Bas Rombouts

A Dutch "Smart-mix"? International Responsible Business Conduct, (Fundamental) Labour Standards and the Sectoral Agreements in the Netherlands

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1. *Introduction*

The international (non-binding) normative frameworks developed in the context of the UN, OECD and ILO form the basis for a diverse set of – voluntary, mandatory, public and private – instruments related to international responsible business conduct (IRBC). One of the key features of the UN Guiding Principles on Business and Human Rights (UNGPs) is the expectation that states take on an active role to enact policies and laws that promote corporate respect for human and labour rights throughout their global value chains (GVCs). Accordingly, states should "consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights"[1]. The Netherlands has been facilitating and promoting sectoral multi-stakeholder agreements on IRBC since 2014,

[1] UN. Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, 2011, p. 5. Also see: Shift, *Fulfilling the State Duty to Protect: A Statement on the Role of Mandatory Measures in a "Smart Mix"*, February 2019, at: https://shiftproject.org/fulfilling-the-state-duty-to-protect-a-statement-on-the-role-of-mandatory-measures-in-a-smart-mix/.

in which labour rights – especially the fundamental labour standards of the International Labour Organization (ILO) – feature prominently[2]. Additionally, several – legislative and other – initiatives were developed to promote corporate accountability for sustainability issues. Labour standards are an important aspect of the social – or human rights – dimension of sustainable development, especially in relation to corporate activities, since multinational enterprises often affect workers' rights at the lower end of GVCs, frequently in Global South countries.

This article evaluates this Dutch "smart-mix approach", with an emphasis on the sectoral agreements in order to assess their value as a tool to promote IRBC in GVCs. It reflects on them by situating them in the international framework of corporate responsibilities and fundamental labour standards. Therefore, this article first examines the international normative architecture of IRBC; the instruments developed in the framework of the OECD and UN, and, to a lesser extent, the ILO. It is essential to explore these voluntary international instruments, since their system, procedures and underlying principles are the basis for all other, national (or regional) IRBC initiatives. Additionally, it is important to take the international framework as a point of departure considering that mandatory legislation, such as the EU Corporate Sustainability Due Diligence Directive, is currently under revision and it is by no means certain what the outcome of those processes will be. This first section examines the central IRBC/UNGPs concepts of a "smart-mix" and of Human Rights Due Diligence (HRDD) in some detail.

Secondly, with this regulatory and to a large extent procedural or functional baseline in place, the article reviews the most central internationally recognized workers' rights, that are to be protected – as a minimum – under these international and national initiatives, with an emphasis on the fundamental labour standards of the ILO. With a clear understanding of both these procedural and substantive foundations of IRBC, the focus will shift to the regulatory instruments that the Netherlands has developed. Considering that the objective of this article is to explore the specific Dutch attempts to regulate IRBC, a detailed examination of due diligence legislation outside the Netherlands, including the CSDDD – and its uncertain future – falls outside the scope of this project.

[2] International RBC Agreements, https://www.imvoconvenanten.nl/en.

2. *The international architecture of IRBC: the UN, OECD and ILO instruments*

Virtually all IRBC instruments refer to the UNGPs and the OECD Guidelines for Multinational Enterprises (OECD Guidelines) as their international normative foundations[3]. A third instrument, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration) is less frequently mentioned, but can be considered as the most comprehensive instruments with regard to labor law protection[4]. These three non-binding instruments aim to regulate responsibilities for business with respect to respecting human rights related to their business activities and GVCs and are – according to the organizations themselves – aligned and complementary[5]. The UN, OECD and ILO consider these voluntary codes the "three main instruments that have become the key reference points for responsible business, and which outline how companies can act responsibly"[6].

The UNGPs are generally regarded as the groundbreaking instrument on assigning specific responsibilities to businesses in relation to their human rights impacts. Adopted by the UN Human Rights Council in 2011, these principles incorporate the "protect, respect, and remedy" framework developed by John Ruggie and his team[7]. According to this policy framework, while states have a *duty* to protect human rights (pillar I), an important *re-*

[3] UN. Office of the High Commissioner for Human Rights, *cit.* OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, 2023, https://doi.org/10.1787/81f92357-en.

[4] ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) and amended at its 279th (November 2000), 295th (March 2006) and 329th (March 2017) Sessions, 5th Edition, March 2017, International Labour Office, Geneva (ILO MNE Declaration).

[5] ILO, OHCHR, OECD, EU, *Responsible Business, Key Messages from International Instruments*, 18 October 2019, p. 2, https://www.ilo.org/resource/brief/responsible-business-key-messages-international-instruments.

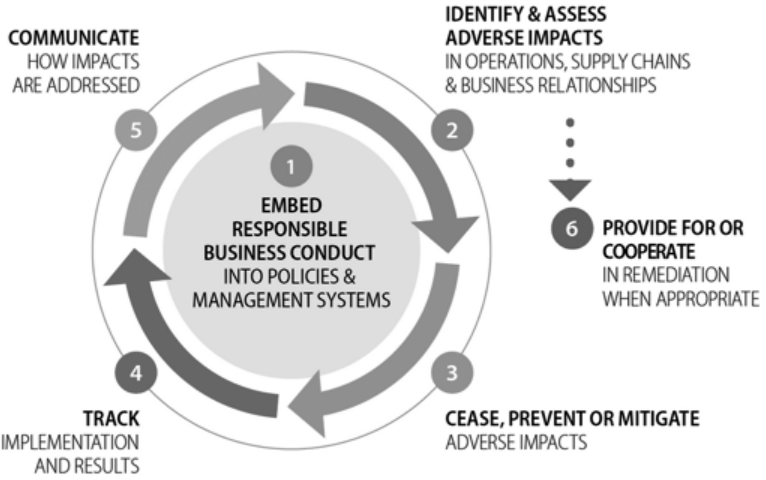
[6] ILO, OHCHR, OECD, EU, *Responsible Business, Key Messages from International Instruments*, 18 October 2019, p. 3, https://www.ilo.org/resource/brief/responsible-business-key-messages-international-instruments.

[7] Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/8/5, Human Rights Council, 7 April 2008.

sponsibility for the private sector is to respect human rights (pillar II). Finally, victims of human rights violations must have access to a fair and effective *remedy* (pillar III). The strength of the UNGPs lies in their simplicity: they comprise 31 principles, divided into foundational and operational principles, followed by a clear commentary. Under pillar II of the UNGPs, "the corporate responsibility to respect" companies must refrain from violating human rights and have to address human rights violations in which they are involved[8]. This means they must avoid causing or contributing to violations and address them when such violations do occur. In addition, companies also have a responsibility to prevent or mitigate violations when they are directly linked to their business activities, even when they have not directly contributed to these negative impacts[9].

This responsibility implies that companies should apply HRDD, a procedure that entails a risk assessment to map – or identify – actual and potential human rights impacts. Those impacts have to be addressed as a next step[10]. A company does not have to address all possible risks; prioritization may take place based on the severity and likelihood of the occurrence of the risks[11]. In addition to identifying, preventing and mitigating human rights risks, (public) accountability for the steps taken is also an important element of the HRDD process. HRDD forms the operational core of the responsibilities assigned to companies within the UNGPs. This system of HRDD has been integrated into the OECD Guidelines and the ILO MNE Declaration. The six steps of HRDD – which should be seen as an iterative process – are visualized as follows.

[8] UNGPs, principle 11.
[9] UNGPs, principle 13.
[10] UNGPs, principle 13.
[11] OECD, *OECD Due Diligence Guidance for Responsible Business Conduct,* 2018, p. 17.



OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, p. 21.

Respect for human rights by businesses, according to the UNGPs, should be promoted by means of a "smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights"[12]. The public and private sector should therefore work together to create a regulatory environment in which IRBC can be genuinely effective. The idea behind the smart-mix is therefore that different types of regulation have different strengths and weaknesses and that "interactions among these instruments can compensate for these, and lead to better regulatory performance overall"[13]. This means that voluntary measures alone will not suffice, and that mandatory legislation is an essential ingredient of the smart-mix[14].

The smart-mix, the process of human rights due diligence and the responsibility for corporations to use their leverage to address negative human rights impacts can be seen as the basis for contemporary IRBC regulation.

[12] UNGPs, principle 3, commentary.

[13] Schleifer, Fransen, *Towards a Smart Mix 2.0, Harnessing Regulatory Heterogeneity for Sustainable Global Supply Chains*, in *SWP Working Paper*, 2022, p. 14.

[14] John Ruggie affirms "smart mix" includes mandatory measures at Finnish EU Presidency conference, 2 December 2019, https://www.business-humanrights.org/en/latest-news/john-ruggie-affirms-smart-mix-includes-mandatory-measures-at-finnish-eu-presidency-conference/.

While the UNGPs should be seen as an instrument that is essentially procedural in nature and that covers all human rights[15], the OECD-Guidelines can be seen as the broadest substantive instrument concerning IRBC. The OECD-Guidelines were adopted in 1976 and contain recommendations from governments to business to conduct their operations in a sustainable manner, as well as to conduct due diligence to avoid negative impacts on people and the environment[16]. The OECD-guidelines cover the entire spectrum of IRBC and contain voluntary standards and principles related to the environment, corporate disclosure, human rights, employment and industrial relations, science, technology and innovation, corruption, competition, taxation and consumer protection[17]. The guidelines find their basis in internationally recognized standards and also include provisions on all the fundamental labour standards of the on the overarching ILO objective to pursue decent work for all[18]. The OECD Investment Committee is charged with overseeing the guidelines and, at the national level, National Contact Points (NCPs) are installed to promote awareness of the guidelines among the business community and to handle disputes on the application and interpretation of the guidelines. The NCPs' complaint mechanism has resulted in nearly 700 "cases" (so-called "specific instances" which are non-binding recommendations) on the application of the guidelines since 2000[19]. The guidelines are endorsed by 51 countries (the 38 OECD member-States and an additional 13 others), all of which have established a National Contact Point. They have been revised regularly, including in 2011 to fully incorporate HRDD into the operational framework of the guidelines. Since then, much practical further documentation has been developed on implementing HRDD, thereby providing detailed interpretations of the requirements under Pillar II of the UNGPs, the "corporate duty to respect human rights[20].

Within the framework of ILO, the MNE Declaration was adopted in 1977, in response to growing concerns about the activities of multinationals (just as the OECD-Guidelines), particularly in low-income countries. The

[15] UNGPs, principle 12, commentary.

[16] OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, 2023, https://doi.org/10.1787/81f92357-en, p. 3.

[17] OECD, *OECD Guidelines for Multinational Enterprises*, cit.

[18] OECD, *OECD Guidelines for Multinational Enterprises*, cit., pp. 28-32.

[19] OECD Database of specific instances https://mneguidelines.oecd.org/database/.

[20] An often cited document that contains additional guidance is: OECD, *OECD Due Diligence Guidance*, cit.

MNE Declaration is addressed primarily to governments and business but also includes provisions for workers' and employers' organizations. The main objective of the Declaration, which – in proper ILO fashion – was created by means of a tripartite process, is to provide recommendations to the private sector on how to implement inclusive, responsible, and sustainable work policies and how business can contribute to the global promotion of decent work[21]. Whereas the OECD guidelines focus on responsible business conduct in the broadest way, the MNE Declaration focuses on work-related business activities. This way, the MNE Declaration is the most detailed of the three frameworks discussed when it comes to labour law and social policy. In addition to references to the fundamental labour standards[22], the MNE Declaration contains various provisions on *e.g.* labour market policy, remuneration, working conditions, social security, training, consultation and access remedy and dispute settlement[23].

The MNE Declaration has been revised several times (in 2000, 2006, 2017 and in 2022). The 2017 revision is particularly noteworthy, as it resulted in improved harmonization with the UNGPs, OECD-Guidelines, the UN 2030 Agenda for Sustainable Development and the Paris Climate Agreement[24]. It was most recently amended in 2022 to enshrine the recognition of the right to a safe and healthy working environment as Fundamental Principle and Right at Work (FPRW). Currently, the MNE Declaration contains provisions in line with the UNGPs regarding HRDD, dispute resolution mechanisms and access to remedy[25]. The MNE Declaration is embedded in the ILO's recent comprehensive strategy on decent work in supply chains, which was adopted by the ILO Governing Body in 2023[26]. The international instruments within the framework of the OECD and ILO both refer to the UNGPs (and to each other) and incorporate the system of Pillar II from the UNGPs, as a result of which, at an international level, these three instruments together can be and are regarded as the normative framework regarding responsibilities of the private sector in relation to IRBC.

[21] ILO MNE Declaration, p. 7. Also see: https://www.ilo.org/resource/other/what-ilo-mne-declaration.

[22] ILO MNE Declaration, par. 9.

[23] ILO MNE Declaration, par. 13-86.

[24] ILO MNE Declaration, p. 7.

[25] ILO MNE Declaration, par. 10.

[26] GB.347/INS/8, Governing Body, 347th Session, Geneva, 13–23 March 2023, 27 February 2023, ILO strategy on decent work in supply chains.

It is important to stress that in all three instruments the fundamental labour standards of the ILO have a central place in the framework of rights that ought to be protected within GVCs. The UNGPs even explicitly mention the fundamental principles and rights as part of the absolute minimum that should be respected by corporations in relation to their own activities and within their supply chains[27].

This section reviewed the international normative structure that forms the basis for the Dutch IRBC framework. It focused mainly on the *functioning* and *structure* of the UN, OECD, and ILO instruments and the *procedures* that lie at the heart of IRBC. However, for a clear analysis of the value of the Dutch regulatory tools, it is additionally imperative to survey which *specific rights* are to be protected in this framework at a minimum.

3. *The minimum of labour standards protected under the IRBC Frameworks*

Under all three IRBC instruments discussed above, the minimum floor of – and the starting point for – labour rights protection is formed by the fundamental labour standards of the ILO and other work-related rights that are enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Universal Declaration of Human Rights incorporates the right to work, the right to equal pay for work of equal value, the right to just and favourable remuneration and the right form and join trade unions in its article 23[28]. A substantial number of work-related rights can be found in the two binding international human rights treaties that flowed from the Universal Declaration; in the ICCPR (which contains mainly "first generation" freedom rights) and particularly in the ICESCR (which includes "second generation" human rights). Many of these rights align and overlap with the fundamental labour standards of the ILO. The ICCPR contains provisions on equal treatment (arts. 2, 3 and 26), on the prohibition of slavery and forced

[27] Together with the "International Bill of Human Rights" which consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. See: UNGPs, principle 12.

[28] United Nations, Universal Declaration of Human Rights, 1948, art. 23.

labour (art. 8) and on freedom of association (art. 22). Within the ICESCR there is even an entire chapter on work-related human rights, which is based largely on the earlier work of the ILO[29]. The right to work is codified in article 6, on which the Committee on Economic, Social and Cultural Rights published an insightful General Comment in 2006, which clearly linked this provision to the ILO strategic goal to achieve "decent work for all"[30]. Article 7 contains the principle of equal pay for work of equal value, article 8 includes provisions on trade union rights including the right to strike, article 9 deals with social security, and protection of children from exploitation is enshrined in article 10. In addition to the norms of these three human rights instruments, work-related rights can also be found within a host of other (core and other) UN Human Rights Treaties and instruments[31].

However, the focus in this essay is on the fundamental labour standards of the ILO, since these are widely regarded as the baseline for international workers' rights protection and explicitly referenced in most – if not all – IRBC instruments that deal with human rights protection in GVCs.

In 1998, the ILO Declaration on Fundamental Principles and Rights at Work (FPRW) was adopted by the International Labour Conference, the ILO's legislative body[32]. This declaration initially identified 4 key issues as fundamental: the prohibitions on (1) child labour and (2) forced labour, (3) non-discrimination and equal treatment in employment, and (4) freedom of association and the right to collective bargaining. In 2022, the Declaration was amended to include the right to a safe and healthy working environment as the fifth fundamental principle and right at work. Each of these FPRW is linked to two Fundamental Conventions, which have been ratified by the

[29] RIEDEL, *Monitoring the 1966 International Covenant on Economic, Social and Cultural Rights*, in POLITAKIS (eds.), *Protecting labour rights as human rights: present and future of international supervision: proceedings of the international colloquium on the 80th anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations*, International Labour Office, 2007, p. 4.

[30] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18.

[31] For a more detailed overview, see: ROMBOUTS, *The international diffusion of fundamental labour standards: Contemporary content, scope, supervision and proliferation of core workers' rights under public, private, binding, and voluntary regulatory regimes*, in *CHRLR*, 2019, 50, 3, pp. 136-139.

[32] ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022).

vast majority of ILO member states[33]. An important feature of the Declaration is that is provides that non-ratifying member states, still have an obligation to respect, promote and realize the principles contained in these fundamental conventions by virtue of their membership in the ILO[34]. Additionally, non-ratifying member states have to report to the ILO on a yearly basis on their efforts and potential progress made with respect to these five fundamental areas[35].

The continued relevance of addressing violations of these five "human rights at work" could hardly be overestimated. An estimated 160 million children are engaged in child labour – nearly one in ten children worldwide – and about half of them perform hazardous work[36]. This may include work in mining, agriculture or fisheries, with dangerous equipment, chemicals, or other types of work that could damage children's physical or mental health and/or jeopardize their right to education. Convention 138 is a general convention that aims to gradually raise the minimum age of access to employment and includes a system with different categories of minimum ages and several exceptions[37]. Convention 182 covers the very worst forms of child labour, such as slavery, prostitution, child soldiers and the use of children in criminal activities and has only one fixed minimum age of 18[38].

An estimated 28 million people worldwide are in trapped in a situation of forced labor, a concept closely related to (modern) slavery, labour exploita-

[33] C138 Minimum Age Convention, 1973 (No. 138); C182 Worst Forms of Child Labour Convention, 1999 (No. 182); C29 - Forced Labour Convention, 1930 (No. 29); C105 - Abolition of Forced Labour Convention, 1957 (No. 105); C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111); C100 - Equal Remuneration Convention, 1951 (No. 100); C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98); C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); C155 - Occupational Safety and Health Convention, 1981 (No. 155); C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). For the ratification rates, see: NORMLEX, *Information system on International Labour Standards*, normlex.ilo.org.

[34] See: ILO Declaration on Fundamental Principles and Rights at Work, par. 2: "[...] all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions [...]".

[35] ILO Declaration on Fundamental Principles and Rights at Work, II Annual follow-up concerning non-ratified Fundamental Conventions, par. A, B.

[36] ILO, UNICEF, *Child Labour: Global estimates 2020, trends and the road forward, 2021*, p. 8.

[37] ILO Minimum Age Convention, 1973 (No. 138).

[38] ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

tion and human trafficking[39]. Forced labour may involve situations in which individuals are actually physically forced to work, but also often involves situations in which people have to loan substantial sums in order gain access to employment. Those debts may be impossible to pay off resulting in "debt bondage". These latter cases often involve vulnerable groups of migrant workers who are posted – under false pretenses – to jobs in a host country[40]. The ILOs old but still relevant fundamental conventions were supplemented in 2014 by a specific protocol which focusses on modern forms of forced labour and contains provisions on prevention, protection of the victim, compensation, remedies, and dispute settlement mechanisms[41].

According to the ILO, work-related illnesses and accidents lead to nearly 3 million fatalities amongst workers each year. Additionally, some 395 million people a confronted with a non-fatal occupational accident or illness each year[42]. A large proportion of these cases are preventable. In addition to the two fundamental conventions, which aim to provide a framework for implementing a functional national system to ensure safe and healthy working conditions[43], the ILO has adopted a large number of specific technical conventions on the subject. There are sector-specific conventions (*e.g.* about mining, fishing, or agriculture) or risk-specific conventions (*e.g.* about work with radiation, with asbestos, or with chemicals)[44].

Discrimination – in its many different forms – in the workplace remains a persistent and systemic problem present in all types of countries and sectors. The ILO's fundamental conventions on the subject cover (non-exhaustively listed) grounds for prohibited discrimination, as well as as the principle of equal pay for men and women for work of equal value[45]. Estimates are that

[39] ILO, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, 2022, p. 2.

[40] For a well-known example and ILO action in that case, see: Swepston, Wallenberg, *Concentrated ILO Supervision of Migrant Rights in Qatar - Part 2*, in *IRLCL*, 2016, 3, pp. 405-408.

[41] Protocol of 2014 to the Forced Labour Convention, 1930 No. 29, 2014. Also see: Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

[42] ILO, *A call for safer and healthier working environments*, 2023, p 2.

[43] C155 - Occupational Safety and Health Convention, 1981 (No. 155). C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

[44] Safety and Health at Work, https://www.ilo.org/topics-and-sectors/safety-and-health-work.

[45] C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111); C100 - Equal Remuneration Convention, 1951 (No. 100).

the gender wage gap worldwide is still about 17%[46]. In the Netherlands, the gap is estimated to be around 13%[47].

Freedom of Association and the related right to collective bargaining are generally regarded as the most important of the fundamental – and probably of all – labour standards. This should not come as a surprise, because without a well-functioning system of worker participation – effective industrial democracy – guaranteeing and establishing other types of workers' rights becomes extremely difficult. Ratification of the two best-known ILO conventions – Convention 87 and Convention 98 – is therefore a major priority for the ILO[48]. Convention 87 protects the independence of trade unions – and employers' organizations – *vis-à-vis* the government, and Convention 98 focuses more on protecting trade unions and their members from discrimination and unjustified interference by management. Violations of these rights, such as banning independent trade unions, violence against trade union leaders or members, and interference through bribery or threats are common, and in many jurisdictions around the world we currently see trade union rights coming under increased pressure[49].

Having dealt with both the form and procedures *and* the content of labour rights protection under international IRBC instruments in GVCs, the next section will examine the Dutch approaches and will assess their (un)successfulness.

4. *The Dutch approach: Legislative initiatives and the IRBC Covenants*

Both the voluntary and the mandatory tracks for promoting IRBC have been pursued in the Netherlands in recent years. This section will start with the different – and arguably failed – attempts at creating binding legislation. The Child Labour Duty of Care Act is explored, the broader (initiative) proposal for a Responsible and Sustainable International Business Conduct Law

[46] Holder, *Gender Pay Gap Statistics 2025: A Comprehensive Analysis, Equal Pay Today*, in *Equal Pay Today*, https://www.equalpaytoday.org/gender-pay-gap-statistics/.

[47] Said, *Vrouw van de Toekomst (Woman of the Future)*, in *TRA*, 2025, 21.

[48] C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98). C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

[49] Cahill, Newman, Ó Conaill, *Global Perspectives on Freedom of Association*, in *EJCLG*, 2024, p. 14.

is examined subsequently, and the latest legislative move, the creation of the Act on International Responsible Business Conduct, which is meant to implement the EU Corporate Sustainability Due Diligence Directive (CSDDD), is dealt with afterwards. It seems in place to already note that none of these legislative initiatives have been properly implemented to date. After exploring the legislative initiatives, the focus will shift to the sectoral IRBC agreements and some additional reflections on the current state of the Dutch IRBC approach.

4.1. *Legislative developments in the Netherlands*

We will start out by examining the Dutch attempts to create binding legislation in the field of IRBC, since even though these laws have not been implemented in fact, they have served as an example of (innovative) IRBC legislation and may have had some positive effects (also on the development of EU legislation). The first initiative to mention is the Child Labour Duty of Care Act (Wzk) published in the official state gazette on November 13, 2019[50].

The Wzk requires companies to declare that they are doing enough to prevent child labour in their supply chain and includes a due diligence obligation[51]. When a company is a party to an IRBC Sector Agreement, it is assumed that the company complies with the law[52]. Child labour is defined in the Wzk by using the ILO standards outlined above and as we have seen, this fundamental labour standard is to be protected under the UNGPs, OECD-Guidelines and ILO MNE Declaration. The law also offers possibilities for sanctioning. Should there be a reasonable suspicion that child labor is occurring in the supply chain, the company must adopt and implement a plan of action based on the guidance provided in the OECD Guidelines. If a company has not adequately fulfilled its responsibilities, an administrative fine can be imposed and directors can be criminally prose-

[50] Child Labour Duty of Care Act, 2019. Staatsblad 2019, 401, *Wet van 24 oktober 2019 houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen (Wet zorgplicht kinderarbeid, Wzk).*

[51] Wzk, art. 5.

[52] Rietveld, Baks, Bier, *De Wet zorgplicht kinderarbeid en de opkomst van human rights due diligence; van vrijwilligheid naar verplichting (Child Labour Duty of Care Act and the rise of HRDD)*, in *Ondernemingsrecht*, 2021/25, afl. 4 - March 2021, p. 152.

cuted in exceptional cases[53]. The Wzk is the first – and so far, the only officially adopted – national law that incorporates mandatory HRDD, although the law itself does specify how due diligence should be conducted[54]. The Wzk has a broad scope and applies to all companies based in the Netherlands, and those selling goods and/or services physically or online in the Netherlands[55].

Although the Wzk was formally adopted, it was never implemented. The reasons for this were that other, more comprehensive laws were expected and under construction, both at the national and EU level, that would have included the protection of minors from child labour. There may be good reasons to prefer broader instruments that cover all human rights. "Single-issue" pieces of legislation may have the effect that companies only focus on these specific issues, while there may be many other human rights or sustainability issues that require attention. Nevertheless, the Wzk was often referred to as an early example of how mandatory HRDD laws could be shaped.

The second legislative initiative, which according to the drafters would have the additional effect of "absorbing" the Child Labour Duty of Care Act[56], is the initiative proposal (private members bill) Responsible and Sustainable International Business Conduct, which was submitted in March 2021[57]. Instead of a single issue law, this initiative proposal focuses – in line with the UNGPs and OECD Guidelines – on a broad mandatory due diligence obligation, that covers all human rights[58]. Interestingly, the proposed Act offers a non-exhaustive list of when negative human rights impacts occur and every right on this list is directly related to the ILO's fundamental labour standards (freedom of association, discrimination, child labour, forced labour, unsafe working conditions, exploitation and slavery)[59]. The explanatory

[53] Wzk, art. 5, *Kamerstukken II* 2016/17, 34506, nr. 8, p. 7-8.

[54] Rose, *De opmars van human rights due diligence, De invulling van de norm "gepaste zorgvuldigheid" uit de Wet zorgplichtkinderarbeid* (*The rise of HRDD and the interpretation of the duty of care in the Child Labour Duty of Care Act*), in *NTM/NJCM-bull.*, 2020, 15, p. 1.

[55] Wzk, art. 4.

[56] Proposal for a Responsible and Sustainable International Business Conduct Act, art. 4.3.

[57] Second Chamber of Parliament, Proposal for a Responsible and Sustainable International Business Conduct Act, Tweede Kamer, vergaderjaar 2020-2021, 35 761, nr. 2.

[58] Proposal for a Responsible and Sustainable International Business Conduct Act, art. 1.2(1).

[59] Proposal for a Responsible and Sustainable International Business Conduct Act, art. 1.2(2) under a, b, c, d, g, i, j.

memorandum of the proposal expressly states that it was created since the creation of a EU wide law would take too much time and the drafters indicated that this proposal might help to speed up the European process[60]. EU wide legislation was always preferable compared to different national instruments, since such a mushrooming of domestic laws might jeopardize a level playing field for IRBC in Europe. Eventually, the EU did adopt the Corporate Sustainability Due Diligence Directive (CSDDD) in June 2024[61], which had the effect that the legislative process of the Responsible and Sustainable International Business Conduct Act was ended.

The Dutch government immediately started drafting an implementation act for the CSDDD, the IRBC Act, which was published for public consultation[62]. However, considering the new developments in the EU, with the adoption of the "Stop the Clock" directive and pending changes to EU sustainability legislation, this national legislative process has also stalled[63]. While much more is to be said about the EU wide developments, and the geopolitical and economic arguments for or against simplification and substantive alteration of the CSDDD, this, as mentioned in the introduction, lies beyond the scope of this contribution.

Instead of seeing the national legislative developments portrayed above as a dead end, it seems to make more sense to view them as small steps in a process that recognizes that voluntary measures alone are insufficient to genuinely promote IRBC and respect for human and labour rights in GVCs. This aligns with the position of the Dutch government and the Social Economic Council – an important advisory body on social policy. The voluntary track nevertheless remains important, and it is through a combination of measures that IRBC ought to be implemented in the Netherlands[64]. One of

[60] Explanatory Memorandum Responsible and Sustainable International Business Conduct Act, 35 761, nr. 2, par. 2.2.1.

[61] Directive of the European Parliament and of the Council, n. 2024/1760, 13 June 2024, on corporate sustainability due diligence and amending Directive (EU), n. 2019/1937 and Regulation (EU), n. 2023/2859 (Text with EEA relevance).

[62] International Responsible Business Conduct Act, public consultation, https://www.internetconsultatie.nl/wivo/reacties.

[63] See generally: https://www.consilium.europa.eu/en/press/press-releases/2025/04/14/simplification-council-gives-final-green-light-on-the-stop-the-clock-mechanism-to-boost-eu-competitiveness-and-provide-legal-certainty-to-businesses/.

[64] Government of the Netherlands, Improving Responsible Business Conduct (RBC), https://www.government.nl/topics/responsible-business-conduct-rbc/government-promotion-of-responsible-business-conduct-rbc.

the most progressive and innovative elements of such a smart mix are the IRBC Sector Agreements, to which our attention is directed presently.

4.2. *The Dutch IRBC Sector Agreements*

An important and innovative aspect of the Dutch approach to IRBC was taken with the adoption of sectoral IRBC Agreements[65]. These are multi-stakeholder agreements within designated high-risk sectors that have the objective of addressing environmental and human rights issues. These agreements could be seen as a hybrid ingredient in the smart-mix. They are certainly not binding legislation, but parties to the Agreements do commit themselves to IRBC standards and procedures and therefore participation in an agreement does lead to obligations[66]. The Agreements are based on an advisory report of the Social Economic Council and are collaborative efforts in which businesses, trade unions, and other civil society organizations are parties and in which the government has a facilitating role[67]. The IRBC Agreements were adopted for a five year period and 11 Agreements were negotiated in total. Presently, there are only two of them left in force, while several others are being re-negotiated, albeit in an adjusted format.

One of the main innovative features of the IRBC Agreements is that they are collaborative efforts between businesses, governments, trade unions and other civil society organizations. The Agreements are also created through an intensive dialogue between all these stakeholders[68]. In this sense, they can be seen as multi-stakeholder initiatives that have a mixed public-private character. All the IRBC Agreements adhere to the ILO's fundamental labour standards and include HRDD requirements based on the OECD-Guidelines and the UNGPs[69]. By concluding these agreements per sector, a

[65] Social Economic Council (SER), International RBC Agreements, https://www.imvo-convenanten.nl/en.

[66] Erkens, *Innovation in Corporate Social Responsibility: sustainable business agreements in The Netherlands*, in *JSR*, 2021, 3, 1, p. 17.

[67] Social Economic Council (SER), Advies 14/04, "IMVO-Convenanten," (IRBC Agreements) April 2014. Also see: KPMG Sustainability, MVO Sector Risico Analyse, Aandachtspunten voor Dialoog (RBC Sectoral Risk Assessment), September 2014, https://-/www.rijksoverheid.nl/documenten/rapporten/2014/09/01/mvo-sector-risico-analyse.

[68] International RBC Agreements, https://www.imvoconvenanten.nl/?sc_lang=en.

[69] International RBC, *Why care about international responsible business conduct?*, https://www.imvoconvenanten.nl/en/why.

tailor-made approach to the specific risks in that sector is possible. All in all, there have been IRBC Agreements concluded in the garments and textile sector[70], the banking sector[71], the gold sector[72], sustainable forestry[73], insurance[74], floriculture[75], pension funds[76], and food products[77]. These IRBC Agreements ended after their five-year term passed. However, the agreement on natural stone (TruStone Initiative) has been extended and adjusted and is in its second term now.[78] The Renewable Energy Agreement[79] is still in force and negotiations on subsequent agreements in the metal sector have been concluded and are ongoing for the garment sector[80]. It is important to point out that these next generation of IRBC Agreements do differ from their predecessors. Not only has their name changed (in Dutch, from "Convenanten" to "Overeenkomsten")[81], but there is also much more limited involvement of the government, which is no longer a party to the Agreements. The reason for this is that the role of the government will shift to monitoring due diligence legislation[82]. While the government does recognize that it remains committed to promoting sectoral initiatives, this sectoral approach will change, depending on the other elements of the policy-mix, especially (EU) legislation[83]. It is likely that a new, more holistic sectoral instrument will be

[70] Dutch agreement on sustainable garment and textile, https://www.imvoconvenanten.nl/en/garments-textile.

[71] Dutch Banking Sector Agreement, https://www.imvoconvenanten.nl/en/banking.

[72] Responsible Gold Agreement, https://www.imvoconvenanten.nl/en/gold.

[73] Agreement to Promote Sustainable Forestry, https://www.imvoconvenanten.nl/en/forestry.

[74] Agreement for international responsible investment in the insurance sector, https://www.imvoconvenanten.nl/en/insurance.

[75] Floricultural sector joins forces to press for more responsible production, https://www.imvoconvenanten.nl/en/floricultural.

[76] Agreement for the Pension Funds, https://www.imvoconvenanten.nl/en/pension-funds.

[77] Agreement for the Food Products Sector, https://www.imvoconvenanten.nl/en/food-products.

[78] International RBC TruStone Initiative, https://www.imvoconvenanten.nl/en/trustone.

[79] International RBC Agreement for the Renewable Energy Sector, https://www.imvoconvenanten.nl/en/renewable-energy.

[80] International RBC Agreement for the Metals Sector, https://www.imvoconvenanten.nl/en/metals-sector.

[81] Which could be translated as from covenants to contracts. The terminology itself does not reflect any substantive difference however.

[82] Second Chamber of Parliament, 26 485, Nr. 395, Responsible Business Conduct.

[83] Second Chamber of Parliament, 26 485, Nr. 376, Responsible Business Conduct.

developed in the near future. However, as mentioned, this is also dependent on the timeline and (future) content of the EU initiatives.

While all agreements commit to respecting fundamental labour standards, the sectoral model allows the different agreements to emphasize the importance of certain rights for a specific industry. A sectoral approach has the benefit of offering tailor-made models for promoting corporate sustainability[84]. The Banking Agreement for example refers to freedom of association and the right to collective bargaining[85], while the Gold Agreement places more emphasis on the prohibitions of forced and child labour[86].

Even though it is indeed voluntary for a company to become a party to an IRBC Agreement, this does involve a strong commitment from the parties involved. The scope of the agreements covers a corporation's own activities and its business relationships throughout their GVCs. The overall objectives of the agreements are firstly, "to improve circumstances in a number of risk areas for example child labour, low wages, human rights violations and environmental pollution" and secondly to offer a collective solution to problems that businesses are unable to solve on their own[87].

The main way by which the IRBC Agreements have a positive impact is by monitoring the compliance of the companies that are a party to the agreement. Additionally, there are specific projects connected to the IRBC agreements. A few examples may be useful to understand the nature of these projects. In the framework of the Renewable Energy Agreement, a number of parties are implementing a project that integrates artisanal and small-scale copper mining production in Peru into responsible supply chains. The project is meant to build productive relations within the sector, promote respect for human rights, and encourage the adoption of better mining practices. The overall aim is to help to improve the living standards of miners and the local

[84] Laagland, *Decent Work in the Cross-Border Supply Chain: A Smart Mix of Legislation and Self-Regulation*, European Council on Foreign Relations, 2023, 2, p. 354.

[85] Dutch Banking Sector Agreement on international responsible business conduct regarding human rights, October 2016, p. 27.

[86] Dutch Gold Sector IRBC Agreement on international responsible business conduct of companies in the Netherlands with gold or gold bearing materials in their value chains, June 2017, Annex I, p 45.

[87] International RBC, *Why care about international responsible business conduct?*, cit.

communities by developing a multi-stakeholder roadmap for a responsible supply chain and to strengthen due diligence mechanisms[88].

A second example is the implementation of a stakeholder dialogue in Rajasthan in India to address specific risks in the sandstone extraction and processing sector. This project – under the TruStone Initiative – aims to formalize labour in sandstone quarries and reduce the incidence of child and forced labour in the sector[89]. The stakeholder dialogue is building trust between suppliers and importers, leads to increased awareness of the specific risks and aligns efforts with local organizations and initiatives[90]. There are similar initiatives in the South of India and in Zimbabwe[91].

Although there are clear differences between the agreements, they all include the risk-based due diligence system based on the OECD guidelines and the UNGPs. Therefore, companies have to identify and address environmental and human rights risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions. Parties to the IRBC Agreements commit to achieving tangible outcomes and several agreements include dispute settlement or complaints mechanisms. This way, one could argue that the IRBC Agreements do not entirely belong to the voluntary category of IRBC, at least not for the parties involved.

The IRBC Agreements, in this perspective, should be seen as an important first step in the Netherlands towards less voluntary and more binding rules on IRBC. The 5 year evaluation of the IRBC Agreements stated that the agreements are seen as highly important instruments, firstly to build capacity and create awareness about IRBC; secondly, to increase the influence of buyers and suppliers in GVCs and thirdly they are seen as invaluable in promoting the continuous learning and knowledge sharing process about how to successfully conduct HRDD[92]. However, the evaluation also made it crystal clear that the sector agreements approach in itself is by no means

[88] https://www.imvoconvenanten.nl/en/renewable-energy/participants/projects/peru-copper.

[89] International RBC, *Projects*, https://www.imvoconvenanten.nl/en/trustone/initiatief/projects#rajasthan.

[90] *Ibid*.

[91] Also see: Tsabora, Chidarara, *From Mountains of Hope to Anthills of Despair, Assessment of human rights risks in the extraction and production of natural stone in Zimbabwe*, TruStone Initiative Anthills of Despair, September 2021.

[92] Ministry of Foreign Affairs, *From giving information to imposing obligations, a new impulse for responsible business conduct*, 2020, p. 12-13.

sufficient considering that the IRBC agreements only reached 1,6% of the corporations in the designated high risk sectors[93]. Therefore, according to the Dutch government and the Social Economic Council, broad mandatory due diligence regulation is absolutely necessary for a functioning IRBC mix[94]. Moving forward, the Dutch government is considering adjusting the sectoral model to a more comprehensive approach which could include a general IRBC framework agreement[95].

The current Dutch policy for a smart-mix is categorized under five key headings:[96] imposing obligations; setting conditions; incentivizing; facilitating; and informing. The Dutch government finds that "without obligatory instruments, voluntary agreements have only limited impact" and that a "legal obligation to exercise due diligence is expected to be effective in defining a minimum standard for RBC"[97]. Setting conditions refers to the good example that the government should set with respect to responsible public procurement and incentivizing refers to a financial system that includes "carrots and sticks" to make sure that laggards with respect to IRBC mend their ways[98]. The Dutch Government has made different grant incentives available, e.g. the "social sustainability fund" for companies that want to address problems related to labour rights in their GVCs[99]. Informing and facilitating refer to the task the government has to make sure that the actors involved have the capacity and know-how to conduct IRBC properly. To this effect, the

[93] Bitzer et al., *Evaluation of the Dutch RBC Agreements 2014-2020: Are voluntary multi-stakeholder approaches to responsible business conduct effective?*, KIT Royal Tropical Institute, Amsterdam, 8 July 2020, p. 8.

[94] SER Advies (Social Economic Council recommendations) 20/08, (Social Economic Council recommendations) september 2020, Samen naar duurzame ketenimpact, Toekomstbestendig beleid voor internationaal MVO. SER Advies 21/11 (Social Economic Council recommendation), oktober 2021, Effectieve Europese gepaste zorgvuldigheidswetgeving voor duurzame ketens (Effective HRDD for sustainable GVCs).

[95] However, not much information on this IRBC "vision for the future" is available at the time of writing. With the exception of Second Chamber of Parliament, 26 485, Nr. 395, Responsible Business Conduct and Second Chamber of Parliament, 26 485, Nr. 376, Responsible Business Conduct.

[96] Referred to as the 5V model, since these headings translate into Dutch as: Verplichten, Voorwaarden stellen, Verleiden, Vergemakkelijken en Voorlichten. See: Ministry of Foreign Affairs, *cit.*, p. 19.

[97] Ministry of Foreign Affairs, *cit.*, p. 13.

[98] Ministry of Foreign Affairs, *cit.*, p. 15.

[99] Https://www.government.nl/topics/responsible-business-conduct-rbc/government-promotion-of-responsible-business-conduct-rbc.

Netherlands has created an RBC Support Center, which provides tailor-made advice, training and coordinates subsidy programs related to IRBC[100]. The IRBC Agreements touch on several of these five main "smart-mix topics" and according to the Dutch government, a policy mix, in which sectoral agreements have an important part to play – next to mandatory legislation – is the preferred course of action[101].

5. *Closing reflections*

None of the legislative efforts with respect to mandatory HRDD in the Netherlands have been effectively implemented to this date. Moreover, the evaluation of the IRBC Sector Agreements showed that they have not been very effective at moving those companies that could be considered as "laggards" towards more sustainable business practices. But it would be wrong to conclude from this that the Dutch attempts at creating a smart-mix have failed. As regards legislation, the preferred outcome was always an instrument at the level of the EU and the Dutch (draft) laws may have influenced the process at the level of the European Union in a positive way.

A distinguishing feature of the IRBC Sector Agreements is that they are modelled to promote collaboration between business actors, civil society organizations and the government[102]. They were and are an innovative tool and an important ingredient in the "smart-mix" that combines both voluntary and binding features. Moreover, it is expected that when mandatory legislation – most likely the CSDDD – will enter into force, this will be beneficial for the further development of sectoral initiatives such as the IRBC Agreements. Moreover, it is expected that mandatory legislation will also lead to more companies joining an IRBC Agreement, since the built-up expertise of the parties to IRBC agreements, governmental support, and their collaborative nature could make them very attractive for companies that want or have to get their HRDD procedures in order. However, col-

[100] IRBC Support Center (MVO Steunpunt), https://www.rvo.nl/onderwerpen/mvo-steunpunt.

[101] Ministry of Foreign Affairs, *cit.*, p. 16.

[102] Erkens, *cit.*, p. 2.

laborating in IRBC Agreements should not be seen as waiving obligations under (future) mandatory legislation[103].

The character of the IRBC agreements has changed a bit and there is now a much more limited role for the government. Nevertheless, they still qualify as multi-stakeholder instruments that incorporates an important holistic approach that brings together different public and private actors, with a view to tackle sustainability issues together, making use of each other's expertise via a model of shared responsibility. Mandatory legislation that focuses on duties for (mainly) lead firms is indeed necessary, but complementing this with collaborative approaches such as the IRBC Agreements is an important venue to promote corporate sustainability as well. Both the private, sectoral and the public mandatory approaches may be "considered as mutually capable of shaping each other"[104].

The OECD Guidelines and the UNGPs (and to some extent, the ILO MNE Declaration) remain indispensable cornerstones of all IRBC instruments in the Netherlands and worldwide, and they ensure that the different IRBC tools are aligned and based on the same normative framework. (Fundamental) labour standards and other work-related human rights are at the heart of IRBC efforts, and they play a crucial role in promoting and realizing more socially responsible GVCs. Given that the most severe labour and human rights violations often occur at the lowest tiers of these chains, it is imperative that IRBC efforts are (also) directed there, if we really want responsible business conduct to make a difference in the lives of those who might need it most. In this light, it is concerning that/if mandatory IRBC legislation is only applicable to higher tiers and this would mean these legislative initiatives are not fully in line with the international normative frameworks of the UN, OECD and ILO. Additionally, mandatory legislation – for it to keep in sync with the spirit of the UNGPs – should not be restrictive when it comes to the specific rights that fall under its scope. The UNGPs emphasize that all human rights (could) deserve attention.

The Netherlands – like other countries – has not gathered all necessary ingredients for the perfect mix of IRBC measures. The rapidly shifting

[103] LAAGLAND, *cit.*, p. 355: "It is important to make sure that due diligence obligations agreed on in private agreements are equivalent to the public norm laid down in law. It must be prevented that participation in RBC-agreements becomes a safe harbour for companies".

[104] LAAGLAND, *cit.*, p. 357.

geopolitical landscape is causing delays and will probably lead to less progressive or diluted regulation, in particular when it comes to EU wide sustainability legislation. Nevertheless, mandatory legislation is a vital element of the combination of measures that is needed. Additionally, sectoral and collaborative approaches such as the IRBC Sector Agreements in the Netherlands are likely to fulfill an important role in any future smart-mix.

Abstract

A key strategy for effectively implementing and promoting International Responsible Business Conduct (IRBC) is securing a "smart-mix" of different – binding, voluntary, public, and private – regulatory mechanisms. The international normative basis for all these instruments is found in the voluntary frameworks developed by the UN, OECD, and ILO. The Fundamental Labour Standards of the International Labour Organization play a central role within IRBC as some of the most basic rights that are to be respected by corporations throughout their global value chains. Taking the international IRBC framework and the Fundamental Labour Standards as a starting point, this article assesses and evaluates some of the Dutch attempts to create and facilitate a smart-mix of IRBC instruments. The article focusses in particular on the Dutch sectoral agreements; multi-stakeholder IRBC instruments that emphasize a collaborative approach between business actors, civil society organizations and the government.

Keywords

International Responsible Business Conduct, Fundamental Labour Standards, Smart-mix, Sectoral Agreements, UN Guiding Principles, OECD Guidelines, International Labour Organization.