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Leiden  
The Netherlands

## Navigating corporate responsibility in global supply chains using codes of conduct

Vandenbroucke, S.E.M.

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In the interconnected world of global commerce, the clothes we wear, the gadgets we use, and the products we consume often conceal a darker reality—the exploitation of vulnerable workers in global supply chains. From the rubble of the Rana Plaza disaster to the cobalt mines of the Democratic Republic of Congo, human rights violations continue to plague the very systems that fuel our modern lives. These tragedies underscore a pressing question: Who should bear the responsibility for safeguarding the rights and dignity of workers in the complex web of global trade?

*Examples of labor rights tragedies in global supply chains*

- The Rana Plaza disaster, Bangladesh, 2013. A structural building failure led to the collapse 1134 dead and 2500 injured garment workers. The complex housed five garment factories supplying western brands.
- Pakistan factory fires, 2012. Fires in a textile industry kill 289 workers and injure more than 600. The factory exports its garment to Europe and the US.
- Uyghur forced labor, 2017 – present. A detained religious minority in China undergoes forced labor in supply chains of international brands, notably for the production of cotton.
- COVID-19 supply chain disruptions and impact on workers, 2020. The pandemic disproportionately affects most vulnerable workers, and especially women, as multinationals cancel contracts with suppliers without paying compensations.<sup>1</sup>
- Cobalt mining, Democratic Republic of Congo, 2016-present. There is no such thing as a clean supply chain of cobalt, as child labor and modern slavery is rampant in artisanal mines of the DRC for the production of cellphone batteries.

## 1.1 SETTING THE STAGE: THE GOVERNANCE OF HUMAN RIGHTS IN A GLOBALIZED WORLD

The instances of human and labor rights tragedies described in the box above have several elements in common: victims are workers in global supply chains, working for multinational brands, in large part for products aimed at western consumers. Seeking responsibility in this complex web of

1 ILO Research Brief, The supply chain ripple effect: How COVID-19 is affecting garment workers and factories in Asia and the Pacific, October 2020

intertwined actors operating transnationally drives us to the question raised by Robert Dahl in 1961: Who governs? In other words, who are the actors of governance of global supply chains? While the term *governance* is traditionally associated with the institutions of national government, this association does not hold for activities transcending national borders (Detomasi, 2007). Private actors' transnational activities are currently largely unregulated by a public '*government*' at the international level, even in the era of global economy and interconnectedness across borders. With globalization, global governance – referring to policy making and policy implementation on a global scale – is no longer a task managed by the State alone (Scherer et al., 2006). Instead, private actors have progressively become instrumental players of international governance. With this expanded role comes increased expectations for businesses to act in the common good and uphold social responsibility. As developed in Young's theories on *shared responsibility*, individuals and institutions bear collective responsibility for addressing social injustices and structural inequalities, even if they are not directly responsible for causing them. This responsibility is particularly significant within multinationals' supply chains, as Krause et al. (2009) assert that '*a company is no more sustainable than its supply chain*'. Consequently, the social responsibility for global production within supply chains increasingly falls to multinationals. Expectations are now placed on these businesses to protect and promote workers' rights throughout their supply chains (Dahan et al., 2021).

Embracing these trends, this dissertation relies on the premise that businesses have a role towards society beyond their economic purpose, and especially in their global supply chains. To conform to societal expectations, businesses have adopted Corporate Social Responsibility (CSR) policies such as codes of conduct, setting ethical expectations and labor standards applicable to their external business partners. This corporate reaction shows proof – at least on paper – that companies accept to some extent a social responsibility in global supply chains. But what are companies really saying, and what happens beyond the ethical standards set in codes? This dissertation tries to answer these questions. In this introduction, I set the context, problematic, and justify the specific choices made for the present investigation. I then present the intended contributions of my research, and finally present the outline of this dissertation.

### 1.1.1 The global supply chain: Landscape of modern production

As underlined by Gereffi et al. (2005), the world economy has changed in significant ways during the past several decades, especially in the areas of international trade and industrial organization. In his theoretical framework capturing what he calls the global value chains, Gereffi underlines the two main features of the contemporary economy: The globalization of production and trade, and the vertical disintegration of transnational corporations – meaning the reduction of the direct ownership over a large part of their

production and services. These two shifts laid the groundwork for the creation of new forms of governance: the global value chains.

Supply chains are defined as vertically coordinated networks of firms engaging in activities associated with the production and distribution of an end product (Boyd et. al, 2007). In the context of this dissertation, the term *global supply chain* is selected to refer to the sequence of activities involved in the production and distribution of goods or services from raw material extraction to final consumption, dispersed across different countries.<sup>2</sup> Their complexity – highlighted by Gereffi and many other scholars attempting to theorize this network form of governance<sup>3</sup> – underscores the multifaceted nature of modern commerce, and the intricate relationships between various stakeholders. Supply chains encompass diverse industries and involve a myriad of actors, from multinational corporations to local suppliers and subcontractors, thus dispersed across multiple tiers and forming levels, with a closer or longer distance between buyers and suppliers. The transnational component of the definition makes it a particularly complex issue for the management, governance, and regulation of environmental and social outcomes.

Liberal economists, most famously Thomas Friedman, have advocated for a supply chain form of global production, arguing that the economic pattern of the global supply chain is beneficial for all. In this ‘win-win’ scenario, Northern countries profit from cheaper labor while Southern countries gain in employment possibilities and foreign investments (Friedman, 2005). To some extent, supply chains have indeed allowed developing countries to acquire competitiveness on the global market. However, another trend is observed as inherent to the interconnected world and the large base of suppliers that MNEs may choose from: the so called ‘race to the bottom’. Corporations constantly move their manufacturing to areas with lower labor costs and fewer labor regulations (Backer, 2008). Supply chains thus become a critical part of the competitive landscape, by drastically improving firms’ capabilities of lowering production and transaction costs while accelerating the development of new products. This dynamic calls for a multi-faceted governance of global production, as companies have different organization and ownership over their supply chains: multinationals either own their production site; are the only buyer from a production site (thus have dominance over it); or work with formally independent suppliers (Barrientos & Smith, 2007).

The social and environmental consequences of this economic produc-

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2 Despite this choice of terminology adopted for coherence and harmonization of the dissertation, I did not have the primary intention of excluding *value chains* from the analysis or adopt a narrower approach than value chains.

3 Among them one can cite for instance Timothy Sturgeon on the evolution and governance of global production networks, Susan Christopherson on the geographical dynamics of global supply chains, and Jennifer Bair investigating governance of global production networks with a practical emphasis on the role of multinational corporations.

tion pattern have provoked significant controversies over the role of global brands and their local suppliers. Multinationals are often seen as exploiting developing countries' low wages and weak social and environmental regulation to produce low-cost goods at the expense of local workers' welfare (Locke, 2013). This contributes to the global North-South divide of wealth, with a systemic reproduction of mechanisms of domination, named by some as 'post-colonialism' (Hoogvelt, 2001). In fact, the enduring power differentials between multinational corporations based in the Global North and local suppliers in the Global South reflect historical colonial dynamics, perpetuating inequalities and reinforcing patterns of dependence. The legacy of colonialism has left many developing countries with economic structures that prioritize the extraction of resources and the exploitation of labor to serve the interests of former colonial powers. These concerns and the fight against global inequalities and inhumane treatment underscore the necessity to examine global supply chains beyond a mere economic perspective.

### 1.1.2 The global governance gap of transnational production

Despite the growing interconnectedness of global commerce, private actors operating transnationally widely operate without a direct and overarching obligation to respect human rights within their global supply chain. While state governments legislate corporate practices within their national borders, the regulation of labor issues occurring in other countries, particularly at the supplier level, remains largely unaddressed. The absence of a cohesive international legal framework has created what international organizations refer to as a 'regulatory gap' in governing the conduct of businesses within global supply chain.<sup>4</sup> Attempts to fill this gap have included initiatives for an international legally binding treaty to regulate the activities of transnational corporations in international human rights law.<sup>5</sup> However, consensus on such measures has been elusive, leaving gaps in accountability and enforcement. Some national courts have attempted to bring forward responses, by opening the possibility for foreign victims to come claim their rights in the headquarter country of the multinational. In the absence of an international legal basis, this extraterritorial judicial-based system has limits: it is reserved to most privileged victims, and often, courts

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4 The UNGP notably recognizes this gap in pillar I, principle 3 on the general State regulatory functions. In the commentary, the principle mentions that the failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice.

5 The open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights is in charge of elaborating this international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. However, negotiations are ongoing since 2014, and the seventh session of October 2021 was not conclusive.

consider themselves incompetent to rule (such as in *Kiobel v. Royal Dutch Petroleum Co.*<sup>6</sup>).

Beyond this *regulatory gap*, business and human rights scholars also claim that we are evolving in a global *governance gap*, meaning the absence of robust mechanisms at the international level to ensure that corporations uphold human rights standards in their operations worldwide (Ruggie, 2008). Despite increasing awareness of the significance of corporate responsibility in respecting human rights, there remains a disconnect between the principles and the practices of businesses and the ability of states and international entities to hold them accountable for any violations. The publication of the “protect, respect and remedy” framework by John Ruggie in 2011, also known as the UN Guiding Principles on Business and Human Rights (UNGPs), was the first global attempt at addressing this gap. The second pillar of the UNGP defines the responsibility of businesses to respect human rights and outlines how businesses should adopt adequate policies and procedures to address human rights impact, by conducting due diligence. It played a pivotal role in shaping corporate behavior, by promoting the idea of corporate self-regulation. The Rana Plaza Disasters in 2013 pushed further this agenda at the international level, as civil society increasingly advocate for a stronger corporate accountability of businesses. Since 2011, the UNGPs have significantly affected business attitudes to human rights despite their voluntary nature, as businesses now accept, in principle, responsibilities to avoid, mitigate, and remedy human rights violations caused by their own operations (Muchlinski, 2021). The supporting guidance to the Guiding Principles indicates that ‘public commitments’ to respect human rights “*may take the form of a single, stand-alone public policy regarding respect for human rights, or be included in a broader document, such as a code of ethics*”.<sup>7</sup> As a result, codes of conduct have become popular, with a trend towards the standardization of supplier codes (Schleper & Busse, 2013).

For a long time, business practices have been regulated by a soft law approach covering voluntary frameworks and standards. These international standards have been criticized to ‘lack teeth’ (Van der Sangen & Lafarre, 2021), considering the absence of binding outcomes for companies,

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6 *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013). In this case, Nigerian plaintiffs sued Royal Dutch Petroleum Co. (Shell) for alleged human rights violations committed by Nigerian government forces protecting the company’s operations. The U.S. Supreme Court ultimately ruled in 2013 that the Alien Tort Statute did not apply extraterritorially to conduct occurring outside the United States, effectively limiting the ability of foreign plaintiffs to sue corporations in U.S. courts for human rights abuses committed abroad. This decision reflected the court’s reluctance to assert jurisdiction over cases involving multinational corporations operating overseas

7 UN Guiding Principles Reporting Framework with implementation guidance, Shift Project, 2015. Accessible at: [https://www.ungpreporting.org/wp-content/uploads/2015/02/UNGuidingPrinciplesReportingFramework\\_withimplementation-guidance\\_Feb2015.pdf](https://www.ungpreporting.org/wp-content/uploads/2015/02/UNGuidingPrinciplesReportingFramework_withimplementation-guidance_Feb2015.pdf) (last accessed June 2024).

or sanctions in case of violations of these standards. Today, the voluntary soft law framework, mainly developed by private actors with codes of conduct, is deemed insufficient, as highlighted by Jägers, who underlines: “*Transnational private regulation is also not THE answer*” (2013, p. 327). The past few years mark a paradigm shift in this soft law approach, as the legal framework significantly evolves to increase corporate accountability and as governments attempt to regain leverage to promote social and sustainability concern.

### 1.1.3 The paradigm shift towards binding corporate social responsibility

Recently, regulatory institutions have recognized the gaps in the current approach and the need to regulate transnational business actions concerning social and environmental impacts. In its Resolution on sustainable corporate governance,<sup>8</sup> the European Parliament concluded that soft law instruments and voluntary international initiatives promoting sustainable corporate governance are ineffective in changing corporate behavior towards sustainability. This conclusion, also shared by national parliaments and governments, explains the progressive shift from voluntary CSR standards to an increasingly mandatory framework, referred to as the “legalization of CSR” at the EU level (Berger-Walliser & Scott, 2018, p. 169). Several recent developments highlight this shift, such as the Shareholder Rights Directive II of 2019 requiring institutional investors to develop and disclose their engagement policies, including ESG factors ; The Non-Financial Reporting Directive (2014) requiring certain large companies to disclose information on the way they operate and manage social and environmental challenges ; and the Corporate Sustainability Reporting Directive (2021) amending and significantly expanding the scope of the Non-Financial Reporting Directive. These Directives promote access to transparency and include obligations of information disclosure. Most recently, the EU went one step further in this direction, with the adoption of the Corporate Sustainability Due Diligence Directive (CSDDD) in June 2024.<sup>9</sup> This Directive mandates companies to conduct due diligence to identify, prevent, mitigate, and account for actual and potential adverse impacts on human rights and the environment – thus going beyond a transparency obligation. The shift towards the legalization of CSR also occurs at the national level, and especially in Europe. For instance, mandatory human rights due diligence laws are adopted in differ-

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8 European Parliament resolution of 17 December 2020 on sustainable corporate governance (2020/2137(INI), accessible at: [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0372\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0372_EN.html)

9 European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937



ent countries. France was the first to adopt due diligence laws on the “*devoir de vigilance*”<sup>10</sup> in 2017, later followed by Norway, and Germany.

Among these recent steps, the Corporate Sustainability Due Diligence Directive (CSDDD) constitutes the most prevalent proof of the shift towards binding corporate social responsibility. Following the Directive, companies must integrate due diligence within their corporate policies, notably via the adoption of a code of conduct to be complied with by the company and its subsidiaries (Article 7 of the Directive). This article marks the transition from the voluntary to the mandatory adoption of supplier codes of conduct. Yet, the EU legislator leaves companies in charge of defining the standards applying in their supply chains, as there are no obligations nor recommendations regarding the content of codes in the CSDDD. The Directive is a good example of a legislation mixing public and private policymaking, as public authority is activated to solidify self-regulatory arrangements across the different stages of the policy process (Porter & Ronit, 2006). As a result, transnational private regulation will continue to play an important role in the upcoming years with the implementation of the CSDDD, which heightens the relevance of research on private regulation and codes of conduct.

Coincidentally, this doctoral research began in March 2020, and a few months later the European Parliament submitted its first legislative-initiative resolution on due diligence, asking the Commission to introduce mandatory due diligence legislation to avoid fragmentation and to give businesses and citizens legal certainty.<sup>11</sup> Four years later, in April 2024, the European Parliament adopts the due diligence Directive, as I complete my dissertation in June 2024. Considering the groundbreaking changes promised by the Directive on the integration of human rights concerns within corporate policies, this thesis could not be timelier. This research is not investigating the specificities of due diligence laws but focusses on supplier codes of conduct – a central component recognized by the CSDDD.

## 1.2 EXPLORING GAPS IN UNDERSTANDING SUPPLIER CODES OF CONDUCT

While SCCs gain traction as tools to address the global governance gap, scholars have highlighted both their potential and limitations. Some view SCCs as promising mechanisms for enhancing worker rights (Pearson & Seyfang, 2001; Ruggie, 2004), others express concerns about the legitimacy and efficacy of private regulation (Amengual & Bartley, 2022). Despite ongoing efforts to assess SCC effectiveness, several key gaps in the literature persist, shaping the focus of this research.

10 *Loi sur le plan de vigilance* Law 2017-399 of March 27, 2017 relating to the duty of vigilance of parent companies and supply companies.

11 European Parliament Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL), accessible at: [https://www.europarl.europa.eu/doceo/document/JURI-PR-657191\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/JURI-PR-657191_EN.pdf)



Firstly, there remains ambiguity regarding the intended scope and content of SCCs. While the overarching goal is to establish minimum labor standards, comprehensive information about the specific labor rights addressed in these codes remains elusive. Béthoux et al. (2007) offer an initial examination of SCC content, albeit with a focus on internal business codes that apply to a company's own employees. However, there are still unanswered questions regarding the inclusion of specific labor rights in SCC and whether these rights are derived from internationally recognized standards, such as those set by the International Labour Organization. As highlighted by Paiement and Melchers (2020), reference to international law can give legitimacy to codes of conduct – but may also create '*an aura of labor rights protections*', one that refers to instruments that are not specifically addressed to private actors and thus not directly transposable to the private context. This would mean that these instruments set inherently uncertain requirements for private actors, thus failing to systematically protect rights and create safe working conditions. The authors explained how codes engage with international instruments, based on an analysis of thirty-eight codes (Paiement & Melchers, 2020). Pursuing this research on a larger scale and including comparative elements for SCC content is highly relevant to understand multinationals' objectives.

Secondly, while there exists a substantial body of literature on corporate codes of conduct, the focus has been predominantly centered on internal standards for corporations' employees, as observed in the literature review of Babri et al. (2019). Only recently has attention shifted towards examining the effectiveness of SCCs applied to external stakeholders, such as suppliers (Jedynak, 2018). Despite this emerging scholarship, there remains a lack of systematic approaches to comprehensively understand and evaluate the implementation and impact of SCCs on supplier practices (Babri et al., 2019). A systematic approach in this context would entail the creation of a research design including methodologies that systematically gather and analyze data on SCCs' implementation, outcomes and factors across different contexts and industries. For instance, a theoretical model was developed by Kaptein & Schwartz (2007), allowing to understand the relevant factors influencing the effectiveness of a code of conduct. This study offers a benchmark for companies to assess their codes against other corporate codes and the items they address. Such systematic approaches allow researchers to move beyond anecdotal evidence or case studies and instead provide robust and generalizable insights into the role and effectiveness of SCCs in promoting ethical labor practices within global supply chains. In the investigation of SCC effectiveness and implementation, the scholarship is missing such systematic approach, thus rendering the literature scattered and focusing on different factors yet without a comprehensive global overview of the problematic. To address this gap, it is necessary to establish a list of influencing factors to take into account when assessing SCC effectiveness, to identify key variables and indicators, and to employ rigorous and coherent research

methods to gather empirical evidence on the impact of corporate policies in global supply chains.

Thirdly, scholars have emphasized the challenges associated with SCCs, especially concerning their implementation and diffusion throughout global supply chains suppliers and cascading down to all suppliers. As codes respond to global societal expectations, there is a risk of window dressing (Esbenshade 2004), wherein codes are adopted primarily to create a façade of ethical supply chain practices without substantive implementation. Some characterize this phenomenon as the “*symbolic adoption*” of SCCs (Bromley & Powell, 2012, p.15), while others go as far as to call it “*organized hypocrisy*” (Lim & Tsutsui, 2012, p.81). Empirical research has long documented empirical evidence of the inconsistent or weak implementation of labor codes (Cao and Jayasinghe, 2023). This notably highlights the necessity for a deeper understanding of the factors influencing implementation practices.

Finally, the effectiveness of SCCs in addressing the power imbalances within global supply chains remains underexplored. While SCCs aim to promote ethical practices and protect workers’ rights, they often operate within complex power dynamics characterized by unequal relationships between buyers and suppliers. Understanding how these ‘internal power dynamics’ – as referred to by Tilcsik (2010) influence the adoption, implementation, and enforcement of SCCs is essential for designing more effective governance mechanisms within supply chains.

### 1.3 RESEARCH QUESTION: AN INTERDISCIPLINARY SOCIO-LEGAL APPROACH

Given the global context of corporate responsibility in supply chains and the existing gaps in the literature on corporate self-regulation, this research is both timely and relevant, especially amidst significant regulatory changes worldwide. The aim of this research is to address the following question:

*To what extent are multinationals addressing labor risks in their global supply chains when adopting and implementing supplier codes of conduct, and what are the factors influencing this process?*

This central research question is further divided into the following sub-research questions, addressed subsequently in each chapter:

- What are the legal obligations associated with SCCs, and what legal effects do they entail for multinationals?
- What do we know about SCC effectiveness to improve labor standards in global supply chains?
- What promises are formulated by MNEs when adopting their codes?
- Do companies walk the talk between their commitments and their actions?

- How do human rights experts working with multinationals perceive the adoption and implementation of their SCCs, and what is their take on the upcoming legislative framework on mandatory due diligence?

To address the urgent need for mitigating global inequalities and ensuring sustainable production methods, I adopt a socio-legal approach. This topic necessitates an interdisciplinary perspective: an economic lens alone does not adequately address the urgency of global inequalities; a purely legal perspective is too limited to understand corporate practices; and a sociological angle lacks the investigations and possibilities for legal solutions to increase corporate accountability, where necessary. The interdisciplinary nature of this study is essential, as the topic lies at the intersection of various academic disciplines (Rasche & Waddock, 2021).

As the formulation of the research question indicates, this investigation is focused on the corporate perspective. Historically, efforts to regulate economic activities for the protection of fundamental rights originated from private actors, as underlined in the context-setting and for lack of an overarching global framework regulating transnational activities of private actors. This underscores the importance of a company-centered approach, as businesses have mainly operated outside of the traditional legal framework. While there is a shift towards greater intervention of public actors in the governance of supply chains, legislation must align with practices established by private entities. This context also highlights the necessity of adopting an empirical perspective. Critical exploration of methodologies is rare within traditional legal scholarship (Brems, 2009, pp. 83-84). To gain knowledge from business practice, an empirical investigation is required, allowing to understand the practical consequences of self-regulation and SCCs.

Understanding these dynamics from a socio-legal perspective allows for the formulation of legal proposals *if* gaps and challenges are identified that require legislative attention. By ensuring that law and practice are not viewed in isolation, particularly given that much regulation in this area is 'soft law' and that practice has been central to developments thus far, this approach is critical. To answer the research question, I will utilize methodologies from various disciplines. This combined approach will integrate quantitative and qualitative methods, providing both a broad overview of self-regulation instruments and a practical understanding of the specific challenges encountered by businesses on a case-by-case basis.

## 1.4 THEORETICAL BUILDING BLOCKS AND CONTRIBUTIONS

### 1.4.1 Foundations of corporate responsibility

By questioning multinationals' responsibility in their global supply chains, this dissertation delves into two pivotal fields addressing thoroughly this

question: Corporate Social Responsibility (CSR) and Business and Human Rights (BHR). Each field come with their own theories and marking authors.

CSR, as conceptualized by scholars like Bowen and Carroll, poses fundamental questions about the ethical obligations of businesses towards society. Bowen's seminal inquiry, dating back to 1953 and resonating today, raised the question: "*what responsibilities to society may businessmen reasonably be expected to assume?*" (Bowen 1953, p. xi). Three main CSR theories may be relevant to study corporate responsibility in global supply chains: The Carroll Theory, The Triple Bottom Line Theory, and the Stakeholder Theories (Brin & Nehme, 2019). Carroll made a specific theory for the way that corporation interact with its surrounding community and the whole world, this theory is known nowadays as Carroll's Pyramid of CSR. Carroll's influential framework delineates CSR by defining CSR as a four-level concept: "*Corporate social responsibility encompasses the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time*" (Carroll 1979, 1991). The Triple Bottom Line theory was found by John Elkington in his book "*Cannibals with Forks: The Triple Bottom Line of 21st Century Business*". This theory can be considered as a CSR framework that incorporates three dimensions of performance: economic, social and environmental. The stakeholder theory proposes that objectives of a corporation can be only achieved by protecting and balancing the interests of different groups of stakeholders. This theory has been subject to critical risks being underlined, the risk being that corporate directors would share the interest of stakeholders who are only interested in maximizing profits, across the spectrum of other stakeholders as people in the surrounding area, those whose lives are touched by the business operations (Brin & Nehme, 2019).

Given the above-mentioned definition and developments of CSR theories, there is no doubt that CSR theories have similar objectives, which is innovating approaches that contribute to the economic stability, environmental sustainability and social development with all stakeholders. These theories are highly business-centered, meaning, they represent visions and directions for businesses in their everyday action. For example, many talk about the 'business case' for respecting human rights, which is contested by scholars to have companies respect human rights only when it suits them (Avery, 2006). In parallel to CSR, the scholarship of *business and human rights* has developed, representing a paradigm shift, focusing explicitly on the intersection between business activities and human rights principles. Business and human rights is centered on *rights* and are less so integrated by business but more developed by international policy-makers and policy-thinkers to articulate human rights responsibility of businesses. Yet, some companies are starting to adopt human rights as the framework for their CSR approach. The work by Professor John Ruggie with the development of the UNGPs incentivizes this trend of discussing *human rights* in business, by seeing CSR beyond an economic approach. Following Ruggie's

conceptualization, BHR not only seeks to prevent human rights abuses but also endeavors to ensure that corporate conduct aligns with principles of sustainability and social justice. BHR is characterized by its dynamic nature, continuously evolving to develop norms, standards, and best practices for integrating human rights considerations into corporate decision-making processes. Tamvada (2023) demonstrates that a new wave in the literature is exploring the relationships between these two fields, notably to bridge the corporate accountability gap. Their CSR-BHR integration framework considers that BHR is a mandatory and essential aspect of CSR. Therefore, this dissertation sets itself in the business and human rights scholarship by adopting a framework centered on human rights to corporate actions, but analyzes and describes all the CSR policies and practice, notably to underscore the tensions or value conflict faced by businesses between the logic of corporate profit-seeking in a globalized market economy and the normative aspiration of human rights as universalistic norms of moral justice and human dignity (Gregg, 2021).

Building on the foundations of corporate responsibility, this dissertation anchors its reflections within Iris Marion Young's theory of shared responsibility. Young argues that individuals and institutions are interconnected within broader social structures, and therefore bear collective responsibility for addressing social injustices and structural inequalities. By developing her *social connection model of responsibility*, she provides a compelling foundation for analyzing the complex dynamics of corporate responsibility within global supply chains. Young considers that the responsibility for addressing social injustices holds also for 'corporate agents' (2011, p. 144), and that this responsibility is political. Seeing the responsibility as *shared*, Young argues that this collective responsibility pends on actors even if they are not *directly* responsible for causing injustices, hence applying to labor conditions in global supply chains. Her vision of ascribing responsibility goes beyond the liability model used in legal proceedings, where agents are held responsible for a specific outcome based on their direct causal contribution to it. Instead, Young adopts a forward-looking approach to responsibility, focusing on how actors can work together to create a more equitable society. The political theorist takes the example of the anti-sweatshop movement to claim that people in affluent countries should assume a responsibility for ensuring decent working conditions for the people who produce their clothes and other goods in other parts of the world (Köning, 2023).

Stemming from this theoretical framework, this research departs from the idea that corporations hold a political responsibility for injustices occurring in global supply chains. Where companies wield economic, political, or influential power and leverage, they must contribute to addressing violations of decent labor rights. The dissertation, therefore, builds on a business and human rights approach, specifically Young's model of shared responsibility, to address social inequalities.

#### 1.4.2 Institutional and organizational theories on policy adoption and implementation

Beyond theories of responsibility, the dissertation relies on institutional and organizational theories, which are particularly useful in offering insights into the dynamics of corporate behavior and regulatory governance. The concept of decoupling, first mentioned by Meyer and Rowan (1977), is a fundamental concept used within institutional theory to explain organizational behavior and responses to external pressure. It refers to the disconnection or misalignment between organizational policies and practices. Decoupling is therefore a useful concept to investigate SCC implementation challenges. Institutional theorists have extensively studied decoupling as a process that organizations may undergo due to various pressures, such as societal expectations. To respond to various stakeholder demands, organizations draft symbolic policies and make symbolic decisions, but both remain unimplemented (Brunsson, 1989). Applied to CSR, decoupling highlights the gap between organizational rhetoric and actual practices shedding light on issues of organizational hypocrisy, symbolic compliance, and the challenges of achieving meaningful change (Egels-Zanden, 2014). Field opacity, such as the difficulty to access reliable data, contributes greatly to decoupling policy from practice (Kuruvilla, 2021). The use of the concept of decoupling is only recently being used to refer to SCCs and improvement of labor standards, but a few authors have successfully set the theoretical stage to use institutional theories in this context (among which, Kuruvilla, 2021; Egels-zanden, 2014). Yet, many questions are left unanswered, and a full overview of the process and how to address it is lacking in the scholarship. Empirical approaches notably are missing to assess business practices tendencies of decoupling.

Linked to decoupling is the goal displacement phenomenon, defined by Michels in 1911, where the original and often radical or idealistic goals of an organization are displaced by the inferior goals required to maintain the organization and keep its leadership in power (Huizinga & de Bree, 2021). The risk of goal displacement in SCCs and supply chain governance of multinationals may be especially high, as companies respond to external pressures to mitigate human rights risks, while operating in a profit-driven capitalist system pushing them to choose cheaper labor options. Vogel (2005) for instance suggests that CSR can become a tool for managing reputation rather than effecting change. For SCCs, goal displacement may undermine their effectiveness by shifting the focus from substantive improvements to procedural compliance and superficial achievements.

The reverse concept of decoupling is *recoupling*. Recoupling as defined by Hallett (2010) is the process of “creating tight couplings where loose couplings were once in place” (p. 54). In essence, recoupling involves bridging the gap between what organizations profess to do (in their SCC policies) and what they actually do in practice. Given the obvious importance of decoupling, it is surprising to find that only a few scholars have investi-



gated recoupling (De Bree & Stoopendal, 2020). Only Egels-Zanden (2014) has adapted this concept to CSR policies and codes of conduct.

Still within institutional theories, there is a prominent perspective within sociology and organizational studies that examines how organizations are influenced by their broader institutional environments. DiMaggio and Powell (1983) introduced the concept of organizational isomorphism, to refer to the process through which organizations within the same institutional environment tend to become structurally similar over time. SCC are interesting to study under this lens, to assess whether multinationals are indeed mirroring each others' CSR standards and actions, and whether that is the reason why most companies adopt codes. Institutional theory suggests that organizations strive for legitimacy and survival within their institutional environments, leading them to adopt structures and practices that align with prevailing institutional expectations (Meyer and Rowan, 1977). This can result in homogenization and standardization across organizations within a particular industry or sector. Understanding institutional isomorphism is crucial for analyzing organizational behavior, change processes, and responses to external pressures. This theory thus lends itself very well to the investigation of a policy adoption and implementation within multinationals, such as supplier codes of conduct.

#### 1.4.3 Intended contributions to theory and literature

This empirical dissertation's strengths do not primarily lie in making novel theoretical contributions or normative assertions on *what ought to be* regarding the global governance of SCCs. Instead, the research question focuses on a descriptive and analytical investigation of business practices related to SCCs. The institutional and organizational theories previously discussed provide a framework for understanding how SCCs are integrated into business practices, forming the basis for a structural analysis of these practices. Consequently, the theoretical contributions of this dissertation will center on providing empirical data supporting and validating existing theories (or not), and testing specific factors that contribute to the policy-practice decoupling observed in SCC implementation. It bridges the realms of business practice with institutional theories.

Institutional theory emphasizes the importance of analyzing social structures and institutions to understand how they shape individual and collective actions. This research integrates into this theoretical framework by offering empirical data on SCC practices, which is currently sparse, as highlighted in section 1.2. By embedding this research within institutional theory, the dissertation aims to provide a comprehensive overview of how SCCs are implemented and the challenges faced in this process. As Iris Marion Young (2004) underscores, analyzing social structures and institutions is crucial for understanding their impact on corporate behavior and responsibility.

A gap identified in the institutional theory literature is the failure to examine whether the link between CSR symbolism and substantive condi-



tions can be strengthened, meaning, whether a *recoupling* process is possible (Egels-Zanden, 2014). This dissertation intends to give empirical elements to fill that gap, by investigating the factors that influence the process of implementation of SCCs and providing recommendations on the steps to take to lead to recoupling. I thus explore ways to align symbolic commitments with substantive practices. This contribution is vital for developing more effective private governance mechanisms that ensure SCCs lead to meaningful improvements in labor standards.

Finally, this dissertation intends to highlight whether the theory of institutional isomorphism can be applied to SCCs. By providing empirical evidence on this topic, the dissertation aims to enhance our understanding of how institutional pressures shape SCC practices and their outcomes.

### 1.5 INTENDED CONTRIBUTION TO PRACTICE

Beyond theoretical contribution, this research is targeted towards the practice, both for corporations, and for policy makers.

For corporations, this dissertation offers several practical insights. By describing the current landscape of SCC business perspectives, as well as its gaps and challenges, it intends to highlight actionable strategies and mechanisms for implementing policies within global supply chains. The ambition is to collect a large sample of empirical data analysis on codes of conduct. This will draw a landscape of SCC content, identify implementation challenges, and assess the practices effective in promoting better labor standards. In turn, I hope that this will help building effective mechanisms as companies mirror the best practice examples that will be discussed.

For policymakers, this dissertation addresses several critical gaps. Policymakers at national, regional, and international levels are increasingly crafting legal frameworks to heighten corporate accountability regarding social issues, notably with the development of the mandatory human rights due diligence framework. This (re)engagement of public actors in a field until now primarily regulated by the private actor reflects the recognition that the path of corporate voluntarism has proven inadequate, or at least insufficient, in addressing the complexities of modern globalized contexts. Despite the limitations of voluntarism, businesses have developed responsible practices within global supply chains. For an effective regulation, it is crucial that the public actor adopts a legal framework aligning with these practices. Therefore, it is essential to understand the shortcomings of self-regulation and voluntarism. By illuminating these gaps, this research can help bridge the divide between current business practices and emerging legal requirements. This approach is supported by de Bree and Stoopendaal's assertion (2020) that public attempts to achieve improvements often result in a one-dimensional debate on whether more legislation is needed. Instead, regulation should be situationally tailored to address issues that business practices alone cannot solve.

By synthesizing empirical findings with theoretical insights, this research aims to inform evidence-based policymaking, both supporting better practices of the private and the public regulator. The socio-legal approach adopted, as highlighted in section 1.3, is crucial for developing regulatory frameworks that promote corporate accountability. This dissertation seeks to offer policymakers a nuanced understanding of how to craft regulations that not only set standards but also encourage meaningful compliance and improvement in corporate practices. This approach helps avoid the risk of regulations becoming mere tick-box exercises, ensuring that legal frameworks effectively address the real-world challenges faced in global supply chains.

## 1.6 METHODOLOGY: A PHD IN SOCIO-LEGAL STUDIES

this interdisciplinary dissertation, situated at the intersection of law and business studies, sets itself in socio-legal studies to investigate various aspects of corporate responsibility and corporate self-regulation within global supply chains. As part of the Dutch sectorplan funding for Empirical Legal Studies (ELS), this research uses empirical research methods, primarily drawn from the social sciences, to scrutinize policies and legislative norms, providing a robust framework for analysis and interpretation. The ELS approach employed in this dissertation contrasts with the traditional doctrinal legal research typically used by lawyers, as articulated by Leeuw and Schmeets (2016.): *“Empirical legal research is not primarily or only interested in laws in the books, but in law(s) in action”*. The conception of ‘law in action’ is associated with legal realism, which examines the role of law, not just as it exists in the statutes and cases, but as it is actually applied in society. ELS emerged in opposition to legal formalism, where the construction of a ‘heaven of legal concepts’ is far removed from social reality and disregards the ways in which law is produced by and operates within society (Cohen, 1935). While ELS is only recently gaining popularity in Europe, with much less development compared to the US, communities of empirical legal researchers are growing. The Netherlands, among others, has become a leader in this new interest for data collection and analysis in law (van Dijk et al., 2018).

The specificity of this dissertation and its differentiation with traditional legal dissertation also lies in the norm at the heart of the research. Codes of conduct, as private regulation belonging to the soft law sphere, make it challenging to adopt the traditional doctrinal approach, as their regulation nor enforcement are typically a task of public institutions. In fact, scholars who investigate the impact of codes of conduct are generally social scientists, familiar with empirical methods.<sup>12</sup> Lawyers studying codes generally focus on their legal standing in courts or the potentiality to be incorporated

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12 Among them can be cited Egels-Zanden, Bartley, Jiang, Locke...

in the existing legal frameworks and ‘harden’ these soft law mechanisms.<sup>13</sup> While these questions are relevant, and the focus of Chapter 2 of this dissertation providing the legal framework of codes, they do not constitute the central focus of this dissertation.

Given the remaining uncertainties surrounding the impact of SCC on actual practice (see section 1.2. above), it is relevant to deploy methodologies to assess SCCs’ effectiveness and compliance. Scholars attempting this endeavor have encountered several challenges, such as attributing labor standards improvements to the existence of a code of conduct ; or accessing transparent and reliable data (e.g., Bartley & Egels-Zanden, 2015; Toffel et al., 2015). The assessment of codes of conduct compliance using social audits, for instance, is an attractive way forward used by many scholars (e.g. Bird et al., 2019), as they provide quantifiable data measuring the compliance with each labor standard. However, they are often criticized for their flawed rating (Jiang 2009a), as suppliers are easily able to cover up violations of codes’ provisions while passing audits. As a result, while compliance with codes may appear to positively evolve through time due to progressing audit reports, suppliers may in fact learn to match their buyer’s expectations, without fundamentally altering their behavior (Egels-Zanden 2007).

To address this issue, scholars developed innovative research designs to measure SCC effectiveness, such as the comparative designs (Bartley & Egels-Zanden 2015), or longitudinal studies (Sethi et al., 2011 ; Yu, 2008). In many cases, empiricists must triangulate their methods, and use different forms of data collection to ensure their reliability. Following an analysis of methods used by empirical scholars to assess SCC effectiveness and compliance, I developed my own method to assess the gap between the *fact* and the *norm*, using both quantitative and qualitative methods. The research methodologies intend to ensure comprehensive exploration and analysis, and include:

1. A textual approach of codes, providing an analysis of the content of codes of conduct to understand the language and commitments made by companies,
2. A comparative approach of the linguistic analysis with an NGO evaluation of supply chain CSR activities by multinationals (KnowtheChain),
3. A qualitative study gathering internal corporate insights through interviews to provide contextual understanding.

Central to this dissertation, and a significant contribution for empirical legal scholars, is the development of the Database of Business Ethics, which serves as a structured repository for collecting supplier codes of conduct and other pertinent corporate data. This open-access database facilitates quantitative text analysis of human rights policies and codes of

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13 The most famous lawyer performing these studies is Anna Beckers.

conduct from a large sample of companies worldwide and across industries, offering valuable insights into corporate practices. In addition to leveraging the Database of Business Ethics, the research plan triangulates this data with another database developed by KnowtheChain, enhancing the validity and reliability of the findings. Finally, the qualitative study conducts interviews to complement the quantitative analyses by providing rich contextual insights into the complexities of corporate practices and the underlying mechanisms shaping ethical decision-making within multinational corporations. By adopting a multi-methods interdisciplinary approach, this dissertation seeks to contribute to the ongoing discourse on corporate responsibility and legal governance within global supply chains. As underlined by (Epstein & Martin, 2014), *“well-executed research with a data component is likely to make more important, influential, and frankly, better contributions to policy and law because the study’s authors can accurately gauge the uncertainty of their conclusions.”*

Finally, it is important to acknowledge my positionality. As a French legal and social scientist mostly educated in the Netherlands, I bring a specific vision on global supply chains and biases that I strive to recognize in my quantitative and qualitative data collection and analysis. My western approach gives me good insights on the functioning of multinationals and the legal framework surrounding them in headquarter countries, but may also entail biases on supplier working conditions and lack of awareness on specific supplier-level legal frameworks. Through my years of research, I attempted to educate myself to become a more neutral scientist and adopt unbiased hypotheses before analyzing the data. My strength lies in my multi-disciplinarity, and capacity to employ empirical methods to legal questions, by trying to englobe these reflections in a political and economic context. As Eisenberg (2004) states, *“Legally trained social scientists have unique opportunities to enhance the description and understanding of the legal system.”*

## 1.7 CHAPTER STRUCTURE AND OVERVIEW

In these introductory words, it should be underlined that I chose to write a dissertation based on articles, the so-called ‘compilation dissertation’. Unlike the traditional monograph commonly adopted by legal scholars, which presents a single, cohesive narrative, this dissertation comprises four stand-alone studies that are either published, under review, or prepared for submission in peer-reviewed journals. Each article addresses a specific aspect of the broader research question, which together explore SCCs, examining specifically the corporate commitments to labor standards in global supply chains and the internal processes in place to implement them. At the date of the last changes made to this dissertation,<sup>14</sup> chapters 3, 4 and

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14 This dissertation was last amended in December 2024.

5 have been published in international peer-reviewed journals, and Chapter 6 is under review. It is also worth noting that chapters 4 and 5 are published in collaboration with my thesis supervisors, as well as with the kind help of Dr. Jaroslaw Kantorowicz who supported me on statistics and text analysis methodologies. However, I remained the first author and main contributor in both articles, as supervisors only provided written support in the last checks before publications.

Chapter 2 introduces the legal framework surrounding corporate responsibility, focusing on the state of the law regarding this soft law policy. It aims to answer the questions: What are the legal obligations associated with SCCs, and what legal effects do they entail for multinationals? This chapter provides a descriptive overview of the legal obligations and enforcement of SCCs. Understanding these legal effects is crucial to defining the policy, but it does not necessarily indicate that SCCs have a practical impact. Therefore, the chapter merely sets the stage for further exploration into the effectiveness of SCCs in improving labor standards, using doctrinal research methodology.

Chapter 3 delves into the question of SCC effectiveness by conducting a systematic literature review. This chapter gathers all results obtained from empirical studies, to answer the question: What do we know about SCC effectiveness to improve labor standards in global supply chains? The systematic review aims to synthesize existing knowledge and highlight gaps that need further investigation. The findings from this chapter provide a critical foundation for the empirical analysis conducted in the subsequent chapters.

Chapter 4 maps the content of SCCs to provide an overarching picture of the labor standards included in these codes. This chapter aims to uncover the priorities and commitments formulated by multinationals in their written SCCs, and raises the question: What promises are formulated by MNEs when adopting their codes? This chapter offers insights into the initial intentions and expectations of multinationals regarding labor standards. This analysis is conducted using quantitative methods, by collecting data for the Database of Business Ethics and analyzing textual content of SCCs.

Chapter 5 shifts the focus onto the implementation efforts of SCCs, investigating the internal management systems that companies establish to ensure the effective dissemination of SCCs within the company and towards their suppliers. SCC paragraphs related to enforcement or implementation are specifically targeted, using the same Database than the one developed for Chapter 4. By comparing the textual implementation data with a Database developed by the NGO KnowtheChain, this chapter compares the commitment to establishing management systems, and companies' efforts to effectively address labor standards in global supply chains. I address the question: Do companies walk the talk between their commitments and their actions? This analysis provides a critical examination of the alignment between corporate promises and actual practices.

Chapter 6 examines the entire process from the adoption to the imple-

mentation of SCCs from the multinational's perspective. This qualitative study is based on interviews with human rights experts within multinationals, aiming to assess the role of SCCs within companies and the challenges faced during implementation. Additionally, this chapter links the efforts of multinationals back to the evolving legal framework on mandatory human rights due diligence. It assesses the anticipated changes that multinationals expect with the adoption of the due diligence directive, answering the question: How do multinationals perceive the adoption and implementation of their SCCs, and what is their take on the upcoming legislative framework on mandatory due diligence?

Each chapter thus builds upon the previous one, providing a comprehensive and nuanced understanding of SCCs in the context of global supply chains. By combining legal, empirical, and qualitative analyses, this research aims to offer a multi-faceted perspective on the content of SCCs and the efforts of multinationals in promoting labor standards globally. The conceptual model below visually represents how each chapter is complementary to the next. Chapter 7 brings together the key findings and closes the dissertation with a discussion on the contributions and impact of the research.

*Conceptual model: Lay out of the structure of this dissertation*

