



SCHOOL OF  
ECONOMICS AND  
MANAGEMENT

## **Global Framework Agreements**

- A solution to fill the vacuum of global labour law?
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## **Abstract**

The phenomenon of global framework agreements has emerged through the difficulties of regulating the global labour market where the multinational enterprises' operations have been driven by an economic agenda and profit. The challenges of creating transnational legislation have brought social actors, such as the United Nations and the International Labour Organisation, to initiate self-regulatory instruments. Due to the complexity of establishing international legislative regulations, globalisation contributes to a legal vacuum regarding the lack of fundamental labour standards. This thesis aims to examine and analyse the legal status of global framework agreements and thus if they could be a contributing factor to fill the identified legal vacuum. To define the legal status, the requirements that must be met for a global framework agreement to be defined as such have been examined. In conclusion, the implementation process of the global framework agreements has been defined as of great importance in order to achieve its purpose. According to the legal status of global framework agreements, they are legally non-binding. Although their legal status is unclear and diffuse to define, they can be incorporated into other legal obligations and thereby acquire authority. The synergy and cooperation between global framework agreements and other publicly and privately driven initiatives may be the solution that will result in a more regulated global labour market where the implementation of fundamental labour rights is fulfilled.

**Keywords: Globalisation, Global framework agreements, International framework agreements, Multinational enterprises, Global union federations, Global supply chain**

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## **Abbreviations list**

CSR	Corporate Social Responsibility
GFA	Global Framework Agreements
GSC	Global Supply Chain
GUF	Global Union Federation
IFA	International Framework Agreements
ILO	International Labour Organisation
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-Operation and Development
UN	United Nations

# 1. Introduction

The world and the economy are getting more global, which has led to the impact of multinational enterprises (hereinafter MNEs) growing. Important decisions which affect the livelihood of many are being made in headquarters often far from the workers it concerns in order to maximise the companies own interests.<sup>1</sup>

The effect on the global labour market and economy caused by globalisation has altered the role of traditional regulatory actors. The term globalisation is a complex and multifaceted phenomenon that describes a variety of economic, cultural, social and political changes that have shaped the world over time.<sup>2</sup> Voices have been raised on how the regulatory agenda for states has been set by the economic-political part of globalisation, whereas the central part of the global governance has been norm-setting for international economic relations rather than the social dimension of globalisation.<sup>3</sup>

The World Commission on the Social Dimension of Globalisation, an independent commission established by the International Labour Organisation (hereinafter ILO), highlights that there is a concern that foreign direct investment and the incentive competition that this creates between developing countries, lead to these countries lowering their regulations, environmental protection and labour standards.<sup>4</sup> The actors, member states, workers' organisations and employers' organisations, working in a tripartite manner within ILO contributing to international labour standards and social justice have during the recent decades weakened in their ability to build better working lives.<sup>5</sup> To correct the imbalance between the economy and society and its effect on social justice, the World Commission stated that better institutional frameworks and policies are required.<sup>6</sup> Both national and international actors on the global labour market seem to agree that the full implementation of core labour standards "constitutes a *conditio sine qua non* for economic globalisation to be successful".<sup>7</sup>

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<sup>1</sup> Blanpain, R., Colucci, M., *The Globalization of Labour Standards - The soft law track*, (2004), p.119

<sup>2</sup> Guttal, S., "Globalisation", *Development in Practice*, (2007), p.523

<sup>3</sup> Liukkunen, U., "The ILO and Transformation of Labour Law", p.18, In Holonen, T., and Liukkunen, U., (eds), *International Labour Organisation and Global Social Governance*, (2021)

<sup>4</sup> World Commission on the Social Dimension of Globalisation, *A Fair Globalisation: Creating Opportunities for All*, (2004), p.34, para. 162 and p.86, para. 389

<sup>5</sup> ILO Constitution, Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO#A11](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A11), (Accessed: 18 December 2023)

<sup>6</sup> World Commission on the Social Dimension of Globalisation, (2004), pp. 3-4

<sup>7</sup> Blanpain, R., Colucci, M., (2004), p.5

Despite the common will to implement international core labour standards, regulatory obstacles are leaving a legal vacuum in the global labour market. More specifically, the legal vacuum is created by the transnational scope of MNEs in combination with the domestic nature of labour law.<sup>8</sup> The relationship between these aspects creates a mismatch that leads to MNEs operating without legislative frameworks.<sup>9</sup>

Primarily, the need for fundamental labour standards and regulations is found in consideration of MNEs who geographically fragment production in third-world and low-wage countries. These countries often have an undeveloped legal system which could leave the employees to be exploited.<sup>10</sup> The regulatory ability for states has decreased whereas they face more situations which occur beyond their jurisdiction as well as beyond their national borders.<sup>11</sup>

The transnational conduct of MNEs and the lack of regulated responsibility throughout the supply chain, including suppliers and subcontractors, in combination with labour law remaining national creates the identified legal vacuum regarding fundamental labour standards.<sup>12</sup> MNEs' opportunity to easily place and shift production across countries generates unease regarding how their activities impact the workers. Thus, this leads to MNEs taking advantage of the weak labour law or the non-existent legal regulation, i.e. the legal vacuum.<sup>13</sup>

Furthermore, these identified issues confirm that a solution to regulate the global labour market is needed. One instrument used to fill the vacuum, as described above, is the global framework agreements (hereinafter GFAs) also often called International framework agreements (IFA). A GFA is an agreement between an MNE and a global union federation

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<sup>8</sup> Fitcher, M., & Helfen, M., "Going Local with Global Policies: Implementing International Framework Agreements in Brazil and the United States", p.86 in Papadakis, K., *Shaping Global Industrial Relations: The Impact of International Framework Agreements*, (2011)

<sup>9</sup> Marassi, M., (ed. Blanpain, R.), *Globalization and transnational collective labour relations : international and European framework agreements at company level*, (2015), p.8

<sup>10</sup> Schömann, I., & Wilke, P., 'Towards a sustainable economy: the potential contribution of international framework agreements', p.167, in Vitols, S., & Kluge, N., (eds.), *The sustainable company: a new approach to corporate governance*, (2011)

<sup>11</sup> Liukkunen, U., *International Labour Organisation and Global Social Governance*, (2021), p.18

<sup>12</sup> Avelar Pereira, F., *Global Framework Agreements: A Response to Urgent Global Labour Concerns*, (2021), p.251

<sup>13</sup> Ibid, pp.84-85

(hereinafter GUF).<sup>14</sup> These agreements aim to improve workers rights throughout the supply chain of the MNEs.<sup>15</sup>

## 1.1 Background

GFAs are relatively new phenomena with the first one being concluded in 1988 by French food multinational Danone, and the number of agreements is increasing every year. The origin of GFAs traces back to the 1960s and was a response to the growing influence on industrial relations by transnational corporations. The original intention of the initiative was to coordinate and coalition bargaining, which was inspired by the United States solution to the formerly blurred lines regarding trade union jurisdiction. This resulted in multiple trade unions having bargaining rights for separate parts of the company. Coordinated bargaining for all unions can prevent fragmentation of the company from contributing to union division and weakness. This applies equally or even more at an international level, where distinct national unions are granted negotiation privileges for designated production facilities within the same corporation.<sup>16</sup> The new conditions of the labour market with regard to the development of transnational companies required new and more effective tools for the unions to be able to build up a power comparable to that of the MNEs they were now facing.<sup>17</sup>

The first agreements were based on a set of identified core labour standards' and have over the years gradually increased in content.<sup>18</sup> The GFAs are an initiative in which a new path of development is found. Even though GFAs are overlapping with national and international standards, as well as the Corporate Social Responsibility (hereinafter CSR) instrument, GFAs account for a new regulatory attempt.<sup>19</sup> Furthermore, GFAs move beyond the mere unilateral declarations of CSRs and codes of conduct by actually containing obligations even if they are not legally enforceable. In addition to this, they establish a platform which enables MNEs to take on responsibilities for the labour rights throughout the supply chain, and thereby deal with governments' non-fulfilment of setting up global minimum standards. GFAs as an

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<sup>14</sup> Bé, D., "Business Commitments in CSR Codes of Conduct and International Framework Agreements: The Case of Human Rights", p.206, in Buhmann, K., Roseberry, L., Morsing, M., (eds.), *Corporate Social and Human Rights Responsibilities: Global Legal and Management Perspectives*, (2011)

<sup>15</sup> Ibid, p.207

<sup>16</sup> Gallin, D., "International framework agreements: A reassessment", pp.16-17 in Papadakis, K., (eds.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, (2008)

<sup>17</sup> Ibid, p.25

<sup>18</sup> Avelar Pereira, F., (2021), p.23

<sup>19</sup> Ibid, p.24



instrument further give the GUFs formal recognition as legitimate bargaining partners.<sup>20</sup> Moreover, GFAs often state a conformity with the *UN Universal Declaration of Human Rights*, the *UN Global Compact*, the *ILO Tripartite Declaration on the Fundamental Rights of Workers* and *OECD Guidelines for Multinational Enterprises*.<sup>21</sup>

The division of duties between states and MNEs has become one of the most central questions of managing the social dimension of globalisation in regard to the execution of workers' rights.<sup>22</sup> The purpose of GFAs and why they are necessary in the global labour market is obvious, the question is if they are the most effective way of handling the issues presented above and if GFAs and their functioning are able to fill the governance gap.

## 1.2 Purpose and research questions

This thesis aims to examine and analyse the legal status of GFAs, and in which sense the GFAs through their legal status can be a contributing factor to fill the vacuum, i.e. the lack of international legislation regarding the protection of fundamental rights of workers in the global labour market. Thus, the purpose is to define the requirements that must be fulfilled for a GFA to be labelled as one. Moreover, to define the concept of a solution to the issues and complexities as described regarding globalisation and transnational business. The fundamental labour standards as described in the *ILO Declaration on Social Justice for a Fair Globalization* will be referred to throughout the analysis. The primary goal of the ILO is to contribute, with Member States, to achieve full and productive employment and decent work for all, including women and young people.<sup>23</sup>

In order to achieve the purpose of this thesis, the following research questions will be analysed:

- What requirements must be met for a GFA to be defined as such?

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<sup>20</sup> Hammer, N., "International Framework Agreements: Global Industrial Relations Between Rights and Bargaining", (2005), p.518, Available at: <https://journals-sagepub-com.ludwig.lub.lu.se/doi/pdf/10.1177/102425890501100404>, (Accessed: 25 November 2023)

<sup>21</sup> Ibid, p.520

<sup>22</sup> Liukkunen, U., *International Labour Organisation and Global Social Governance*, (2021), p.38

<sup>23</sup> International Labour Conference, "ILO Declaration on Social Justice for a Fair Globalization", (2008), see also ILO, Stevis, D., "Employment Sector, Employment Working Paper No.47- International framework agreements and global social dialogue: Parameters and prospects", (2010)

- What is the legal status of GFAs, and in which sense can GFAs through their legal status be a contributing factor to fill the legal vacuum and thereby implement fundamental labour standards on the global labour market?

## 1.4 Methodology

In order to examine GFAs from a legal perspective, it is necessary to interpret and describe existing law and therefore define and identify the current legal position and relevant legal material, both primary and secondary sources of law. To achieve the purpose of the thesis, a legal dogmatic approach is chosen in order to interpret *the lege lata* of the field. The interpretation of the current law contributes to the legal analysis where the research questions are examined.<sup>24</sup> To investigate the legal status of the GFAs from a global perspective and whether the GFAs can fill the legal vacuum, the legal vacuum as a legal position needs to be problematised.<sup>25</sup> Since laws and regulations are studied from a global and transnational perspective, the legal dogmatic method, also known as the legal analytical method, is used to identify the legal position and which laws or regulations apply.<sup>26</sup> Thus, only international legislation and transnational legal rules that are applicable to the global labour market, meaning geographically independent, are examined and systematised. Regarding international labour law, the main focus is given to ILO and the corresponding conventions. In particular, the legal dogmatic method is used to investigate the legal status of the GFAs, where their legal hierarchical value is defined. Based on the scope of the thesis, it is therefore of great importance to establish the existing law regarding self-regulation and more specifically CSR. Although self-regulation is developed in the private sector, without state intervention, the outcome of self-regulation can influence the legal system and the applications of the law. Norms and principles developed in the context of self-regulation may be used as a reference for the interpretation and application of legislation and contracts.<sup>27</sup> In order to describe current and relevant law there is a desire to define the formal authority of legal sources and thus their legal hierarchical value. In this aspect, legal methodology is used to discern and delimit material, based on the doctrine of legal sources, in order to use relevant legal facts.<sup>28</sup>

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<sup>24</sup> Nääv, M., Zamboni, M., (eds.), *Juridisk metodlära*, (2018), pp.36-39

<sup>25</sup> *Ibid*, p.30

<sup>26</sup> *Ibid*, p.25

<sup>27</sup> Papadopoulou, F., Skarp, B., *Juridikens nycklar: introduktion till rättsliga sammanhang, metoder och verktyg*, (2021), pp.96-97, 106-108

<sup>28</sup> Sandgren, C., *Rättsvetenskap för uppsatsförfattare- Ämne, material, metod och argumentation*, (2018), p.46

## 1.5 Material

The selection of material is based on the purpose declared. The legal material includes international law, mainly regulations formulated by the United Nations (hereinafter UN) and its agencies- namely the ILO, and GFAs. Specifically, the thesis is based on a selection of documents and texts from social initiatives, such as the UN and its relevant and often referred frameworks and the ILO declarations and conventions that are often referred to in both literature and GFAs. The selection of GFAs being: ABN AMRO, Accour Group, Bosh, Carrefour, Danone, Impregilo S.p.A, SAAB AB, Securitas and SKF, has been made from a global perspective to study agreements covering as many workers as possible. Hence, agreements signed by the three largest GUFs<sup>29</sup> have been examined in order to create a better understanding of the scope, content and functions of GFAs. The selection of agreements has also been studied with the aim of confirming the literature's hypotheses on commitments and identifications of GFAs. On this basis, a few agreements that are not signed by the three largest GUFs, which are mentioned in the literature, have also been reviewed. To create a greater understanding of the legal issue, doctrine, a secondary source of law, has been used.<sup>30</sup> Moreover, as identified in literature, global framework agreements will also in this thesis be interchangeable with international framework agreements.

## 1.6 Delimitations

To reach the purpose of this thesis, some delimitations are necessary. To delimit the area of investigation the focus merely is placed on GFAs, where the definition and the legal status will be presented, discussed and analysed. In order to answer the research questions, other initiatives, from the UN, mainly from ILO, the Organisation for Economic Co-Operation and Development (hereinafter OECD) and the MNEs' voluntary responsibilities in forms of CSR, to regulate the global labour market will be presented to make a greater understanding of the situation. Regarding global agreements, European frameworks, which could be seen as subcategories of global agreements, will not be presented since the investigation aims to examine the global labour market.

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<sup>29</sup> Avelar Pereira, F., (2021), p.278

<sup>30</sup> Samuelsson, J., Melander, J., *Tolkning och tillämpning*, (2003), p.156

## 2. Public and private-driven initiatives to regulate MNEs' conduct

Globalisation creates a governance gap in the global labour market, as MNEs require broader regulation. Currently, this regulatory domain is overseen by national-level social actors, such as trade unions.<sup>31</sup> Multiple international organisations have addressed business' responsibility regarding human rights and social justice, such as the UN, ILO and OECD.<sup>32</sup>

### 2.1 UN

Against this background, the UN expressed the need to create a regulatory framework for MNEs. There is a growing concern that the issue creates a downward spiral of low-wage countries deliberately not regulating the labour market with the concern of what this might lead to. Whereas a more regulated labour market could result in investors such as MNEs moving their operations and production to other more economically beneficial countries.<sup>33</sup> A central question in this debate is: How the institutional structures are built in order to demand that human rights are respected in relation to the conduct of MNEs?<sup>34</sup>

#### 2.1.1 UN frameworks

The UN has implemented multiple frameworks in order to regulate and create fundamental principles and social justice. One of such, is the *UN Global Compact*, which concludes a non-binding initiative containing principles which are established on membership. This initiative refers to and highlights ten principles which stem from the *Universal Declaration of Human Rights*, the *ILO Declaration on Fundamental Principles and Rights at Work*, the *Rio Declaration on Environment and Development* and the *United Nations Convention Against Corruption*.<sup>35</sup> The aim is to promote the implementation of the ten principles into business strategies but also to incentivise companies to take action in support of UN goals.<sup>36</sup> To initiate their involvement, businesses make a written statement to the UN secretary-general in

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<sup>31</sup> Papadakis, K., (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, (2008), p.1

<sup>32</sup> Avelar Pereira, F., (2021), p.89

<sup>33</sup> Seck, L, S., "Conceptualizing the Home State Duty to Protect Human Rights", p.32, in Buhmann, K., Roseberry, L., Morsing, M., (ed.), *Corporate Social and Human Rights Responsibilities: Global Legal and Management Perspectives*, (2011)

<sup>34</sup> Seck, L, S., *Corporate Social and Human Rights Responsibilities- Global Legal and Management Perspectives*, (2011), p.50

<sup>35</sup> United Nations "Global Compact -The Ten Principles of the UN Global Compact," Available At: <https://unglobalcompact.org/what-is-gc/mission/principles>, (Accessed 13 November 2023)

<sup>36</sup> Wynhoven, U, A., "The Protect-Respect-Remedy Framework and the United Nations Global Compact", (2011), p.84

which they express their support of the ten principles and their promise to uphold certain progress and implementation. This commitment becomes public on the *UN Global Compact* website but will result in de-listing if the business fails to report its progress. The transparency and accountability of the businesses increase with this disclosure element.<sup>37</sup>

*The UN guiding principle on business and human rights* gives guidance from the UN Human Rights Council *Protect, respect and remedy* framework<sup>38</sup> and is, according to Avelar Pereira, the most authoritative initiative to date. It offers both business and government advice on how to protect and remedy the negative effects business can cause on human rights.<sup>39</sup> *Protect, respect and remedy* framework itself, states the fundamental pillar of the state duty to protect against abuse of human rights. This duty to protect applies against non-state actors which include businesses.<sup>40</sup> The UN framework is a three-pronged framework that is a combination of the state's duty and enterprises' responsibility to respect human rights through, in particular, due diligence.<sup>41</sup>

In the *Guiding principles on business and human rights*, the concept of due diligence is defined as:

“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”<sup>42</sup>

Due diligence is a broad concept that does not have an individual or specific definition, but the content of the concept relates to the responsibilities of the MNEs to exercise reasonable care.<sup>43</sup>

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<sup>37</sup> Wynhoven, U. A., (2011), p.85

<sup>38</sup> U.N. Human Rights. Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, (2008), Available at: <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>, (Accessed: 18 December 2023)

<sup>39</sup> Avelar Pereira, F., (2021), p.91

<sup>40</sup> U.N. Human Rights. Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, §9, (2008), Available at: <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>, (Accessed: 18 December 2023)

<sup>41</sup> Buhmann, K., Roseberry, L., Morsing, M., (eds.), *Corporate Social and Human Rights Responsibilities- Global Legal and Management Perspectives*, (2011), p.4

<sup>42</sup> United Nations Human Rights Office of the High Commissioner, “Guiding Principles On Business and Human Rights- Implementing the United Nations “Protect, Respect and Remedy” Framework”, (2011), p.17 Available at: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf), (Accessed: 18 December 2023)

<sup>43</sup> McCall-Smith, K., RühmKorf, A., “Sustainable global supply chains: from

The *protect, respect and remedy* framework is intended to help fill the governance gap created by globalisation. Moreover, the framework sheds light on a shared responsibility by both the states and enterprises to prevent abuse of human rights.<sup>44</sup> The main purpose address important and complex issues in a relatively new and unexplored area, namely the regulatory vacuum of the global labour market.<sup>45</sup>

## 2.2 ILO

The ILO plays a large and important role in determining the regulatory and legal framework within global labour law. Although ILO has recognised the effects brought by globalisation and that the ILO general standards have addressed transnational corporations, there are still difficulties and complexity regarding the legal regulation of the global labour market. The ILO collaborates with other labour-promoting organisations, where different voices of all parties seek to be heard in a context where a legal status or legal hierarchy is not established. Consequently, a labour market regulation is created that overlaps with one another, and where either all or none actually governs.<sup>46</sup> Furthermore, ILO standards do not have a horizontal effect on legal objects but only impose obligations on states.<sup>47</sup>

### 2.2.1 ILO Declarations

Two ILO declarations in particular are often referred to in relation to CSR, which are the *ILO Declaration on Fundamental Principles and Rights at Work* and the *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*<sup>48</sup> ( *the MNE Declaration*).<sup>49</sup> The first declaration is, according to the ILO, an expression of the commitment of the tripartite constituents to maintain fundamental human values that are essential to our socio-economic lives. The declaration contains five core principles of labour standards in the context of globalisation, which Member States are expected to adopt and respect. These five principles include freedom of association and the effective right to

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transparency to due diligence”, pp.114-117, in Gammage, C., Novitz, T., *Sustainable Trade, Investment and Finance: Toward Responsible and Coherent Regulatory Frameworks*, (2019)

<sup>44</sup> Deva, S., “Protect, Respect and Remedy: A Critique of the SRSG’s Framework for Business and Human Rights”, pp.125-126, in Buhmann, K., Roseberry, L., Morsing, M., (eds.), *Corporate Social and Human Rights Responsibilities- Global Legal and Management Perspectives*, (2011)

<sup>45</sup> Deva, S., *Corporate Social and Human Rights Responsibilities- Global Legal and Management Perspectives*, (2011), p.125

<sup>46</sup> Avelar Pereira, F., (2021), pp.105-107

<sup>47</sup> Ibid, p.86

<sup>48</sup> ILO, “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy”, (2022)

<sup>49</sup> Avelar Pereira, F., (2021), p.106

collective bargaining, the elimination of all forms of forced and compulsory labour, the effective abolition of child labour, the elimination of discrimination regarding employment and occupation and a safe and healthy working environment.<sup>50</sup>

The *MNE declaration* aims to promote cooperation between business, labour and governments in order to make progress in an economic and social aspect.<sup>51</sup> The declaration emphasises that all parties of the tripartite structure should respect the sovereign rights of states, comply with national and international laws, and observe human rights and labour standards. It encourages the realisation of fundamental labour rights and the corporate responsibility to respect human rights.<sup>52</sup> In addition to these basic principles, it also requires MNEs to implement the UN framework *protect, respect and remedy* to determine responsibilities and obligations of the respective states and companies wherever they operate. Nevertheless, due diligence should also be carried out in order to maintain decent human rights standards.<sup>53</sup> By adopting the MNE Declaration, all parties of the tripartite structure should respect, promote and realise, specifically, the five core principles of the *Declaration on Fundamental Principles and Rights at Work*.<sup>54</sup>

Through the adoption of the *Declaration on Social Justice for a Fair Globalisation* the ILO addresses the complexity of cross-border labour interaction and its impact in reshaping the labour market in different ways. The declaration articulates the ILO's aim of promoting social justice with regard to globalisation.<sup>55</sup>

### **2.3 Organisation for Economic Co-Operation and Development**

The relevant instrument concluded by the OECD is the *OECD guidelines for multinational enterprises*. The OECD itself and the aim for its operations is to contribute to economic and trade expansion in the world economy as well as achieve sustainable economic growth and employment. In contrast to ILO, which as described above has a tripartite structure, the members of the OECD are only governments.<sup>56</sup>

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<sup>50</sup> ILO, "ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up", (2022)

<sup>51</sup> Blanpain, R., Colucci, M., (2004) pp.16-17

<sup>52</sup> ILO, "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy", (2022), p.10

<sup>53</sup> Ibid, pp.9-11

<sup>54</sup> Blanpain, R., Colucci, M., (2004), pp.21-22

<sup>55</sup> Avelar Pereira, F., (2021), pp.105-107

<sup>56</sup> Blanpain, R., Colucci, M., (2004), p.9

The guidelines' intend to promote the positive contributions that enterprises can offer to economic, environmental, and social advancement while minimising any negative impacts on the areas outlined in the guidelines.<sup>57</sup> The guidelines have since their introduction in 1976 been updated to address the socioeconomic challenges and evolving context.<sup>58</sup> It is essential for MNEs to avoid any illegal employment and industrial relations practices, aligning their actions with due diligence expectations.<sup>59</sup>

The guidelines define the concept of due diligence, in comparison to the UN, as “the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.”<sup>60</sup>

## **2.4 Corporate Social Responsibility and codes of conduct**

As a response or compensation for the complex issues and challenges MNEs contribute to the global labour market, CSR practices have emerged in recent decades. CSR is not mandated by law and is generally explained as a voluntary business act,<sup>61</sup> they often have neither recognised bodies that control the objectives nor enforcement mechanisms.<sup>62</sup>

The emergence of MNEs and their growing impact through access to capital, technology and control of the global labour market means that they should take greater social responsibility through a voluntary code of conduct.<sup>63</sup> Some MNEs have indeed, either individually or with the input of other initiatives, developed codes of conduct where they convey their willingness to implement core labour standards throughout the global supply chain (hereinafter GSC) and their global policies.<sup>64</sup> A voluntary code of conduct is a self-imposed commitment, wherein an institution publicly pledges to adhere to specific standards of behaviour.<sup>65</sup> The trade-off

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<sup>57</sup> OECD, “OECD Guidelines for Multinational Enterprises on Responsible Business Conduct”, (2023), p.3

<sup>58</sup> Ibid, p.3

<sup>59</sup> Ibid, p.28

<sup>60</sup> Ibid, p.17

<sup>61</sup> Commission of the European Communities, “Promoting a European Framework for Corporate Social Responsibility”, (2001), Available at: [https://www.europarl.europa.eu/meetdocs/committees/deve/20020122/com%282001%29366\\_en.pdf](https://www.europarl.europa.eu/meetdocs/committees/deve/20020122/com%282001%29366_en.pdf), (Accessed: 18 December 2023)

<sup>62</sup> Avelar Pereira, F., (2021), p.262

<sup>63</sup> Sethi Prakash, S., (eds.), *Globalization and self-regulation - The crucial role that corporate codes of conduct play in global business*, (2011), pp.3-4

<sup>64</sup> Blanpain. R., Colucci. M., (2004), p.7

<sup>65</sup> Sethi Prakash, S., (eds.), (2011), p.6



and the purpose of these could be challenging to define, as the CSR that multinational corporations undertake sometimes can be perceived as ambivalent.<sup>66</sup> Codes of conduct are a well-established concept where the meaning is clear, but the actual impact on workers in low-wage countries is debated.<sup>67</sup> Consumers and the public pay more attention to these policies and the way companies behave and have the opportunity to sanction them by not buying their goods and/or services when fundamental social principles are disrespected.<sup>68</sup> There is, however, an emerging consensus amongst social scientists that codes of conduct have a low impact of reducing incidents of labour violations throughout the GSC.<sup>69</sup>

## 2.5 Legal issues concerning global labour standards

There is no global, all-around legal answer to transnational investment and the labour standards are still mainly local and regional. Even the ILO conventions and the labour standards these conclude would be considered local, while the frameworks which are concluded by the conventions are international, the ratifications are still to be ratified by national governments and thereby applied on a national level. However, as a response to this regulatory issue, the implementation of "hard" law has been difficult, some would say impossible because the task of working out legal instruments in detail is far too complicated and burdensome.<sup>70</sup>

Instead, governments have chosen the way of "soft" law, the category into which the non-legally binding guidelines and instruments fall, which in this case are created to ensure and implement core labour standards throughout the global labour market.<sup>71</sup> The soft law instruments and the labour standards which they conclude are implemented by MNEs, they are as employers "the actors in labour and employment *par excellence*."<sup>72</sup> As follows by the voluntary nature of the soft law instruments, the implementation becomes of the greatest importance for credibility. The question remaining is whether they have an impact in real life?<sup>73</sup>

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<sup>66</sup> Papadakis, K., *Shaping Global Industrial Relations- the Impact of International Framework Agreements*, (2011), p.1-3

<sup>67</sup> Egels-Zandén, N., Hyllman, P., "Evaluating Strategies for Negotiating Workers' Rights in Transnational Corporations: The Effects of Codes of Conduct and Global Agreements on Workplace Democracy", *Journal of Business Ethics.*, (2007), p.208

<sup>68</sup> Blanpain, R., Colucci, M., (2004), p.7

<sup>69</sup> Anner, M., Balir, J., Blasi, J., "Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks", *Comparative Labour law & Policy Journal*, (2013), p.5

<sup>70</sup> Blanpain, R., Colucci, M., (2004), p.119

<sup>71</sup> Ibid, p.120

<sup>72</sup> Ibid, p.7

<sup>73</sup> Ibid, p.43

### 3. Global framework agreements

The domestic nature of collective bargaining which historically has been the focus point, led to questions regarding the cross-border dimension of collective agreements mainly arising to solve issues such as when domestic collective agreements concerned work to be carried out abroad. Being a product of globalisation, transnational agreements such as GFAs are being concretized within transnational normative frames that cross national and regional borders. Furthermore, they fall outside the traditional categorisations and concepts of labour law.<sup>74</sup>

#### 3.2 Definition of GFAs

The purpose of GFAs relates to creating a better labour market and working conditions for workers throughout the GSC, a dialogue is fostered between GUFs and MNEs to promote the fundamental rights of workers.<sup>75</sup> GFA is, therefore, a result of the negotiation between individual MNEs and GUFs, which often create GFAs for a specific sector.<sup>76</sup> The aim is to provide at least a fundamental standard of protection for the workers within the company, regardless of what country or region they operate in.<sup>77</sup> GFAs are also meant to establish an ongoing formal connection between MNEs and GUFs which through cooperation can contribute to solutions for both parties.<sup>78</sup> Hammer states that “one of the most important innovations of IFAs is that they allow trade unions a grip on the global supply chain, thereby extending (core) labour rights beyond national borders.”<sup>79</sup>

GFAs are tools for implementing CSR policies in MNEs. GFAs are typically compared to codes of conduct, as they share the equivalent function of formalising the MNEs’ engagement towards business ethics.<sup>80</sup> Their primary distinction lies in procedures where codes of conduct are unilaterally adopted by companies, whereas GFAs result from collective bargaining with GUFs.<sup>81</sup>

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<sup>74</sup> Liukkunen, U., *International Labour Organisation and Global Social Governance*, (2021), p.39

<sup>75</sup> Drouin, R-C., “Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges”, *Comparative Labour law & Policy Journal*, (2010), pp.592-593

<sup>76</sup> Papadakis, K., Casale G., and Tsotroudi, K., “International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework”, p.68, In Papadakis, K., (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, (2008)

<sup>77</sup> Drouin, R-C., (2010), p.600

<sup>78</sup> Papadakis, K., Casale G., and Tsotroudi, K., *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, (2008), p.69

<sup>79</sup> Hammer, N., (2005), p.525

<sup>80</sup> Bourguignon, R., Garaudel, P., Procher, S., “Global Framework Agreements and Trade Unions as Monitoring Agents in Transnational Corporations”, *Journal of Business Ethics*, (2020), pp.517-533

<sup>81</sup> *Ibid*, p.517

### 3.3 Requirements of GFAs

Although GFAs come in different forms and vary considerably, there are some general elements of the legal nature of GFAs.<sup>82</sup> Considered the building blocks of the concept the following elements are crucial for a GFA to be labelled as such; (1) the involvement of a GUF in the negotiation and signing of an agreement, (2) a right-based content usually derived from ILO instruments, (3) some form of procedure to review the implementation of the agreement and (4) a provision concerning suppliers and business partners.<sup>83</sup> According to the last mentioned element, the provisions concerning suppliers, subcontractors and business partners are included in the other three crucial elements for GFAs. If one of these four components are not fulfilled, the agreement cannot be considered a GFA.<sup>84</sup> Thus, these four pillars make up the foundation which is required for the agreement to be identified as a GFA, and distinguishes GFAs from other work-promoting initiatives.<sup>85</sup>

Avelar Pereira clarifies that the GFAs can be mentioned differently and regardless of its heading, what constitutes a GFA depends on the content of the relevant document.<sup>86</sup> By studying signed GFAs, Avelar Pereira identifies that the content of the agreements is more important than the heading. By comparing the content of the GFA signed between Bosch and International Metalworker's Federations with the heading "Basic principles of social responsibility at Bosch"<sup>87</sup>, with the GFA signed between Securitas AB, UNI Global Union and Swedish Transport Workers' Union with the heading "Global agreement", the

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<sup>82</sup> García-Muñoz Alhambra, M. A., Ter Haar, B. Kun, A., "Soft on the Inside, Hard on the Outside: An Analysis of the Legal Nature of New Forms of International Labour Law", (2011), pp.355-356

<sup>83</sup> Drouin R-C, (2010), pp.592-593. See also IndustriALL, "IndustriALL Global Unions's Guidelines for Global Framework Agreements (GFAs)", p.2, Available at: [https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/industriall\\_gfa\\_guidelines\\_final\\_version\\_exco\\_12-2014\\_english.pdf](https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/industriall_gfa_guidelines_final_version_exco_12-2014_english.pdf), (Accessed 28 November 2023). As quoted from this source:

"The GFAs must :

- cover all company operations throughout the world without exception;
- include a strong and unequivocal commitment by the multinational company concerned that suppliers and subcontractors adopt these standards for their workers;
- guarantee a commitment from the company to treat unions positively, and refrain from all anti-union activities and to remain strictly neutral concerning employee preference to join, remain with, transfer, or abandon their relationship with a union organization
- union representatives should have a reasonable access to the workplace.
- contain an effective mechanism for implementation, enforcement and a procedure for binding dispute resolution"

<sup>84</sup> Avelar Pereira, F., (2021), p.255

<sup>85</sup> Ibid, p.273

<sup>86</sup> Ibid, p.272

<sup>87</sup> Bosch, "Basic principles of social responsibility at Bosch", Agreement between Bosch and International Metalworker's Federation, (2004), Available at: <https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/Bosch/bosch-gfa-english.pdf>, (Accessed: 28 November 2023)

identification is confirmed.<sup>88</sup> Although their headings differ, the content and the scope of the GFAs are similar and fulfil the four crucial elements. As mentioned before, GFAs often, besides referencing ILO, also reference other international instruments such as the UN Universal Declaration of Human Rights, and the UN Global Compact. In addition to ILO these instruments build another layer of credibility and legitimacy due to the authority of international public law.<sup>89</sup>

### 3.3.1 Parties and the bilateral character

One important trait of GFAs which distinguishes them from other publicly driven initiatives is primarily the bilateral character. Moreover, it differs from CSR or code of conduct, whereas the GFAs involve the worker's side making it, as stated above, bilateral.<sup>90</sup>

Eurofound, a tripartite EU agency<sup>91</sup>, further defines GFAs as an instrument which adheres to the purpose “to establish an ongoing relationship between a multinational enterprise and a global union federation to ensure that the company adheres to the same standards in every country in which it operates.”<sup>92</sup> GFAs are an outcome of an ongoing relationship and negotiations between MNEs and GUFs, with the aim to promote fundamental principles of the global labour market, specifically the fundamental principles concerning collective bargaining and freedom of association.<sup>93</sup> It allows the GUFs to represent and protect the workers irrespective of what countries the company is operating in. In addition, it allows for the scope of application to the extended GSC, including subcontractors and suppliers.<sup>94</sup>

GUFs are associations comprised of national trade unions within a particular industry or occupation, established to advocate for and advance the interests of their members. They represent their members, not in a specific company, but in the specific sectors on a transnational basis. The amount of existing GUFs has over the years decreased,<sup>95</sup> and

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<sup>88</sup> Securitas, “Global agreement”, Agreement between Securitas AB, UNI Global Union and Swedish Transport Workers’ Union, (2012), Available at: <https://uniglobalunion.org/wp-content/uploads/Securitas-Global-Agreement-English.pdf> (Accessed: 18 December 2023)

<sup>89</sup> Drouin, R-C., (2010), p.595

<sup>90</sup> Drouin, R-C., (2010), p.273

<sup>91</sup> Eurofound, “Who we are”, Available at: <https://www.eurofound.europa.eu/en/about/who-we-are>, (Accessed: 13 November 2023)

<sup>92</sup> Eurofound, “International framework Agreement”, (20 December 2019), Available At: <https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/international-framework-agreement> (Accessed: 13 November 2023).

<sup>93</sup> Papadakis, K., Casale, G., Tsotroudi, K., *Cross-border social dialog and agreements: an emerging global industrial relations framework?*, (2008), p.68

<sup>94</sup> Marassi, M., (ed. Blanpain, R.), (2015), p.38

<sup>95</sup> Ibid, p.38

according to Avelar Pereira, the majority of GFAs have been signed by BWI, IndustriALL and UNI Global Union,<sup>96</sup> where IndustriALL currently is the most active.<sup>97</sup>

Moreover, GUFs are not always the only signatory part besides MNEs. There are some GFAs where national trade unions have co-signed,<sup>98</sup> and in one agreement between Chiquita and Allied Workers' Association the ILO director is one of the signatory parties.<sup>99</sup>

### 3.3.2 ILOs involvement in GFAs

GFAs are designed with the purpose and aim of improving workers' rights. Therefore, GFAs have adopted and affirmed fundamental labour rights defined by the ILO core labour conventions.<sup>100</sup> The ILO sets the foundation and formulates international labour standards in the form of conventions and recommendations that contain minimum standards for the most fundamental labour rights.<sup>101</sup> The core conventions of *ILO* are also the key areas for GFAs, these are: *freedom of association, the right to organise and collective bargaining* (C87<sup>102</sup>, C98<sup>103</sup>), *the equality and non-discrimination* (C100<sup>104</sup>, C111<sup>105</sup>), *the prevention of forced labour* (C29<sup>106</sup>, C105<sup>107</sup>) and *the prevention of child labour* (C138<sup>108</sup>, C182<sup>109</sup>).<sup>110</sup> The

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<sup>96</sup> Avelar Pereira, F., (2021), p.278

<sup>97</sup> Marassi, M., (ed. Blanpain, R.), (2015), p.40

<sup>98</sup> See for example Securitas, (2012), ABN AMRO "International Framework Agreement", Agreement between ABN AMRO Bank N.V., FNV Finance, UNI Global Union, (2015), Available at: [https://ec.europa.eu/employment\\_social/empl\\_portal/transnational\\_agreements/abn\\_amro-gfa\\_EN.pdf](https://ec.europa.eu/employment_social/empl_portal/transnational_agreements/abn_amro-gfa_EN.pdf), (Accessed: 28 November 2023), SAAB AB, "International Framework Agreement between SAAB AB and employee representatives Organisations in Saab AB and IF Metall and Industri ALL Global", (2012), Available at: <https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/Saab/saab-gfa-english.pdf>, (Accessed: 28 November 2023)

<sup>99</sup> Marassi, M., (ed. Blanpain, R.), (2015), p.41

<sup>100</sup> Bé, D., *Corporate Social and Human Rights Responsibilities- Global Legal and Management Perspectives*, (2011), p.207

<sup>101</sup> Nielsen, R., "Public Procurement, International Labour Law and Free Movement in EU Law: Protect, Respect and Remedy", p.170-172, in Buhmann. K., Roseberry, L., Morsing, M., *Corporate Social and Human Rights Responsibilities- Global Legal and Management Perspectives*, (2011)

<sup>102</sup> ILO, "C087- Freedom of Association and Protection of the Right to Organise Convention", (1948), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232), (Accessed: 20 Nov 2023)

<sup>103</sup> ILO, "C098- Right to Organise and Collective Bargaining Convention", (1949), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C098](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098), (Accessed: 20 Nov 2023),

<sup>104</sup> ILO, "C100- Equal Remuneration Convention", (1951), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100), (Accessed: 20 Nov 2023)

<sup>105</sup> ILO, "C111 -Discrimination (Employment and Occupation) Convention", (1958), (Accessed: 20 Nov 2023), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111)

<sup>106</sup> ILO, "C029- Forced Labour Convention", (1930), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029), (Accessed: 20 Nov 2023)

<sup>107</sup> ILO, "C105-Abolition of Forced Labour Convention", (1957), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C105](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105), (Accessed: 20 Nov 2023)

<sup>108</sup> ILO, "C138- Minimum Age Convention", (1973), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::P12100\\_ilo\\_code:C138](https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::P12100_ilo_code:C138), (Accessed: 20 Nov 2023)

<sup>109</sup> ILO, "C182- Worst Forms of Child Labour Convention", (1999), Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182), (Accessed: 20 Nov 2023)

<sup>110</sup> Hammer, N., (2005), p.520

eight key conventions that have been identified are also present in IndustriALL’s guidelines on GFAs. According to these guidelines, the fundamental labour standards and pertinent legal decisions of the ILO should be prioritised over national law if the latter are less favourable than the corresponding ILO Conventions.<sup>111</sup> All GFAs reference the ILO conventions but they are not all referring to the conventions by number. E.g. the span varies of only C138 being mentioned by number in the SKF agreement<sup>112</sup> to the IFBWW agreement with Impregilo<sup>113</sup> which mentions 20 conventions and recommendations.<sup>114</sup> Further, all GFAs besides, Danone<sup>115</sup>, Accor<sup>116</sup> and Carrefour agreements<sup>117</sup>, obligate the MNEs to respect all the core conventions. Behind these exceptions, Hammer explains that they refer to *the freedom of association and right to organise (C87), the right to organise and collective bargaining (C98) and standards on workers’ representation (C135)*. These references give the GFAs the premise of being able to establish a platform for union strength which is the foundation for further advances.<sup>118</sup>

### 3.3.3 The implementation of GFAs

As mentioned above, the majority of GFAs refer to ILO core labour standards or the core conventions. Although the content of the GFAs differs in some aspects, some common patterns can be identified.<sup>119</sup> Avelar Pereira describes the agreement’s scope of applications as local implementation with a global scope.<sup>120</sup>

<sup>111</sup> IndustriALL, “IndustriALL Global Unions’s Guidelines for Global Framework Agreements (GFAs)”, Available at: [https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/industrial\\_gfa\\_guidelines\\_final\\_version\\_exco\\_12-2014\\_english.pdf](https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/industrial_gfa_guidelines_final_version_exco_12-2014_english.pdf), (Accessed 28 November 2023)

<sup>112</sup> SKF, “SKF Code of conduct”, Agreement between SKF and IndustriALL, (2003), [https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/SKF/ifa\\_skf\\_eng.pdf](https://www.industrialunion.org/sites/default/files/uploads/documents/GFAs/SKF/ifa_skf_eng.pdf), (Accessed 20 November 2023)

<sup>113</sup> Impregilo S.p.A., “Framework Agreement between IMPREGILO S.p.A. and IFBWW”, Agreement between IMPREGILO S.p.A. and IFBWW, (2004), [https://ec.europa.eu/employment\\_social/empl\\_portal/transnational\\_agreements/Impregilo\\_IFA\\_EN.pdf](https://ec.europa.eu/employment_social/empl_portal/transnational_agreements/Impregilo_IFA_EN.pdf), (Accessed 20 November 2023)

<sup>114</sup> Hammer, N., (2005), p.520

<sup>115</sup> Danone, “Danone/ IUF Agreement on health, safety, working conditions and stress”, Agreement between Danone and IUF, (2008), Available at: [https://ec.europa.eu/employment\\_social/empl\\_portal/transnational\\_agreements/Danone\\_H&S%20Stress\\_EN.pdf](https://ec.europa.eu/employment_social/empl_portal/transnational_agreements/Danone_H&S%20Stress_EN.pdf), (Accessed: 28 November 2023)

<sup>116</sup> Accor Group, “Agreement between the IUF and the Accor Group on Trade Union Rights”, Agreement between Accor Group and IUF, (1995), Available at: [https://ec.europa.eu/employment\\_social/empl\\_portal/transnational\\_agreements/Accor\\_UnionRights\\_EN.pdf](https://ec.europa.eu/employment_social/empl_portal/transnational_agreements/Accor_UnionRights_EN.pdf), (Accessed: 28 November 2023)

<sup>117</sup> Carrefour, “International agreement for the promotion of social dialogue and diversity and respect for basic employee rights”, Agreement between Carrefour and UNI Global Union, (2018), Available at: [https://www.carrefour.com/sites/default/files/2022-06/International%20Agreement%20Carrefour%20x%20UNI\\_2018.pdf](https://www.carrefour.com/sites/default/files/2022-06/International%20Agreement%20Carrefour%20x%20UNI_2018.pdf), (Accessed: 28 November 2023)

<sup>118</sup> Hammer, N., (2005), pp.520-521

<sup>119</sup> Gallin, D., *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, (2008), p.38

<sup>120</sup> Avelar Pereira, F., (2021), p.299

The implementation process is crucial for how and to what extent the content of the agreement is applied and enforced within the specific transnational enterprise or company, and thus how the content of the agreement improves conditions for the workers. Through a well-executed implementation process, conditions are thus created for the GFAs content to have a greater impact. To ensure proper implementation and in order to provide the best possible effect and ongoing compliance, regular monitoring is often used in consultation between parties, MNEs and GUFs. Hammer defines three factors or aspects that are important in the implementation and monitoring process. These three main aspects mainly concern who is responsible for monitoring and ensuring compliance with the agreement, what commitments or requirements are placed on the MNE, subcontractors and suppliers, and which individuals, workers, are involved and affected in the various processes.<sup>121</sup> However, the implementation process may vary depending on the enterprise. Even though a clear or specifically designed implementation and subsequent monitoring process is not established or even required, it is usually included when implementing a GFA in a MNE and throughout their GSC.<sup>122</sup> Despite this, almost all agreements refer to provisions concerning the dissemination, translation, review and monitoring of the agreement, as well as how breaches of the agreement are handled through dispute settlement and sanctions.<sup>123</sup>

### **3.5 The legal status of GFAs**

Based on what has been presented above, it can be ascertained that globalisation has undeniably affected the labour market, with new challenges for all parties involved. One challenge is whether to apply and enforce labour law and to what extent this can and should be done. In general, labour law is regulated in two main ways, by public authorities or by social partners who, through negotiations and common interests, shape the framework of national labour law.<sup>124</sup> Usually, labour law only regulates the relationship between employers and the workers,<sup>125</sup> without taking into account other social dimensions or responsibilities. Based on this aspect, there is a need for an expanded multidimensional labour law, as the

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<sup>121</sup> Hammer, N., *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, (2008), pp.100-102

<sup>122</sup> Gallin, D., *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, (2008), p.39

<sup>123</sup> Avelar Pereira, F., (2021), p.300

<sup>124</sup> Sobczak, A., "Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility", *Industrial Relations*, (2007), pp.469-471

<sup>125</sup> Sobczak, A., "Codes of Conduct in Subcontracting Networks: A Labour Law Perspective", *Journal of Business Ethics*, (2003), pp.225-234

global labour market involves broader social responsibility. This also increases the complexity of the legal regulation, as several social actors are involved, while general labour law lacks overall control as the legal framework is negotiated by the parties.<sup>126</sup>

Apart from the fact that GFAs categorise as soft law, there is currently no legal framework for the agreements, which means that their legal status is very unclear and diffuse. The legal status of the agreement therefore depends on the parties and their legal capacity. However, labour law does not explicitly give the parties involved in GFAs any specific authority.<sup>127</sup> GFA's implementation mechanisms and the outcome of the implementation are of a primarily political rather than legal nature. Therefore, different types of implementation, monitoring and enforcement of GFAs may look different, meaning that the actual impact of GFAs may differ in terms of legal standards. Although GFAs are characterised more as political than legal values, GFAs can be classified as soft law from an international law perspective where GFAs are part of the emerging multi-level polity of industrial relations created in a transnational labour market.<sup>128</sup> Since GFAs are considered soft law, breaches cannot be taken to court. However, this does not mean that GFAs have no legal value. By integrating GFAs into other legally binding norms, such as collective agreements and business contracts since these instruments have a legal effect on a national level, the agreement is given a legal effect. This means that GFAs may have legal effect and legal status when it is incorporated into other legal obligations.<sup>129</sup>

In response to the legal vacuum that can be found in the global labour market, two main self-regulatory instruments are used as voluntary initiatives by businesses and civil society. These two instruments are codes of conduct and GFAs, where both are used as transnational initiatives with the aim to deal with the regulation of social matters within multinational organisations.<sup>130</sup> Schömann repeatedly describes in her texts whether MNEs together with GUFs have been left to define and create negotiation conditions and fundamental rights in a legal "no man's land".<sup>131</sup> As GFAs are developed in a legal "no man's land" the

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<sup>126</sup> Sobczak, A., (2007), p.469-470

<sup>127</sup> Avelar Pereira, F., (2021), p.327 with references to Schömann, I., Jagodzinski R., Boni, G., Clauwaert, S., Glassner, V., and Jaspers, T., (eds.) *Transnational Collective Bargaining at Company Level: A New Component of European Industrial Relations?* (2012), pp.219-220.

<sup>128</sup> Welz, C., *Shaping global industrial relations- The Impact of International Framework Agreements*, (2011), p.57

<sup>129</sup> Sobczak, A., "Legal dimensions of international framework agreements in the field of corporate social responsibility" p.125 in Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?*, International Institute for Labour Studies, (2008)

<sup>130</sup> García-Muñoz Alhambra, M. A., Ter Haar, B., Kun, A., (2011), pp.337-339

<sup>131</sup> See for example Schömann, I., "The Impact of Transnational Company Agreements on Social Dialogue and Industrial Relations" in Papadakis, K. (ed.), *Shaping global industrial relations- The Impact of International Framework Agreements*,



responsibility lies with the parties, the MNEs and the GUFs, to create and design measures to complement the national laws and regulations that the global labour market is not included in.<sup>132</sup> The outcome of GFAs as a tool in the global labour market has so far, according to Drouin, been successful for both GUFs and MNEs. GFAs have been used as a tool for social dialog and organisation for GUFs and in terms of MNEs, GFAs have contributed as a tool for risk management but also to strengthen the image of the companies. The actual impact of the GFAs, as a tool, to contribute to fundamental standards for the workers throughout the GSC is not as certain.<sup>133</sup> The minimum standards set by GFAs could in some cases result in improved working conditions throughout the GSC, regardless of the country where the enterprise operates. The minimum conditions do set a base from which working conditions can be improved in relation to the different national conditions.<sup>134</sup>

GFAs represent a new form of social regulation, a self-regulatory initiative, without a detailed legal framework, meaning that there is no definitive legal value or impact. Despite the lack of a legal framework, there is a significant interaction and impact between the legal nature of GFAs and the transnational social partners.<sup>135</sup> In relation to this, legal certainty is also a problem for both GUFs and MNEs. From a trade union perspective, this lack of legal certainty is a challenge for organising workers. In particular, it is about being able to demonstrate and ensure to workers that the actions of GUFs are beneficial. As the legal certainty and legal status of GFAs are still diffuse and sometimes non-existent, sanctions or penalties cannot be applied in case of non-compliance with GFAs. This in turn may lead to workers not choosing to organise, as the impact is not adequate, and trade unions may be seen as a part of MNEs' marketing strategies. For MNEs, the issue of legal certainty in GFAs is reflected in the legal risks of signing such an agreement. These risks include the fact that a company can be sanctioned because a subsidiary or subcontractor did not comply with what was agreed in the signed agreement.<sup>136</sup>

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<sup>132</sup> Avelar Pereira, F., (2021), pp.327-328

<sup>133</sup> Drouin, R-C., (2010), p.599

<sup>134</sup> Avelar Pereira, F., (2021), p.167

<sup>135</sup> Sobczak, A., *Cross-border social dialog and agreements: an emerging global industrial relations framework?*, (2008), p.116

<sup>136</sup> *Ibid*, p.127

### 3.5.1 The future legal status of GFAs

Although GFAs do not have a specific legal status, Sobczak argues that GFAs may have the potential to meet these labour law challenges by contributing to a more regulated global labour market by complementing national, international and transnational labour law standards.<sup>137</sup> From this aspect of meeting the challenges of the global labour market, the GFAs are claimed to fill the governance gap by promoting and executing the core labour standards of the ILO.<sup>138</sup> However, Sobczak argues whether guaranteed legal certainty is needed in the form of a legal framework for cross-border collective bargaining. Such a legal framework for GFAs could be a voluntary initiative of the social partners but emphasises the necessity of maintaining a legal framework that can define the legal nature of a GFA.<sup>139</sup>

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<sup>137</sup> Sobczak, A., (2007), p.470

<sup>138</sup> García-Muñoz Alhambra, M. A., Ter Haar, B., Kun, A., (2011), p.339

<sup>139</sup> Sobczak, A., *Cross-border social dialog and agreements: an emerging global industrial relations framework?*, (2008), pp.127-129

## 4. Analysis

This chapter is based on the legal study examined and presented above in order to analyse the research questions. Thus, an analysis of GFA's definition, implementation and potential impact will be made. Thereafter, the legal status of GFAs will be examined in order to analyse whether GFAs may be a solution to help fill the legal vacuum.

### 4.1 What requirements must be met for a GFA to be defined as such?

#### 4.1.1 Requirements

In order to define GFAs as such, four recognised elements and requirements must be taken into account, (1) the involvement of a GUF in the negotiation and signing of an agreement, (2) a right-based content usually derived from ILO instruments, (3) some form of procedure to review the implementation of the agreement and (4) a provision concerning suppliers and business partners. Despite these building blocks, the existing GFAs are very different from each other in terms of content, scope and impact.

The purpose of all GFAs is to foster a dialogue between MNEs and GUFs, this purpose is met in the first examined requirement. In comparison to CSR or code of conduct, the GFAs involve the worker's side through the involvement of GUFs making it bilateral. This voluntary relationship is created in a context where collective bargaining and freedom of association are promoted. The collective bargaining comprising GFAs is an expansion of the previous domestic nature within the field. In addition to this, the GUFs are representing the workers throughout the GSC irrespective of what countries the company is operating in. Since the purpose of the GFAs is established and the definition is identified, this should, in theory, lead to improved labour conditions for workers.

The second examined requirement is the rights-based content which is derived from ILO instruments. The ILO, which as mentioned above is the tripartite structured UN organ, has defined the following core conventions within the organisation: *freedom of association, the right to organise and collective bargaining, the equality and non-discrimination, the prevention of forced labour and the prevention of child labour*. These core conventions are key areas for the content of the GFAs since there is no global, all-around legal answer to

transnational investment. However, the ILO conventions and declarations themselves do not have a horizontal effect between legal objects but only impose obligations on states. By incorporating the ILO instruments in the content of the GFAs, their conventions and declarations become of value for the economic-political part of globalisation.

In addition to the importance of the GFA's content, the process of implementation is crucial for how and to what extent the content of the agreement is enforced within the specific transnational enterprise and thus how the content of the agreement improves conditions for the workers. The implementation process is not required, but almost all agreements refer to provisions concerning the dissemination, translation, review and monitoring of the agreement. Through a well-structured process of implementation, the impact of the agreement should create better conditions for creating decent work for all and implementing fundamental workers rights throughout the GSC.

In conclusion, the GFA is defined by its content and can be named in many different ways. The agreements selected in this thesis all contain the content above which confirms the hypothesis presented in the chosen literature. The four key elements of GFAs are the building blocks to be able to create better working standards which line up with the fundamental labour rights defined by the ILO. Thus, the content, implementation and impact differ and are presented in various forms. In defining the requirements and the GFAs as such, a more elaborate analysis of their legal status can be made.

## **4.2 What is the legal status of GFAs, and in which sense can GFAs through their legal status be a contributing factor to fill the legal vacuum on the global labour market?**

### **4.2.1 What is the legal status of GFAs?**

The development of globalisation has resulted in a need for an expanded multidimensional labour law where the labour law not only regulates the relationship between employers and workers. A multidimensional labour law creates a complexity of legal regulation, as several social actors are involved but the labour law remains mainly local and national. Therefore there is a demand for a more regulated framework on an international dimension irrespective of what countries the MNE is operating in. The global labour market can be described as a

“no man’s land”, where the legal responsibilities are not defined, through which GFAs have been developed.

The implementation of GFAs and their impact are more of a political nature which is a result of the labour law not giving the parties any specific legal authority. Due to this, the GFAs result in a more political voluntary phenomenon where the MNEs benefit from a business and economic point of view. By being categorised as soft law the legal status and legal certainty are unclear, breaches can not be taken to court, nor can sanction be applied in case of non-compliance with GFAs. In addition to this, GFAs are a new form of social regulation, a self-regulatory initiative, which without detailed legal framework has no definitive legal status or impact.

Although GFAs may obtain legal status by being integrated into other legally binding norms, the GFAs themselves have no legal status. However, a distinction, in relation to the studied literature, between legal status and legal value can be made. The legal status refers to, as mentioned above, that GFAs are considered as soft law and where breaches cannot be taken to courts. On the other hand, the GFAs may be obtaining legal value as their content and impact create fundamental labour standards on the global labour market and throughout the MNEs’ GSC. Therefore, this means that GFAs have no legal status, but do have a legal value. Thus, it is important to emphasise that this distinction has to be made with caution and vigilance.

In conclusion, it can be determined that GFAs do not have a specific legal status. Despite this, the GFAs may have the potential to meet the identified issues regarding the global labour market and through their legal value contribute to fill the legal vacuum. GFAs have the potential of having a higher legal status and their impact on the global labour market could be expected to increase in correlation to more MNEs signing agreements. This could result in more workers being covered by GFAs and a greater opportunity to implement fundamental rights through the GSC. As discussed in this thesis, the GFAs could increasingly regulate and set frameworks for the global labour market. This development means that GFAs have the potential to be the norm as a method of regulation in the global labour market.

#### 4.2.2 A solution to fill the legal vacuum?

The MNEs have been given a playground driven by an economic agenda with little to no labour rights frameworks to take into consideration. In an attempt to narrow this playground down from a labour rights perspective, organisations such as the UN, the ILO and the OECD have developed frameworks and declarations. These are intended to make sure human rights are respected in MNEs operations and thereby creating fundamental labour standards.

Besides the publicly driven initiatives, CSR practices can be a contributing factor to this playground. CSR could be seen both as well-intentioned initiatives on the company's part, but also as compensation for the damage the MNEs could create by their operations in low-wage countries. The companies are aware of the growing attention from consumers on their behaviour and the CSR policies can be seen as a public performance with no substance since it is hard to verify any consequences if a breach would arise.

The multiple frameworks that have been developed by the UN, the ILO and the OECD would all be considered as soft law. The challenges of creating international hard law in the field of labour law have proven that soft law has been the way to go. Thus, the implementation of the frameworks is of greatest importance to provide and uphold credibility. MNEs are the ones to implement the soft law instruments and the labour standards they conclude, i.e., they as employers are the most important actors of labour and employment. The UN implemented the authoritative initiative of *The UN guiding principle on business and human rights*. It gives guidance to the *Protect, respect and remedy* framework which offers businesses and governments advice on how to handle the negative effects which businesses can cause on human rights. The MNEs are thus offered tools on how to operate in order to protect and remedy the negative effects and further on through due diligence exercise reasonable care in respect of human rights. The concept of due diligence is also relevant in regards to the *OECD guidelines for multinational enterprises* where the MNEs are given further incentive on identifying and addressing their actual and potential adverse impact in risk management systems. *The Global Compact* does include a disclosure element which is meant to increase transparency and accountability of the MNEs. If companies fail to report their progress, they will be delisted. With the content of this thesis, it is not possible to examine if this disclosure element makes a difference in the company's behaviour and/or if it can contribute to consumers taking a stand against them.

Furthermore, the ILO plays one of the most important roles in reshaping the labour market, e.g. through the adoption of the *Declaration on Social Justice for a Fair Globalisation*, the *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* and *Declaration on Fundamental Principles and Rights at Work*. The ILO sets the foundations and formulates international labour standards in the form of conventions and recommendations. Ten of the ILO's conventions make up the core conventions which also are the key areas for GFAs. In disregard to GFAs, it is the member states of ILO that are expected to adopt and respect the core principles. An identified issue with the declarations referring to member states is the complexity of when the states are within their jurisdiction to intervene against MNEs' operations. This problem is handled by the UN framework *Protect, respect and remedy* which refers to, as mentioned above, both businesses and states. It sheds light on the shared responsibility to respect human rights.

Even though all these public-driven initiatives have been implemented, there is still an identified legal vacuum. Fundamental labour standards are not a reality for all workers across the globe since the national legislation differs. Low-wage countries are at risk of being exploited and put in a downward spiral where more comprehensive labour legislation could lead to MNEs moving their operations to other more economically profitable countries. The geographical fragmentation of MNEs gives a greater power to control and influence the labour market in low-wage countries. Therefore, there is a demand for a more controlled and regulated global labour market, with fundamental labour standards and the aim to achieve decent work for all throughout GSC. According to these issues and complexity, the GFAs may be a solution to fill the legal vacuum.

The outcome of GFAs has been successful for both GUFs and MNEs. For MNEs, the agreements can be used for risk management and it gives an opportunity to strengthen the public image of the company. The agreement does however not come without possible issues. One of such is the legal certainty which affects both MNEs and GUFs. The lack of legal certainty gives the GUFs resistance in being able to demonstrate the benefits towards workers and where GFAs are at risk of being a part of MNE's marketing strategies rather than making a difference for the workers. As norms create greater incentive to take action, the challenge of organising workers becomes of greater importance. A higher unionisation rate would give the GUFs greater credibility and impact on the global labour market, thus more workers would

be covered by collective bargaining. Consequently, a higher unionisation rate can be a contributing factor to the GFAs obtaining an established and defined legal status, in relation to the discussion of norms, from a global perspective.

Based on the differences in the implementation process, the outcome and the actual impact of GFAs can be affected. The implementation process consists of a variety of elements or steps that concern who is responsible for monitoring and ensuring compliance, what commitments or requirements are placed on the MNE, subcontractors and suppliers, and which individuals are involved and affected in the various processes. Consequently, the content is of great importance where fundamental labour rights are set and more extensive content creates a better outset to be able to make an impact on the GSC. The parties, MNEs and GUFs, have an opportunity to include more labour legislation, conventions and recommendations from public and private-driven initiatives, making the GFAs broader and more impactful.

## **5. Conclusion**

Based on the analysis above, conclusions can be made about the complexity that globalisation creates in the global labour market. Through the investigation and examination of the subject in this thesis, a greater understanding of the global labour market has been given and its issues have been problematised. The global socio-economic complexity has challenged the domestic nature of labour law and has resulted in a need for new methods of regulation. Therefore, public and private-driven organisations have taken action through self-regulated instruments and initiatives.

GFAs have through this thesis been defined by their content and bilateral character. The definition contains four critical elements, which are the requirements of content, parties, implementation process and provisions concerning suppliers and business partners. The definition has given the opportunity to examine the legal status of the GFAs.

Based on the analysis above the question still remains whether GFAs can be the solution to fill the legal vacuum? The very simple answer is that it depends. As previously mentioned, Sobczak suggests that GFAs may have the potential to meet the global labour law challenges. However, a clearer legal framework will have to be maintained in the transnational and geographically independent labour market. Beyond the need for a global legal framework that



can establish the legal status of the GFAs, there are other factors that can affect the actual impact of the GFAs. The most important area of impact, according to the analysis above, is the implementation process. Through proper implementation, the outcome and hence the impact will result in the purpose and content of the agreement being applicable to all MNEs' workers, subcontractors and business partners, i.e. the entire supply chain. As the implementation process is of great importance, the content also plays an important role in determining whether GFAs are able to fill the legal vacuum.

In this respect, GFAs can influence and make a difference by applying and implementing several fundamental rights developed by, e.g. the ILO and the OECD. The GFAs are required to refer to the eight core labour conventions of the ILO, but perhaps this is not enough to fill the vacuum. Perhaps the synergy and cooperation between the different publicly and privately driven initiatives is the solution that will result in a more regulated global labour market and ensure that transnational corporations can guarantee and achieve full and productive employment and decent work for all, including women and young people.

Further interesting research areas on the subject in order to examine the actual impact of the agreements on the individual worker would be to investigate a specific GFA and its content. This would demand an empirical incidence and method and furthermore the investigation of a specific country and its domestic labour law. This purpose would call for a more extensive thesis in terms of space and time.

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