>, it still remains largely ignored by businesses, governments and civil society.

What then of the effects of these regulations? Be they public or private, these initiatives have in common the fact that they mainly attempt to circulate “best practices”<sup>15</sup> in social matters, more than (im)posing a legally binding framework for the activities of corporations. This is why some people talk of “soft law”, in contrast to a genuinely binding “hard law”—a contrast which one might in fact call into question. Nevertheless, these measures are not necessarily deprived of monitoring or supervisory systems, and have established themselves as frames of reference which (both international and local) non-governmental organisations rely on to justify their demands or even their complaints against multinational corporations. The OECD Guidelines have thus established National Contact Points (NCPs) which provide offices to deal with complaints from civil society (though these offices are often deemed to be wanting)<sup>16</sup>. The *Global Compact*, for its part, provides a mechanism for excluding businesses that do not regularly report on the compliance of their practices, and automatically excludes businesses whose activities are deemed to be by their very nature incompatible with UN objectives (arms or tobacco sales for example). Since 2014, the UN Human Rights Council has furthermore considerably increased pressure on multinational corporations by drawing up a legally binding international treaty relating to the respect of human rights and remedy for the victims of violations committed by corporations<sup>17</sup>.

The efficacy of these instruments being very much relative, they mainly highlight an awareness at the international level of the necessity of providing a social framework to the economic activity of multinational corporations, which have for their part established themselves as genuine players in (their own) regulation in a fragmented diplomatic game.

## The Representation of Multinationals at the Global Level: the Art of Evasion?

### Managerial Polyphony

The attention paid by the media to the individual lobbying aimed by multinational corporations at political players (think for example of the case of the lobbying carried out by

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<sup>14</sup> <https://www.ilo.org/empent/areas/business-helpdesk/lang--en/index.htm>

<sup>15</sup> C. Laporte, A. Klein and M. Saiget (ed.), *Les bonnes pratiques des organisations internationales*, op. cit.

<sup>16</sup> S. Bommier, “Responsabilité environnementale des entreprises et régulation extraterritoriale. L’implantation de Michelin en Inde à l’épreuve des Principes directeurs de l’OCDE”, *Études internationales*, vol. 47, no. 1, 2016, p. 107-130. See also, S. Bommier and C. Renouard, *L’entreprise comme commun. Au-delà de la RSE*, ECLM, 2018. <http://www.eclm.fr/ouvrage-394.html>

<sup>17</sup> For the report on how these negotiations are developing, and especially to follow the October 2018 negotiations on the latest version of the treaty, see in particular <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntnc.aspx>

the agri-food firm Monsanto to prevent the prohibition of glyphosate by the European Union) often prevents us from seeing (or even conceiving of) the ways in which corporations work together at the international level. Although it remains less well-known than the actions of their employees, the collective action of multinational corporations is very real<sup>18</sup>, and, unlike what certain common preconceptions would have us think, does not take the form of a single global lobby.

### Corporations in International Organisations

Created in 1919, the ILO has a tripartite structure: each state is thus represented by government delegates, as well as by delegates from worker and employer organisations from the same country, which negotiate, on almost equal footing with the governments, international labour standards. Most of the workers and employers represented at the ILO are gathered together within the International Trade Union Confederation and the International Organisation of Employers (the IOE). The IOE also enjoys an advisory status to the UN ECOSOC, a status which was also granted to the International Chamber of Commerce (the ICC)—which in fact became, in 2016, a permanent observer at the General Assembly.

Founded in 1961 following the Organisation for European Economic Co-operation, the OECD has established two committees responsible for representing workers and employers: the *Trade Union Advisory Committee* and the *Business and Industry Advisory Committee*, now called *Business at OECD* but which remains better known under the acronym “BIAC”.

Corporations (multinational ones, but not just these) are thus officially represented within several institutions of global governance through national and international employer organisations. But unlike at the ILO, where they have real decision-making power, they only have a consultative role within the UN and the OECD (which does not mean that they do not have any influence).

One’s initial reflex is to think of the Economic Forum in Davos, which was created in 1971. This is the framework for annual meetings between the leaders of the businesses that really count on a global level, and an opportunity for many heads of government and political personalities to show themselves. In particular, it was during the 1999 Davos Economic

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<sup>18</sup> K. Ronit, “Transnational Corporations and the Regulation of Business at the Global Level”, in Bob Reinalda (ed.), *The Ashgate Research Companion to Non-State Actors*, Farnham, Burlington, Ashgate, 2011, p. 75-87.

Forum that Kofi Annan put forward the idea of the *Global Compact*<sup>19</sup>, thus implicitly acknowledging the representativeness of this gathering of company leaders to prepare the ground for a partnership with the United Nations. However, while the Davos Forum does indeed provide an important forum for discussions and meetings between economic elites, real organisations have, for almost a century, been representing businesses at the global level. These include in particular the ICC and the IOE (see box above), the headquarters of which are located in Paris and Geneva respectively, and whose affiliated businesses and organisations are distributed among around 120 countries in the case of the ICC, and 140 for the IOE. These organisations both lay claim to a monopoly over the representation of private corporations at the global level: the ICC in terms of economic issues, and the IOE in terms of social issues, according to the terms of a compromise that was reached in the early 1920s and which was renewed in the 1970s. On paper, the ICC and IOE thus harmoniously share the task of providing diplomatic representation for corporations within the institutions of global governance. In practice, these two organisations developed relatively independently of each other, with isolated collaborations. The ICC thus focussed on commercial issues, and in particular on questions of international arbitration, by nurturing a privileged relationship with the LoN and then with the UN. As for the IOE, for a long time its only mandate (and perhaps even its only *raison d'être*) was representing employer organisations within the ILO, through interventions on essentially legal questions connected to the drawing up of international labour standards.

From the 1970s, this division of labour was made more complicated by the increasing interdependency of the areas covered by each of these organisations (an interdependency which in fact predated their creation), and in particular the intensity of the debates concerning the regulation of multinational corporations, of which we have seen that they penetrated all of the international forums in which the IOE and the ICC are involved. The ICC has thus proved to be very active on questions related to the social responsibility of multinational corporations where the IOE found it more difficult to establish a clear and audible position on this question, both due to the tripartite framework of the ILO, which favours more traditional forms of social dialogue or collective negotiation, and to its composition and mandate. Indeed, unlike the ICC, the IOE's members only include employer organisations, and not individual corporations. The more indirect relationships it has with multinational corporations, added to its desire to provide universal representation for corporations, and in particular for small and medium-sized enterprises, have thus not allowed the IOE to be at the forefront of debates regarding the corporate social responsibility of multinationals, nor to demonstrate its added value for such corporations yet. Taking advantage of its Geneva location and its proximity to the ILO and the UN Human Rights Council<sup>20</sup>, the IOE has recently tried to make itself more credible for multinationals by creating strategic partnerships like the *Global Industrial Relations Network*. Launched in 2008,

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<sup>19</sup> A. Rasche, S. Waddock, M. McIntosh, "The United Nations Global Compact: Retrospect and Prospect", *Business & Society*, 52(1), 2012, p. 6-30.

<sup>20</sup> Created in 2006.

this initiative aims to offer multinational corporations (currently around thirty of them) a confidential space for discussing the problems they encounter in terms of labour law, as well as a space providing information and advice on existing international social regulations.

Aside from the ICC and the IOE, the creation of the BIAC by the OECD (see box above), which comes on top of myriad other employer organisations with more limited remits (such as *BusinessEurope*), the representation of businesses at the global level appears fragmented to say the least, in spite of recent consolidations within the framework of the G20, particularly through the establishment of a *Business 20* bringing together the employer organisations of the G20 countries<sup>21</sup>. At the international level, we are dealing more with a polyphony of employers than with a single voice of business.

### The Benefits of Confusion

This quick sketch of the various employer organisations that speak on behalf of businesses, including multinationals, leads us to question the utility and effects of such fragmentation in terms of social regulation. Indeed, this fragmentation is doubtless not without its consequences on the disparity of existing regulations at the global level, which, on top of the absence of any political consensus, also reflects the absence of a *single* reference stakeholder who could speak in the name of all multinationals. Let us first recall that, while they are not opposed to some forms of cooperation both on the national and international levels, business leaders have always defended a certain autonomy in terms of collective action. In addition, they have always insisted on their diversity in order to oppose the existence of uniform and universal regulations. The variety of existing employer organisations thus simply reflects the diversity of economic stakeholders (the majority of which still consist of small and medium-sized enterprises, and not of multinational corporations), and their reluctance to engage with strongly institutionalised delegations of their authority. This is all the more true for multinational corporations as they are often less in need than others of the services provided by employer organisations<sup>22</sup>, hence the success of the Davos Economic Forum. In addition, we might reasonably think that multinational corporations also have an interest in maintaining this status quo, which is relatively evasive in terms of representation, and in resisting forms of representation that might be too institutionalised or centralised—on the one hand because the absence of a single reference representative organisation, which would have the authority required to negotiate agreements *in the name of* multinational corporations, prohibits the negotiation of general and restrictive regulations; and on the other because the multiplication of stakeholders and forums for negotiation contributes to maintaining a certain confusion regarding the rules of the game.

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<sup>21</sup> M. Louis, “The ILO, the Social Partners and the G20. New Prospects for Social Dialogue at the Global Level?” *Global Social Policy*, vol. 16, no. 3, 2016, p. 235-252.

<sup>22</sup> See Thomas Zanetti’s contribution on Michelin in *Le pouvoir des multinationales*, Puf-Vie des idées.



To conclude this analysis, we find at least two results. The first is that, at this present moment, there is neither a single binding framework for regulating multinational corporations, nor a “global lobby” of multinational corporations which might shape or combat it in a uniform manner. Even when they are in a dominant position, multinational corporations are still constantly engaged in power dynamics that force them to get involved, either through international employer organisations or directly, in the arenas of global governance. The current struggle over the UN treaty on the respect of human rights by businesses is a manifestation of this. As skilled diplomats, multinational corporations thus deal with an international environment of which they are at once the objects and subjects. The second conclusion is that the social diplomacy of multinational corporations, which as we have seen has a wide variety of shapes and tools, produces ambivalent and potentially subversive effects: while it provides such corporations with room for manoeuvre and defends their interests, it also contributes to weaving a net (to use one of Norbert Elias’ favoured metaphors) which these corporations must increasingly contend with, and of which they cannot pretend that they are not aware. The fact that the mesh of the net may be deemed to be too wide remains of course an open debate. But formulating this debate solely in terms of power dynamics and confrontations between multinationals and governments is a reductive way of looking at the issue. The multiplicity of levels of collective action, the fragmentation of the stakeholders involved, and the diversity of interests at play (both in terms of corporations and of governments) are all elements which it is just as important to take into account in developing and implementing effective international regulations.

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