

Article

Innovation in Corporate Social Responsibility: Sustainable Business Agreements in The Netherlands[†]

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ABSTRACT

Human rights have long been the unique domain of States. This changed with the emergence of multinational companies that span the world. As a result of these companies engaging with suppliers and third parties, global supply chains have emerged. The responsibility for compliance with fundamental rights within those chains appears to be a problem. On the one hand it is unclear where responsibilities lie, and on the other hand the enforcement of regulations is problematic because activities go beyond national boundaries—and thus jurisdictions. As a result, regulation through (international) treaties or (national) legislation is increasingly inadequate. Whether there is a connection or not, in recent decades multinational companies have taken more responsibility for human rights. A new development in the Netherlands for setting standards in this area is regulation through so-called “CSR Covenants”. This article explains what these CSR Covenants—sustainable business agreements—are and examines their impact on the enforcement of fundamental labour rights.

KEYWORDS: innovation; sustainability; sectoral approach; supply chains

INTRODUCTION

Human rights have long been the unique domain of States. This changed with globalisation and the emergence of multinational corporations that span the world. Since manufacturing shifted to low-wage countries and due to the presence of necessary raw materials in certain parts of the world, the use of suppliers and third parties has led to the emergence of global supply chains. The size and complexity of these supply chains has created risks of violations of fundamental rights, including labour rights. Almost 21 million people—3 out of 1000 people worldwide—are the victim of forced labour [1]. There are 218 million children in the world working, who are aged between 5 and 17 years. Of those, 152 million are victims of child labour and almost half that number, 73 million, work in hazardous child labour [2]. These figures do not indicate to what extent these violations take place in a supply chain, but it

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is clear that the fundamental labour rights of a large number of workers are being violated.

Guaranteeing compliance with fundamental rights within supply chains is problematic. Not only is it unclear where responsibilities lie, but the enforcement of regulations also causes problems since activities extend beyond national borders, and thus beyond national jurisdictions. National legislation and enforcement fall short in this area. This also applies to regulation via treaties: UN treaties and ILO Conventions impose obligations on member States, not on businesses. States commit themselves to obligations within the OECD framework. As a result, in recent decades responsibility for human rights compliance has shifted to multinationals [3], either as a way to overcome the resulting governance gap or as a new approach that can be observed separately [4]. Considering that multinational companies are not part of traditional compliance mechanisms, a challenge has arisen to create new ways of defending labour rights within their sphere of influence.

In 2000, the Social and Economic Council of the Netherlands (hereinafter referred to as SER) issued recommendations on Corporate Social Responsibility (hereinafter referred to as CSR) [5]. CSR can be described briefly as the acceptance by companies of responsibility for their impact on society [6].

According to the SER, CSR should be part of a company's core business in the sense that attention is paid to the social effects of its operations. Referring to John Elkington's Triple P framework (Profit, People, Planet) (now adjusted as People, Planet, Prosperity and expanded with Peace and Partnership), the SER defines CSR as "consciously focusing corporate activities on long-term value creation in three dimensions: not only in financial and economic quantities such as profitability and market value, but also in an ecological and social sense" [7]. The SER regards the social role of the company as being broader than the mere pursuit of profit. It takes the principle of corporate citizenship as a starting point, where the company limits the negative external effects of its actions as much as possible and encourages and reinforces the (potential) positive external and long-term effects [7]. The Dutch Government wishes to encourage and support CSR practice in the business sector [8]. To this end, it commissioned a study of the various sectors in the Dutch economy. The objective of this study, conducted using a so-called Sector Risk Analysis, was to identify where the greatest risks for environmental and human rights violations lie [9]. In April 2014, on the basis of the results from this sector analysis, the SER recommended that the government draw up effective CSR agreements with the various trade and industry sectors [10]. And so a new multi-stakeholder CSR tool was launched: sector agreements or covenants. A distinctive feature of these sector agreements is the fact that business and branch organisations, unions and NGOs work together, facilitated by the SER and with support from the Dutch government. The SER plays an important role in facilitating and supervising the negotiation

process in the run-up to the conclusion of the covenants, a process that can take years. Over time, considerable expertise has been developed in this area within the SER, which can be used in the formation of new covenants.

Focus

This paper examines fundamental labour rights, although the scope of CSR goes further than that (e.g., environment, combating bribery, bribe solicitation and extortion, consumer interests, competition and taxation). Fundamental labour rights include the right to freedom of association and the right to collective bargaining, elimination of all forms of forced labour, abolition of child labour and elimination of discrimination in the area of employment and occupation. Health and safety at work are a priority, but are not (yet) considered to be fundamental labour rights. In the Centenary Declaration adopted in Geneva on the occasion of the 100th anniversary of the ILO in June 2019, this topic was placed on the agenda to be added in the coming years to the list of fundamental labour rights of 1998 [11].

This paper explains what covenants are, and examines their impact on the enforcement of fundamental labour rights. Sector agreements are innovative in CSR rulemaking and the Dutch covenants are the first in the field. Whether enterprises have obligations to respect human rights or not, in the context of the covenants they participate in multi-stakeholder agreements and voluntarily take responsibility for the enforcement mechanisms concluded in the agreements. That leads to a few summarising remarks with regard to the broader issue of effectiveness of CSR frameworks.

DUTCH SECTOR AGREEMENTS: CONTENT AND SCOPE

Introduction

In the context of public international law, “covenant” means a written document containing agreements between States. In a CSR context, a covenant is an agreement between parties with different interests to commit to a specific goal. According to the SER, covenants help the parties to increase their leverage by working together at sector level with the government and stakeholders to address specific complex problems, especially in relation to supply chains [12].

As explained above, the first step on the way to the realisation of the covenants was to identify sectors in which production-related social risks are high. Subsequently, the government entered into discussions with the designated sectors concerning the development of a CSR covenant. That has since led to the establishment of nine covenants (as of January 2020) that are supported by the SER: Garments and Textile (July 2016), Banking (October 2016), Gold (June 2017), Food Products (June 2018), Insurance (July 2018), Pension Funds (December 2018), Natural Stone (May 2019), Metals (July 2019) and Floriculture (July 2019) [13]. And more are on the way—in the field of Agriculture and Horticulture, for example. A number

of sector agreements were also concluded without assistance from the SER—on sustainable forest management and on vegetable proteins, for example.

In this section, the content and scope of the aforementioned sector agreements will be examined.

Organisation

As explained above, the covenants are sectoral: they are concluded for specific business sectors. Parties to the covenants are the government, trade unions, industry organisations and civil society organisations. Individual companies are not usually contracting parties to a covenant, although sometimes they are—e.g., in the gold, metal chains and natural stone sectors. Due to the participation of the government, the participants in covenants are a mix of public and private parties. Because of the diversity of the parties involved, the covenants are also referred to as multi-stakeholder tools: a partnership of various groups that represent different interests. However, in spite of these contrasting interests the parties are prepared to work together to achieve a solution for a common problem or to acknowledged malpractice. The stakeholders in the various covenants are, more specifically, the Dutch government (represented by the Minister for Foreign Trade and Development Cooperation, the State Secretary for Infrastructure and the Environment, the State Secretary for Economic Affairs or the State Secretary for Foreign affairs), trade union federations (such FNV and CNV), industry organisations for the specific sectors (such as the branch organisation in Retail Non-Food or the Dutch pension federation) and NGOs (such as Amnesty International, Oxfam Novib, or Unicef).

The sustainable business agreements are part of the Dutch government's policy on human rights and are supported financially on the basis of that policy [14]. The policy is accounted for in the House of Representatives, which is informed once a year of progress in the implementation of the international CSR policy in a letter from the Minister of Foreign Trade and Development [15–17]. The State Secretary for Economic Affairs and Climate is responsible for the national CSR policy [18]. The Dutch government has expressed the ambition to create uniform rules in the field of CSR throughout the whole of Europe. As a result, a start has been made in relation to the Natural Stone covenant. The Dutch and Flemish natural stone sectors have entered into covenants with the Dutch and Flemish governments, NGOs and trade unions on a joint approach to possible malpractices [17,19]. The Dutch government is also working at the legislative level to ensure that fundamental labour rights are respected. An example is the Act on the duty of care to prevent child labour [20] concerning prevention of the supply of goods and services that are produced using child labour. The Act requires companies to declare that they will do their utmost to ensure the prevention of child labour.

The covenants have signatory parties and supporters. The obligations from the covenant apply directly to the signatory parties. Individual companies that are not parties can join the covenants as adhering party. If they do so, then the obligations that apply to them are indicated in the respective covenant. The negotiating parties determine the scope of the covenant, both geographically and in terms of content. For example, the Banking covenant only deals with corporate lending and project finance activities of the affiliated banks.

Each covenant has a steering group with a secretariat that takes care of the day-to-day administration. The steering group includes representatives of the parties involved and is chaired by an independent chairperson. On behalf of the parties involved, the steering group monitors compliance with the covenant and provides guidance on its implementation. In seven of the nine current covenants, the steering group also has a dispute resolution function (see Sections “**Compliance**” and “**Effectiveness of CSR Frameworks**”). The cost of the implementation of the covenants is covered jointly by the parties and affiliated businesses, in some cases also with government support.

Substance

The content of the covenants varies, but the template is more or less the same. Parties to the covenants commit themselves to achieving tangible results in the area of CSR. The covenants are based on existing objectives and standards of the United Nations Guiding Principles (UNGPs) and the Guidelines of the Organisation for Economic Co-operation and Development (OECD Guidelines) [21]. One of the most important objectives is the establishment of responsible supply chain management. The risks that are emphasised in this process vary by covenant. Besides the more generally formulated due diligence obligations (see Section “**Due Diligence**”), appendices to the covenants mention special projects that tackle sector-specific problems. The covenants have a duration of three to five years in which the affiliated parties set themselves the goal of achieving substantial improvement. The affiliated branch organisations are obliged to commit companies to the agreements in the covenant. All covenants state that the parties do not pursue any agreements that restrict the market or reduce competition. It should be noted that a number of covenants emphasise that the covenant is not legally enforceable.

Appendix 1 of the Garment and Textile Covenant contains agreements dealing with discrimination and gender, child labour, forced labour, freedom of association and health and safety in the workplace. Appendix 1 of the Gold Sector Covenant provides a list of “issues and risks” in the mining and processing of gold. The list of risks contains all forms of forced labour and the most serious forms of child labour. Health, safety and working conditions are also mentioned. Chapter 1 of the Banking Covenant refers to the responsibility of individual banks to respect human rights, including labour rights, in accordance with the OECD Guidelines

and the UNGPs. Chapter 8 includes a specific theme stating that parties have a shared ambition to bring about respect for human rights, including at the very least freedom of association, collective bargaining and a living wage.

The Food Products Covenant, besides referring to the UNGPs and OECD Guidelines, also refers to the Sustainable Development Goals of the United Nations [22]. A working group examines the possibilities for remedy or redress for “those who in the food value chain” experience a negative impact in relation to the business operations of companies affiliated with the covenant. Special projects in the Food Products Covenant are related to living wage and climate change. The Insurance Covenant is aimed at the responsible investment policy of Dutch insurance companies. This covenant also includes a section on the option of remedy and redress in the case of “negative impacts” that occur due to the actions of the affiliated companies. The appendixes to the covenant include a sustainable investment code and a code of conduct for insurers. Children’s rights are specifically mentioned in the Insurance Covenant as an area that requires attention. The Pension Funds Covenant is also aimed at achieving responsible investment policy. A distinction is made between a “deep track” and a “wide track”. The wide track is aimed at achieving acceleration in the implementation of the OECD Guidelines and the UNGPs for the entire sector. The deep track focusses on specific cases to tackle the adverse impact of companies in which pension funds invest. Although pension funds outsource many activities to external service providers, they explicitly state that they are responsible for the implementation of OECD Guidelines and the UNGPs. This covenant also contains a section on access to remedy and redress.

The Natural Stone Covenant states under Article 1 of Part III that the agreements in the covenant are aimed at specific CSR risks within the production and supply chain of the natural stone sector. Seven specific themes are formulated: discrimination and gender, child labour, forced labour, living wage, right to organise and right to collective bargaining, health and safety and land rights and the living environment (Article 6(14)). This selection was drawn up jointly by the parties on the basis of “observations of the adverse impact on society of the natural stone sector” (Article 6(15)). The Metals Sector Covenant includes an inventory of risks within the mining and processing of metals in Annex 2 in which the main categories—environment, biodiversity and health, governance and security, human rights including children’s rights, gender equality land-related rights, workers’ rights and working conditions—are subdivided into 82 (!) subcategories, making it by far the most detailed of all the covenants. The Floriculture Covenant refers to the specific CSR themes that “require priority focus from parties active in the floriculture sector” as being living wage, women’s rights, health and safety exposed to crop protection products, land rights, climate change, water usage and milieu

impact of use of crop protection products (considerations under 1.6 and 5, joint thematic approach). So the focus here is on the environment.

It should be noted that the emphasis within the various covenants differs depending on the sector for which the covenant was concluded. Protection of fundamental labour rights forms the main focus.

All covenants contain the obligation to publish an annual progress report on the results they have achieved. An instruction to perform due diligence is also included in all covenants.

Due Diligence

It is difficult for companies to maintain an overview of the supply chains they have created. Take Unilever, for instance, which refers in its “supply chain overview” to a total of 66,674 suppliers in 162 countries across four continents [23]. Providing an overview of these chains is one of the conditions for the success of CSR policy. One of the most important provisions aimed at regulating international supply chains is therefore the due diligence obligations included in the covenants.

CSR due diligence basically concerns collecting, linking and sharing information on CSR risks in product chains and countries where the affiliated companies are active. To facilitate this process, parties to the covenants draw up guidelines and—where necessary—provide support specifically aimed at small and medium-sized businesses, an important target group of the covenants [15]. Examples of the performance of due diligence are the initiation of a dialogue between an insurance company and the business aimed at the prevention of violations of fundamental rights [24], the formulation of a policy on voting for listed companies [25] or a summary of specific risk factors per country including the gravity, size and extent of irreversibility of those risks [26] and the inclusion of recommended measures to deal with those risks (for example improving education for the children of seasonal workers to fight child labour or random monitoring to check whether forced labour has been banished from quarries through consultations with trade unions or social organisations) [26].

CSR risk management also includes the promotion of goals and agreements on obligations in the covenants by trade organisations at meetings with members. Where possible, parties to the covenants search for collaboration on other initiatives and with other actors.

One of the most important achievements of due diligence is that supply chains and the related risks become visible. The obligations included in the Garments and Textile Covenant, for example, have led to the publication of factory locations by the affiliated parties [27]. In this way, everyone can see where goods come from and what violations of rights possibly occur. Due diligence thus creates openness and promotes awareness. It is expected that as a result, companies will make an effort to ensure that business contacts in their own chain avoid negative consequences—by including clauses in contracts, for example. Due

diligence does not give rise to legal obligations, however. If an affiliated company does not meet its obligations or does so inadequately, then the most severe sanction on the basis of the covenants is that the parties to the covenant expel the company in question. A company that has difficulty meeting the due diligence obligations can also leave the covenant on its own initiative.

Compliance

All covenants contain reporting obligations for the affiliated parties that are inspired by the monitoring system of the ILO. In this system, member States report on the observance of the Conventions that they have ratified. The parties that are affiliated to a CSR covenant are obliged to publish an annual progress report. For more information on these annual reports see Section “**Reporting Obligations**”.

In July 2018, an overarching progress report was published by the SER on three CSR covenants—Textile, Banking and Gold [28]. The report was drawn up following interviews with parties and stakeholders and provides information on the most important results up to then. The report contains a number of interesting outcomes.

More than 40% of the market is affiliated with the Garments and Textile Covenant, and a far-reaching collaboration with German sister initiative *Textilbündnis* is in progress. Since 4 July 2017, 2802 manufacturing locations have been published online, so that local trade unions and NGOs can raise existing malpractices at the secretariat of the covenant. This action has been taken on six occasions already. In the Banking Covenant, the role of banks in the cocoa and palm oil chains has been analysed to see how violations of standards can be tackled jointly. As a result of the Gold Sector Covenant, a project to combat child labour in small-scale gold mines in Uganda has been launched [28].

Besides the results, the progress report also raises points of attention for improving the process to establish covenants—in particular, the role of the parties involved, the time schedule and the setting of priorities [28].

ENFORCEMENT OF FUNDAMENTAL LABOUR RIGHTS

Introduction

Without compliance mechanisms, there is a risk that granting rights becomes symbolic. Enforceability of fundamental rights is essential, especially in the supply chains. The covenants have their own dispute settlement mechanism in the form of dispute committees. This section explains what such dispute committees entail. Enforcement based on the covenants is compared with enforcement of the rights from the ILO MNE Declaration, the OECD Guidelines and the UNGPs, in order to be able to make a few remarks about the degree of “(semi-)legal” protection that the various regulatory frameworks offer in the event of non-compliance.

Enforcement of the Rights Based on the OECD Guidelines, the ILO MNE Declaration and the UNGPs

In 1976, the member States of the OECD adopted the OECD Guidelines for Multinational Enterprises, the first international framework for corporate social responsibility. The OECD Guidelines are recommendations from governments that are addressed to multinational enterprises operating in or from adhering countries [29]. Companies that subscribe to the Guidelines are obliged to observe them. The OECD Guidelines are supported by a unique implementation mechanism of National Contact Points, agencies established by adhering governments to promote and to implement the Guidelines. These NCPs assist enterprises and their stakeholders in taking appropriate measures to further the implementation of the Guidelines. Since 2000, they also provide a mediation and conciliation platform [30]. When problems arise with regard to compliance with the Guidelines, the NCP helps the parties to resolve them through mediation (“good practices” in OECD terminology). The procedure at the NCP is confidential. Since the introduction of this dispute resolution mechanism, up to December 2016 more than 400 issues (“specific instances” in OECD terminology) have been dealt with worldwide, dealing with situations in more than 100 countries. Anyone can turn to the NCP: “the NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations and other interested parties” [31]. From the introduction of the dispute resolution mechanism in 2000 until December 2018, NCPs handled some 450 cases in more than 100 countries throughout the world. The Dutch NCP has seen the number of cases rise sharply in the past few years [32].

The principles of the ILO MNE Declaration (1977) are intended to guide governments, employers’ and workers’ organisations of home and host countries and multinational enterprises [33] in voluntarily taking measures and actions and developing social policies in areas such as employment, training, working conditions and industrial relations [33]. All principles build on international labour standards (ILO conventions and recommendations). Declarations are resolutions of the International Labour Conference used to make a formal and authoritative statement and reaffirm the importance that the constituents attach to certain principles and values. Although declarations are not subject to ratification, they are intended to have a wide application and contain symbolic and political undertakings by the member States [33]. To stimulate acceptance of its principles by all parties, the ILO MNE Declaration offers “Company–union dialogue”—dispute settlement intended to facilitate dialogue between social partners based on consensus. The results may not be used in a “binding procedure”. The similarity with the “Good Practices” (NCP terminology for assistance) of the National Contact Points that are based on the OECD Guidelines is striking—both offer a form of guided mediation—but with one difference. Whereas NCPs mediate when there is

a complaint about non-compliance with the Guidelines, the International Labour Office offers neutral ground for discussion “and the help of qualified facilitators” when a company and a trade union voluntarily agree to meet and to talk. Company-union dialogue is confidential [33]. In addition, there is an interpretation procedure carried out by officers of the Governing Body. The purpose of this procedure is to interpret the provisions of the declaration when needed to resolve a disagreement on their meaning.

The UNGPs do not have a compliance mechanism except for the optional obligation to conduct due diligence and reporting obligations based on the UNGP reporting framework. This option is voluntary because parties are not obliged to take part, but if they do, then their commitment to the UNGPs becomes mandatory [34].

Covenants

Enforcement and dispute resolution

When a party to a covenant does not comply with the obligations arising from that covenant, persuasion is first applied to try to get the party back in line. If the violation continues, the offender may be prohibited from continuing its participation in the covenant. Exclusion is the last resort, and “naming and shaming” (familiar from the ILO system) is added to this sanction because the exclusion is published on the website of the covenant.

All covenants except two [26,35] have delegated dispute resolution to a steering group. In contrast to the complaints procedure (see below), dispute resolution is only open to parties affiliated with a covenant and must be related to obligations arising from the covenant in question. First non-legal, confidential forms of dispute resolution are attempted such as dialogue and mediation. If these measures do not work, then the steering group takes a decision; these decisions are binding on the parties, but are not legally enforceable [36].

The Sustainable Garment and Textile Covenant has an independent dispute and complaints committee (hereinafter referred to as the Committee), which was established in the summer of 2017. The Committee has three members: an independent chairperson, a member with business experience in the garment and textile industry appointed by the branch organisations, and a member with expertise in the garment and textile industry appointed by the trade unions and social organisations affiliated to the covenant. A distinction is made between disputes and complaints: disputes occur between parties to the covenant, complaints can be submitted by any interested party. An interested party can be anyone who experiences harm as a result of a violation of the covenant by an adhering company or in the supply chain [37]. The latter possibility ensures that there is a “true” dispute procedure to which disadvantaged third parties—not just parties who are affiliated to the covenant—can turn. A decision

taken by the Committee is published on the website of the covenant. The Committee's decisions are binding. The non-observance of a binding decision by the Committee provides the company involved with the right to put the dispute before the Netherlands Arbitration Institute (NAI). To this end, the statement that companies sign when they join the covenant contains an arbitration clause. In the Natural Stone Covenant, a proposal was included to establish an independent complaints and dispute committee no later than one year after the covenant took effect (this date was expected to be October 2019). Here again, a distinction will be made between disputes and complaints.

Dispute committee of the Sustainable Garment and Textile Covenant

Up to now (summer 2020), the dispute committee of the Sustainable Garment and Textile Covenant has given a decision in two cases, both on 22 May 2019, both regarding disputes [37]. In the decision concerning the textile company *Manderley Fashion*, the Committee established that the company had not met the obligations arising from the covenant. However, a distinction was to be made between *not wanting* and *not being able* to meet the obligations of the covenant. With regard to Manderley, it was a case of not being able to: the company had been halved in size, and as a result there was insufficient manpower to be able to meet the increasing number of obligations under the terms of the covenant. Here, the Committee found that it was understandable and fitting for this small company to withdraw from the covenant. The Committee recommended that a provision should be included in the covenant on the grounds of which a company, in case of circumstances beyond its control that made it factually impossible to comply with the covenant, may be able to withdraw from the covenant in the short term. The current withdrawal term is two years.

In the case of *Vandyck bed- en badmode*, the company itself indicated that it wanted to end its participation in the covenant because the company did not want to be associated with political activism. The company viewed the obligation to ask Turkish suppliers if they had hired refugees from Syria without a work permit as being political activism. During the proceedings, however, it became clear that Vandyck had taken insufficient account of the consequences: a withdrawal from the covenant is published on the website, and it turned out that the company was uncomfortable about this result. After consultation with the secretariat, Vandyck decided not to withdraw from the covenant, and declared that it would henceforth adhere to the obligations arising from the covenant. It remains to be seen whether expulsion is an adequate sanction. In essence, it releases a company of its obligations, which certainly was not the intention. Another point is that the more companies that join a covenant and remain in it, the more effective the covenant will be. Expulsion would have the opposite effect.

On 2 July 2020, the Clean Clothes Campaign (CCC) Netherlands, the Centre for Research on Multinational Corporations (SOMO) Netherlands, and Action Labor Rights (ALR) Myanmar submitted a complaint against C&A Nederland C.V. on the grounds that one of C&A's suppliers, Roo Hsing Garment Manufacturing Co Ltd. in Yangon, Myanmar, had failed to ensure freedom of association and collective bargaining at factory level [38]. After a spontaneous strike on 4 June 2018 against a new bonus system introduced by the Roo Hsing management, factory employees set up a trade union. Through an effective deterrent campaign by the factory management, trade union activities were nipped in the bud. On numerous occasions between July 2018 and April 2020, the complainants had reached out to C&A with information on the labour issues at Roo Hsing and with concrete demands. Despite being informed in detail about the ongoing issues, C&A failed to take action. According to the complainants, although the management of the Roo Hsing Garment Manufacturing Co Ltd. is in the first place responsible for labour rights violations at the facility, C&A—as an important buyer and a member of the Textile Covenant—has an obligation to ensure that labour rights are respected by its supplier. By not taking any action, C&A has failed to use its influence to correct wrongful actions by the Roo Hsing management. The complaint lists the demands and concrete actions that the complainants expect C&A to take. At the conclusion of the text of this paper—summer 2020—the outcome of the procedure was still unclear. Two decisions are not sufficient to provide any far-reaching conclusions. Nevertheless, a few observations can be made.

The decisions demonstrate that companies do not always realise in advance what they have committed themselves to when they join a covenant. Small companies have fewer resources than larger companies, and therefore they sometimes struggle with the obligations placed on them by the covenant. In addition, it is possible that participating companies are prepared to endorse the principles of the covenant in abstract terms, but unwillingness to attach actual consequences to this endorsement arises when demanded of them. An interesting aspect in the case concerning Vandyck is that the company claimed that it did not want to get involved in political issues, but the steering group responded by saying that political issues are exactly what the Garment and Textile Covenant is concerned with.

It is a positive development that besides contract parties, third parties are also provided a forum in which their complaints are considered. To address violations of fundamental labour rights in supply chains, the complaints procedure is of great value. The fact that third parties have found their way to the dispute committee is encouraging, especially now that the NGOs involved have had the opportunity to go to the dispute committee after two years of unsuccessful attempts to get C&A to take action to ensure that fundamental labour rights are respected in the

supply chain. Without the opportunity to initiate proceedings with the dispute committee, the parties would have been left empty-handed.

The findings from Sections “**Dutch Sector Agreements: Content and Scope**” to “**Effectiveness of CSR Frameworks**” are set out in Table 1.

Table 1. Content, Scope and Compliance Mechanisms of CSR Frameworks

CSR Framework	Parties	Compliance Mechanisms	Scope	Sanctions
ILO MNE Declaration	Adopted by the ILO members: employers' organisations, trade union federations and governments	Company union dialogue	Work in global supply chains	No
OECD Guidelines	Adopted by OECD member States, designed for Multinational enterprises	National Contact Points	Economic activities of Multinational enterprises located in OECD countries	No
UNGP Covenants	Enterprises - Ministers; - Trade union federations; - Industry organisations; - Civil society organisations.	Due diligence - Reporting obligations; - Monitoring commission; - Dispute resolution.	Economic activities of enterprises - Dutch enterprises or enterprises operating in the Dutch market (Textile); - Corporate lending and project finance activities (Banking); - Companies in the Netherlands with gold or gold bearing materials in their value chain (Gold); - Dutch Food sector (Food products); - Investment activities of Dutch insurers (Insurance); - Investment activities of Dutch pension funds (Pensions); - Dutch or Belgium enterprises or enterprises operating in the Dutch or Belgium market (Natural Stone); - Dutch companies in the metals sector (Metals); - Companies that are active or established in the Netherlands (Floriculture).	No Exclusion from the covenant

On the basis of this diagram we can conclude that the parties differ, the compliance mechanisms differ and the scope differs, but that the aim is the same: regulating the supply chain. None of the compliance mechanisms constitutes a legally enforceable obligation, but all are intended to achieve voluntary compliance through forms of mediation. Sanctions are lacking, as is the opportunity to claim damages. All in all, the frameworks discussed regulate the supply chains in a non-obligatory manner. With regard to the covenants, the question of whether this approach is effective is discussed in Section “**Effectiveness of CSR Frameworks**” below.

EFFECTIVENESS OF CSR FRAMEWORKS

The term “effectiveness” is used here to indicate whether or not a contribution is made to compliance with fundamental labour rights in global supply chains. What has emerged from the above (see Section “**Substance**”) is that the parties to the covenants have committed themselves to achieving tangible results in the area of CSR. Reporting requirements and dispute resolution can contribute to effectiveness because they reveal whether the parties are fulfilling their commitments, and they provide an adequate response when those commitments have not been fulfilled. The role of the SER will not be considered because the main contribution of the SER in relation to effectiveness takes place at an earlier stage: the expertise of the SER contributes to a smoother conclusion of new covenants.

Reporting Obligations

Reporting obligations combined with a system of sanctions in the event of non-compliance contribute to the effectiveness of the covenants. The reports make it clear whether the parties have achieved the targets they have set themselves. We have seen that these targets lie within the field of fundamental labour rights to a large extent. By complying with these rights within supply chains, concrete changes can be achieved in the workplace.

Monitoring on the basis of regular reports from the States that ratified a convention is a classic ILO tool for checking on compliance. According to Koroma and Van der Heijden in their review of the ILO supervisory mechanism, for almost a century the ILO system has managed to do well in monitoring the implementation of international labour standards [39]. The system functions adequately and generally meets its objective of ensuring compliance with international labour standards, although certain improvements are suggested [39]. In the covenants, traces of this ILO system can be found where all covenants include the obligation for parties to submit monitoring reports. If a party does not submit a report or reports are incomplete or otherwise inadequate, the most far-reaching sanction is exclusion from the covenant. Has the reporting system proven to be effective up to now?

The *Textile* industry has monitoring reports covering 2016, 2017 and 2018 [40]. According to the SER, 48% percent of the Dutch clothing sector has joined the Textile covenant. Nearly all adhering companies (92 so far) have drawn up an action plan to address the risks that they have identified in their supply chains. One of the outcomes is a production location list that provides an insight into the sources of the companies’ products [41]. By the end of 2018, 4268 production sites had been reported, compared to 2802 in 2017. The list shows that many Dutch textile companies have clothing made in factories in China, Turkey, India, and Bangladesh.

In September 2019, three covenants presented their annual reports: Banking [42], Gold [43] and Food Products [44]. The Banking Covenant refers collectively to the Cocoa Value Chain Analysis and the Palm Oil Value chain report. Individually, the adhering banks demonstrated their commitment to the covenant by reporting on human rights. The Gold Covenant reports that the gold chain has been mapped both globally and for the Dutch market. This report provides insights into what the chain looks like from gold mine to end user and where risks of abuses lie [45]. Of the adhering companies, 85% published a due diligence policy or statement on their website and 38% prepared a due diligence annual report in 2018–2019, outlining how the due diligence policy was implemented that year. As in the first year, it appeared that it remains difficult to convince new parties to join the covenant. The original target—40 parties by the end of the second year—was not achieved. According to the Food Products Covenant report, the main objective for the first year was to get a common understanding of CSR risk management and to encourage the members of the sector organisations to develop or their CSR risk management or to develop it further. Important steps were taken to map the food production chain and the associated risks. The report characterizes this effort as an immense one for a sector with complex chains and an enormous diversity of food companies and supermarkets. A living wage is one of the priority themes within the Foods Products Covenant.

In October 2019, the Insurance Covenant presented its first annual report [46]. The main objective of the covenant according to the report is to prevent, to reduce and, if necessary, to repair the possible negative impact of investments by insurers as far as possible; in short the “do no harm” principle. In addition, the parties also want to bring about a positive impact. The report mainly looks to the future, and no concrete results are reported. This omission is not surprising, however, because the Insurance Covenant only dates back to July 2018.

The Pension Funds Covenant, established in December 2018, has not yet issued an annual report. However, the report from the ‘Monitoring Committee of the Covenant on International Social Responsible Investment Pension Funds’ presents an overview of the state of affairs when the Covenant commenced [47]. This report reveals that a great deal of uncertainty exists about the terms used and the obligations and responsibilities arising from the covenant. The most important recommendation made by the Monitoring Committee is that both these points need clarification.

The covenants for Natural Stone (May 2019), Metals (July 2019) and Floriculture (July 2019) have not yet published an annual report because these covenants were concluded only about a year ago.

Common ground in all reports is the emphasis placed on the collection of data and the identification of risks on the basis of this data. Almost all reports note that a mentality change is being worked on. A certain amount

of progress is reported for all covenants, but at the same time it is determined that much work still needs to be done because not all adhering parties meet the obligations that arise from the covenant.

Enforcement and Dispute Resolution

Do covenants add something to the enforcement mechanisms already in place [48]? The commitments contained in the covenants are not enforceable in court. The Textile Covenant is the most extensive in this regard. Parties to that covenant must accept an arbitration clause on disputes that arise between them in relation to non-compliance with the reporting obligations in the covenant. If the steering committee of the covenant fails to resolve the matter, then the parties may submit the dispute to the Netherlands Arbitration Institute. This mechanism precludes recourse to a court. In addition, anyone who has suffered damage due to a violation of the covenant can submit a *complaint*. In the latter case, sanctions can be disclosure of information about the violation or exclusion of the party from the covenant.

The main shortcoming of the ILO enforcement mechanisms is the fact that individuals do not have access to them. Sanctions are also fairly indirect in the event of a violation of standards. The ILO penalty for the offender—a country, not a business—is naming and shaming. At NCPs, mediation takes place in full confidentiality. What happens behind closed doors is only revealed when parties agree to do so and to the extent they choose. One problem, however, is the opacity and duration of the procedure. Considering these points, covenants can add value if they provide dispute resolution systems that are broad in scope, are accessible to individuals, and can impose effective sanctions on the offender. Textile comes closest in that regard, offering stakeholders the opportunity to file a complaint. The covenant does not provide for the possibility that the complainant can recover damages suffered by means of the company, but the fact that a violation has been established may help in a civil law suit [49]. This area is where the largest gains from a broadly accessible dispute committee are to be made, at least in the short term. As these committees become more established, their decisions will carry more weight and the impact of this development ultimately will be discernible in subsequent court cases.

Because it will not be easy for someone in Bangladesh to find his or her way to a dispute committee in The Hague, stakeholders of the covenants—NGOs and trade unions—can play an important role here, similar to the way in which they assist and represent complainants at the NCPs. The complaint submitted on 2 July 2020 by the Clean Clothes Campaign (CCC), the Centre for Research on Multinational Corporations (SOMO) and Action Labor Rights (ALR) shows that NGOs are actually taking up this role. As a result of the Covid-19 crisis, the world has had to learn how to make better use of modern online means of communication. An online hearing of a complainant from Bangladesh will make the journey to The Hague

redundant. The signalling function of dispute committees can be considered to be “bycatch”: by bringing a case to a committee, it becomes clear where problems are occurring in the tangled supply chains.

The question arises whether a dispute committee is more suitable for infringements at the individual level. Although all covenants endorse the right to collective bargaining by referring to the OECD Guidelines, one might expect that the ILO’s Committee on Freedom of Association (CFA) is the more accessible forum when freedom of association and the right to collective bargaining are at stake. After all, the CFA has years of experience in resolving disputes in this area, thus underlining the value of co-existing ways of enforcing fundamental labour rights. Nevertheless, it is remarkable that the first complaint to the Textile Covenant dispute committee is about “union busting”, so it could very well be that the dispute committees of the covenants will play a role in entrenching not only individual but also collective fundamental labour rights.

GENERAL CONCLUSIONS

Let us return to the main question of this paper: do sustainable business agreements—CSR covenants—have an impact when it comes to upholding fundamental labour rights?

Sustainable business agreements are proof of the growing awareness within the Dutch business sector of the importance of fundamental rights, in particular in relation to global supply chains. The fact that the parties to the agreements are prepared to undertake obligations voluntarily demonstrates an increasing realisation of responsibility for the negative side effects of economic activities.

The sectoral approach seems to work: Section “**Substance**” shows that the emphasis in each business sector varies. This result is related to the nature of the industry sector and the related business processes. In the Sustainable Garments and Textile Covenant, the main focus is on child labour, while the Floriculture Covenant is particularly focussed on environmental factors that are related to water usage and the use of crop protection measures.

Section “**Covenants, Dispute committee of the Sustainable Garment and Textile Covenant**” shows that covenants lead to obligations, although the contracting parties and adhering parties do have the option to withdraw from these obligations. Nevertheless, this does not mean that participation in a covenant is completely free of obligation: companies find “naming and shaming” undesirable, as was known already from the ILO system [50]. One positive incentive to participate is that parties to the covenants and the affiliated companies support each other in activities to increase control in global chains. There are also initiatives and connections in relation to the covenants that contribute to this phenomenon and ensure broader support, resulting in a more level playing field.

All in all, it can be concluded that the covenants do make a contribution to the enforcement of fundamental rights. The extent of their impact will become clearer after the first evaluation of the sector agreements, which was scheduled to be announced in autumn 2019 but has not been published yet [51,52].

Something else catches the eye: the interaction between hard law and soft law. The covenants participants were referred to as a mix of public and private parties due to the participation of the government. The government contributes by participating in the impact of the covenants, but the covenants in turn contribute to the interpretation and implementation of legislation. One example in the Netherlands is the Act on the duty of care to prevent child labour [20] concerning the prevention of the supply of goods and services that are produced using child labour. The Act requires companies to declare that they will do all that is necessary to prevent child labour. Companies that are part of a covenant have committed themselves to implementing due diligence. As a result, they comply with the requirements included in paragraph 5 of the aforementioned Act [53].

Are covenants the CSR compliance mechanism of the future because of their multi-stakeholder approach? The importance of CSR is unquestioned in the current era; due diligence has become an established concept. The standards framework in relation to fundamental labour rights has crystallised, building on the ILO Conventions. The problem is not so much setting standards but the enforceability of these standards. The old structures in which economic activities mainly took place within national boundaries have been exchanged for a worldwide network where production is moved to places with the lowest costs. Supply chains were created, and with those chains came new problems regarding the enforceability of standards. Jurisdiction stops at the border; public standards focus on States. Multinational companies developed Codes of Conduct concerning fundamental rights, but it is not always clear whether they are respected or should be seen as mere “window dressing”. Against this background, the Dutch covenants are promising: participants are not only enterprises and their organisations but also ministers representing the Dutch government and civil society organisations. The government, by placing its signature, not only sends out an important signal, but also commits itself towards making efforts to comply with the content of the covenants. The NGOs act as watchdog and conscience. The structure of multiple parties taking responsibility—each from the perspective of their own background and function—is promising. The fact that parties join forces to tackle complex problems that sometimes occur at the other end of the world is clearly a step forward.

Problem solved then? No, definitely not. First of all, the Netherlands is a small country with a small share in the various markets. The influence of the Dutch covenants on a global scale is therefore modest. In addition, the covenants offer hardly any opportunities for third parties to enforce

compliance. Only the Textile Covenant offers stakeholders an opportunity to invoke the content of the covenant, with limited sanctions. This opportunity is an important starting point for improvements. There is no global legal order, and in many cases the possibilities to enforce legal obligations outside a State's own jurisdiction are limited. So, for the time being, the only possibility is to look for solutions within the national legal system. The chances of success increase if the claimant, who turns to the national civil court to recover damages, is supported by a decision from a dispute committee. That direction is the one to take: creating the opportunity to recover damages resulting from a violation of fundamental labour rights. A dispute resolution system with a broad scope is a first step on that road.

All things considered, one of the most important observations to emerge is that the need for policy in the field of CSR is no longer something controversial. A framework of standards has emerged that can be traced back to the pioneering work that the ILO has already been carrying out since 1919. More than ever, the demand for goods and raw materials in the industrialised world has consequences for the working conditions of workers in other parts of the world, where those goods and raw materials are manufactured or extracted. This demand entails a duty to take into account the rights of workers beyond national borders -- by designing national frameworks that promote and stimulate compliance with fundamental labour rights in global supply chains, for example. And that result is exactly what the sustainable business agreements in the Netherlands are aiming to achieve.

CONFLICTS OF INTEREST

The author declares that there is no conflict of interest.

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