

1. Introduction

The first chapter of this dissertation introduces the context, relevance and focus of this research. In sections 1.1 to 1.3, the importance of multinational corporations (MNCs) in globalisation, the universality of human rights and the impact of business on human rights issues are discussed. Section 1.4 deals with the accountability of business regarding human rights under international law. The link between business and human rights with the trend of Corporate Social Responsibility is discussed in section 1.5. The debate on global standards versus voluntary initiatives is presented in section 1.6. In section 1.7, the focus of this research is described by presenting the research objectives and questions. Finally, the structure of the thesis is explained in section 1.8.

1.1 Globalisation and MNCs

Since the 80s, the so-called 'globalisation' trend became visible. Globalisation can be defined as the denationalisation of markets, politics and legal systems, i.e., the rise of the so-called global economy. The positive effects of globalisation, as indicated by Sen (2004), are visible across the world in reducing poverty through economic interrelations and modern technology. However, many indicated that globalisation also had negative side effects, as e.g. Went (1996) expressed:

'it is simple to see how the increasing social inequality is being created on behalf of globalisation: a smaller accessibility to capital unless you meet the demands of the 'market'; bigger social differences as a consequence of a process of double polarization – within countries and on a world-scale between countries; increasing migration, 'levelling down' of wages, labour conditions and social security; disastrous ecological effects; a further going affection of democracy; increasing commodification. That is the other side of the market thinking which is advancing everywhere, of the increasing internationalisation of the economies, of the logic of globalisation'.

Multinational companies (MNC) have become important actors in this new world economy. Since the seventies multinationals have grown in size as well as in quantity: from 7,000 companies in 1970 to 78,000 companies with 773,000 subsidiaries in 2007 (UNCTAD, 2007). Direct foreign investments have increased more than twenty times in the past 25 years. Research shows that several hundred multinational companies, who are often larger than sovereign nations, are leading the world economy. For example, the MNC 'General Motors' has a turnover, which is larger than the Gross National Product of Norway (Schwartz, 1994).

MNCs not only grew in number, but also increasingly gained influence on the economy and sometimes also on politics, as suggested by Dunning (1993). The reason for the growth of influence or power of multinationals is that unlike governments, global businesses are able to operate efficiently on a world scale, moving people, money and, above all, information around the world. This increase of power of multinationals has led to the perception that these companies can influence the human rights situation in a country negatively or positively, as indicated by Amnesty International (2003): *'a growing number of businesses operate across boundaries in ways that exceed the regulatory capacities of any one national system. Economically powerful actors may dramatically influence policy – whether for good or ill – and thereby impact on the human rights of millions of people'*. This research will focus on the subject of business and human rights because of this potential influence of MNCs on human rights.

1.2 Universal human rights

The terms human rights should first be clarified before the impact of business on human rights can be discussed. Human rights are rights, which a person enjoys by virtue of being human, without any supplementary condition being required (Tomuschat, 2003). Human rights are fundamental principles allowing the individual freedom to lead a dignified life, freedom from abuse and violations, and freedom to express independent beliefs. Human rights are based on rules of human behaviour common across diverse cultures to achieve stable, peaceful and equitable societies (Frankental & House, 2000). Human rights are described in the Universal Declaration of Human Rights (UDHR, 1948), summarised in the box below. The full text is available in appendix 1. All member countries of the United Nations (192 of 202 sovereign states) have endorsed the UDHR.

Box 1 Summary of the UDHR

The 30 articles of the UDHR can be summarised in 20 core human rights (Danish Institute for Human Rights, 2004):

1. Right to freedom from discrimination (art. 2)
2. Right to life, liberty and security of person (art. 3)
3. Right to freedom from forced labour and servitude (art. 4)
4. Right to freedom from torture, cruel, inhuman or degrading treatment and punishment (art. 5)
5. Right to fair trial and recognition as a person before the law (art. 6,7,10 and 11)
6. Right to privacy (art. 12)
7. Right to freedom of movement (art. 13)
8. Right to freedom of opinion, expression, thought, conscience and religion (art. 18 and 19)
9. Right to peaceful assembly and freedom of association (art. 20 and 23)
10. Right to take part in government (art. 21)
11. Right to family life (art. 16)
12. Right to own property (art. 17)
13. Right to work just and favourable conditions at work (art. 23, 24 and 25)
14. Right to an adequate standard of living (art. 22)
15. Right to adequate food (art. 25)
16. Right to adequate housing (art. 25)
17. Right to health (art. 25)
18. Right to education (art. 26)
19. Right to participate in cultural life (art. 26)
20. Right to intellectual property (art. 26)

The UDHR is incorporated in the constitutions and laws of many countries, but has no legal status on its own. The UDHR only gets a binding nature for those states that have ratified the wide range of supporting international covenants and conventions. Appendix 2 summarises the complicated system of implementing, monitoring and enforcing the UDHR and its associated issues. These problems resulted in different degrees of respecting human rights in different countries.

Besides the limited available enforcement mechanisms of human rights, many debates around human rights also concern their universal validity (Huntington, 1996; Mutua, 2002). Firstly, it is argued that the UN Convention on Human Rights of 1948 is based on European and American liberal values only, which are not shared by other cultures, and not even understood by the latter. This concerns especially those cultures, which do not recognize individual rights because in these cultures, the community and the duties imposed by the community have always been the decisive point of reference for social order from the outset. Secondly, attempts to give human rights universal validity are discredited as cultural imperialism, which unjustifiably disregards the local peculiarities of other cultures (Steinmann & Scherer, 1998; Donaldson, 1996b). Other critiques on human rights include the dismissal of the substantive impact and efficaciousness of human rights as a force for positive change, being 'conservative', 'in thrall to the status quo' or 'narrowly reformist' (Pegg, 2003).

However, the first Article of the UDHR states that '*all human beings are born free and equal in dignity and rights*'. This article means, as Bouckaert (1998) argues, the very fact of being human provides a platform for an intercultural, universally applicable standard of ethics. For example, inhumane and degrading treatment of human beings is alien to all cultures, even if some governments use it to serve their own political ends (Frankental & House, 2000). Furthermore, homogeneity of values within a particular culture is assumed, which is highly improbable, as there is no single set of regional or religious cultural values. Establishing universal standards of conduct may be essential for the long-term survival and interest of human society as a whole (Donaldson & Dunfee, 1999). After thorough analysis, Tomuschat (2003) therefore comes to the conclusion that most arguments against the universality of human rights are politically motivated.

Besides, the UDHR was adopted by 58 states with different political systems and ideologies¹. A wide-ranging consultation across cultures and creeds led to the drawing up of the UDHR. The International Court of Justice also identified certain fundamental rights in 1970, which transcend cultural differences. Amongst others, these are the right to life, freedom from torture, inhumane treatment and slavery, and the right to recognition as a person before the law. The violation of such fundamental rights cannot be excused by differing cultural values. Furthermore, the representatives of 171 states adopted by consensus the Vienna Declaration and Programme of Action in 1993, which declared that '*all human rights (civil, political, economic, social and cultural) are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis*'. This indivisibility of human rights referred to in the Vienna declaration refers to the arguments of some states that civil and political rights are more important than economic, social and cultural rights. However, as Clohesy (2004) argues, without basic economic and social goods (e.g. food and safety), people are unable to be active citizens and political and civil rights are necessary to ensure social and economic rights.

This research will assume that human rights are universal and indivisible. The next section will describe the trend of globalisation and how business impacted human rights.

1.3 The impact of business on human rights

MNCs can have both positive and negative impacts on human rights. The negative impacts include violations of human rights. Amnesty International (2003) indicates how business can violate human rights through their employment practices, or how their processes impact on workers, communities and the environment. Companies may also be implicated in abuses through their association with repressive governments or political authorities. So, companies may directly violate human rights, but also be complicit in human rights violations committed by other parties, e.g. the government.

Examples of human rights violations of business are beatings of employees in Nike factories in Vietnam, sexual harassment and workers being forced to kneel for extended periods with their arms held in the air. More generally, millions of child workers are enslaved through forms of debt bondage in countries such as India; forced labour is widely used in countries such as Burma (Myanmar) and China; trade unionists receive death threats in Colombia, are banned outright in

¹ States who adopted the UDHR in 1948 came from Latin America, Africa and Asia, besides Europe and the USA. The states that abstained were communist states, Saudi Arabia and South Africa.

Burma and are routinely pressured into resigning in Guatemala (Sullivan, 2003). Howen (2005) adds other examples:

'In Iraq, we have witnessed how some companies have been implicated in the torture or ill treatment of prisoners. In Bosnia-Herzegovina there are companies who are discriminating against returning refugees by only employing Croats. In Burma, UNOCAL was well aware that its business partner, the Burmese Government, was using forced labour and torture to clear land around the Yadana oil pipeline. The deBeers group has admitted buying diamonds from rebels, knowing that this money funded these groups' military activities and serious violence against civilians. The South African Truth Commission documented how mining companies in South Africa under apartheid helped the Government create a discriminatory migrant labour system for their own advantage and how they called the police into factories to brutally disperse striking workers. These are just a few examples from many well-documented cases.'

Recent research of 65 human rights violations by business conducted by the UN Special Representative on business and human rights (whose mandate is further discussed in appendix 3), shows that significant differences exist among various industry sectors in terms of the types and magnitude of human rights challenges. For example, the extractive sector was found to have the largest social and environmental footprint (Ruggie, 2006a). Besides, he also found that human rights violations occur mainly in low-income countries, emerged from conflict and in countries that are categorised by weak governance. Until this date, however, there is no comprehensive overview of the extent of human rights violations by business. Recently, several organisations started to track business involvement in human rights violations in a more systematic way, such as the Business and Human Rights Resource Centre (launched in January 2005).

Next to negative impacts, business can also contribute to human rights or make a positive impact. The International Chamber of Commerce and the International Organisation of Employers (2004) have listed the contribution of business to human rights, which are summarised and adapted for MNCs.

- MNCs pay taxes

MNCs pay taxes to the states where they operate. Most states depend heavily upon tax revenues to finance themselves. The wealth of a society is created by its business activities, and the state depends upon the economic surpluses generated by these activities to raise its revenues. These revenues can then be used to promote many human rights, e.g. right to education, health, adequate housing, adequate standard of living, etc.

- MNCs employ people

MNCs worldwide employ 73 million people in their foreign affiliates in 2006, although this only accounts for 3% of the global workforce (UNCTAD, 2007). Also, in a number of developing countries, the share of employment in foreign affiliates compared to total employment rose during the past two decades. Employment opportunities promote the human right to work and enable people to provide for an adequate standard of living.

- MNCs builds human resources

MNCs train people in technical and managerial skills (promotes the right to education and ultimately a better standard of living), and a state will use this labour pool to help fill its public service. In addition, political leaders have often developed their leadership skills, and obtained their expertise on policy questions, from working in the business sector. Therefore, many states are eager to attract Foreign Direct Investment (FDI) as a tool for restructuring and upgrading the indigenous resources and capabilities of recipient countries (Dunning, 2005).

- MNCs provide goods and services

The creation and delivery of goods and services are the very essence of business. People cannot possess goods or services unless businesses have produced them

and unless the cost is low enough to make them affordable, and unless the person has the means to purchase them, or someone else has the means to acquire them for the person. In addition, business (and MNCs) supplies the state with crucial goods and services that it needs to conduct its operations in a similar way that citizens do for their everyday affairs. For example, the telecommunications that the state uses will have been invented, manufactured, and delivered by businesses; the portable refrigerators that public health officials use to transport vaccines are designed and produced by businesses, etc. All of these goods and services enable the state to fulfil their obligation to human rights.

- MNCs help to exploit the natural resources of a country
Many states use their ownership of natural resources to help finance them, which amounts to e.g. 70% of budget revenues in Saudi Arabia. The utilization of these resources is itself business activity. Often, multinational corporations are contracted by states to help exploit these natural resources, e.g. oil and gas, because of the complex technology involved.

- MNCs generate economic growth
When business expands, more employees can be hired. And the resulting increase in the active labour force increases the sources of tax revenues. In addition, the expansion of the workforce increases the number of people who are able to purchase goods and services, which in turn stimulates growth. More economic growth usually leads to an increased state budget, which can then be used to promote many human rights. MNCs are seen as important catalysts of such growth, because of their need for local suppliers and distributors.

Next to these general contributions to human rights, individual companies also make contributions to human rights, such as corporate philanthropy. For example, CECP reports that in 2004, 72 predominantly US-based companies contributed 7,6 billion dollars to communities, art, culture, environment, etc (CECP, 2005). As can be noted above, these positive business contributions to human rights do not relate to civil and political rights, only to economic, social and cultural rights. However, business also has a positive contribution to civil and political rights by facilitating these rights. For example, constructing the trade union a building where they can discuss labour conditions collectively promotes the right to freedom of association.

In sum, business has both negative and positive impacts on human rights. Even though states have the primary responsibility to implement human rights, the question is whether business can be held accountable for these impacts? This is the subject of the next section.

1.4 Business accountability regarding human rights

How can business be held accountable for their impacts on human rights? One way is to hold business accountable under international law. However, to what extent is international law applicable to business? Increasingly, law research is focused on answering that particular question (Steinhardt, 2005; Schutter, 2005; Reinisch, 2005; Loomis, 1999; Genugten, 2000), but no consensus has been reached yet. The view of civil society is that international law is applicable, as stated by the human rights NGO Amnesty International (2003), who recognises that there is a clear trend to extend human rights obligations beyond states, i.e. to private companies. Nevertheless, Amnesty International (2003) also recognises the problems in applying international law to companies, because most international human rights treaties were drafted with primary attention to

the obligations of states (as opposed to businesses or individuals) and therefore the scope of those obligations when applied to companies 'may appear somewhat uncertain in some contexts'. The NGO further recognises that defining the different responsibilities of states versus private companies is still in development.

The current standpoint on the matter is that business can be held legally liable for their human rights performance, although strongly limited (see e.g. Tomuschat, 2003). Kline (2005) explains why this is the case:

'The domain for international law is limited and generally applies to corporate entities only through the intermediary of national legal authorities in the enterprises country of incorporation. The stubborn fact of contemporary global life is that insufficient consensus exists among national governments regarding fundamental societal objectives to support agreements on business conduct standards that could be negotiated in sufficient detail to be adjudicated in court as international law.'

Thus, there is no international consensus on standards yet (see also Robinson, 2006). The critical challenge is to define a viable basis for determining what it should include, and then to agree on what parts of it should be subject to national and international law, what should be addressed by the policies of individual governments or intern-governmental collaboration, what should be left to the interplay of social expectations and market dynamics, and what belongs in the realm of moral obligation and aspiration (regional consultation, 2006).

One of the current legal mechanisms that is used to hold business responsible for their actions abroad is the 'Alien Tort Claims Act' (ATCA) of the USA. An example of such a case is presented in box 2.

Box 2 Total and Unocal sued in US because of operations in Burma

Total, the French oil group, has faced growing pressure over its activities in Burma, which is subject to sanctions by the US in protest over the poor human rights record of the junta. Total agreed to pay Euros 5.2m (Dollars 6.1m) to settle charges in a Paris court that it used forced labour to build a natural gas pipeline in Burma. Lawyers said the settlement, one of the first of its kind in Europe, could set a precedent for similar lawsuits by victims of human rights violations against European companies operating in developing countries. Eight Burmese citizens agreed to drop charges against Total after it agreed to pay them each Euros 10,000 and set up a Euro 5.2m fund to compensate victims and fund humanitarian groups working in Burma. France's biggest company by market capitalisation insisted the settlement was not an admission of wrongdoing. However, the group admitted it hoped the settlement would "protect its reputation" from accusations over its activities in Burma. "Total upholds its categorical denial of any involvement of forced labour and all accusations of this nature. The group has always fought against forced labour, unfortunately not yet eradicated from Myanmar (as Burma has been renamed by the country's military junta)". Unocal, the junior partner on the Yadana gas project, settled a similar lawsuit in a Californian court for alleged forced labour last year, with compensation thought to have been about Dollars 30m.

Source: Financial Times. November 30th. 2005.

Because of these example cases, corporate lawyers are increasingly calling global companies to be concerned around human rights claims (e.g. Schrage, 2003). However, as Ruggie (2006a) points out, of the 36 ATCA cases to date involving companies, 20 have been dismissed, 3 settled and none decided in favour of the plaintiffs; the rest are ongoing. Thus, ATCA's influence has been mainly existential: the mere fact of providing the possibility of a remedy has made a difference. But it remains a limited tool; it is difficult and expensive to use, especially for plaintiffs; and it is unique.

Thus, the extent in which business can be held accountable for their actions that impact human rights under international law is limited. Still, in the last decades, society's expectations for business to adhere to human rights increased substantially. Societal actors have found other ways to hold business accountable for their actions, which lead to the trend of 'Corporate Social Responsibility', described in the next section.

1.5 Corporate social responsibility, sustainable development and human rights

Because of the violations of human rights by business and its potential positive impacts, the expectations of society changed regarding business. It changed from expecting business to generate wealth and governments to ensure the equitable sharing of this wealth to an expectation of sharing of responsibilities for human rights and related ethical responsibilities in a manner more in keeping with the vision captured by the UDHR (Cragg, 2000). This leads to a call for a more humane, more ethical, more transparent way of doing business. International businesses are expected to be profitable, socially and environmentally responsible, humane employers and globally good citizens (Queiroz and Wood, 2003). In academic and business environments hundreds of concepts and definitions have been proposed referring to this change of expectations. The term 'Corporate Social Responsibility' (CSR) is most commonly used to indicate this development. CSR is definitely a current trend. It has evolved to a business concept that seems to have become almost commonplace.

CSR is about capturing the whole set of values, issues and processes that companies must address in order to minimize any harm resulting from their activities and to create economic (profit), social (people) and environmental (planet) value. This involves being clear about the company's purpose and taking into account the needs of all the company's stakeholders: shareholders, customers, employees, business partners, governments, local communities and the public. Many of these needs of stakeholders comprise human rights issues. Schierbeck (2000) performed an analysis, covering the period 1995 through 1998 with the purpose of identifying and describing the social norms expecting corporations to behave in certain ways concerning human rights. The analysis revealed that a major focus point concerning corporate behaviour is human rights, since human rights have become a primary focus of attention for many opinion-makers and other stakeholders. This was illustrated by the fact that Schierbeck's analysis demonstrated that in 9 out of 10 cases of criticism against corporate behaviour, the problem in question originated from a situation where human rights issues were involved.

Human rights is often seen as the social pillar of CSR, because human rights are rights of people. However, human rights also partly covers the environmental and economic pillars of CSR. The right to adequate food, for example, cannot be realised if the environment is polluted. The 2000 report of the UN Environmental Programme states in this respect that clean water and food security are basic human rights. This way, a clean environment also facilitates the right to life and the right to an adequate standard of living. Besides, in the 1992 Rio Declaration on Environment and Development, several human rights were mentioned that are currently not recognised under international law, called 'third generation human rights'. These rights include the right to a healthy environment. Another right mentioned in this Declaration is the right to economic and social development, which links to the economic pillar of CSR. Economic related CSR issues, such as bribery and corruption are also closely related to human rights. For example, a corporation can undermine the human right to take part in government when it participates in corrupt practices. This way, decisions will be taken on the basis of who pays the most instead of the general interest. Hence, this research views economic and environmental issues as potential human rights issues as well.

Taking a human rights approach does not only cover all pillars of CSR, but it also impacts the way CSR is practiced. This can be better illustrated when another term commonly used by companies is introduced: sustainable development (see

e.g. Herrmann, 2004). The definition used by the United Nations is '*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*'. Many international organisations focused on reducing poverty are currently applying a 'human rights-based approach' to development (e.g. the UN Development Programme - UNDP). The UN Secretary General indicated the importance to take this approach to development in his 1998 Annual Report by emphasizing that this approach empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed (Annan, 1998). Hence, this research regards human rights as a perspective to look at the overall responsibilities of corporations.

Many authors (amongst others Clohesy, 2004; Meyer, 2003; Cragg, 2000; Van Tulder & Zwart, 2003) acknowledge that particularly the civil society plays a central role in this new social contract. In recent years, social activists and Non-Governmental Organisations (NGOs)² have brought human rights violations by MNCs to public attention. According to Wilson (2001), more than 100 of America's biggest brand names have been targeted with 'hate' sites, many of them proclaiming alleged human rights violations. Examples are www.saigon.com/~nike/ or www.cbgnetwork.de. By doing so, activists put pressure on MNCs to change their acts. The reason is that, as Kline (2005) indicates, social activist pressures have sometimes found MNCs more responsive than governments. Civil society actors in many ways have become as transnationalised as MNCs; more than 30.000 non-governmental organizations operate international programmes, roughly 1000 have memberships drawn from three or more countries, while purely national and local NGOs are often supported by international counterpart institutions (Khagram et al, 2002). Important NGOs who report on human rights violations by business and are therefore important stakeholders for MNCs are Amnesty International, Human Rights Watch and Global Witness. As a result of the influence of stakeholders, some efforts have been made to develop human rights standards for business, described in the next section.

1.6 Global standards and voluntary initiatives

Two main ways can be identified: through global human rights standards (section 1.6.1), and on a voluntarily basis (section 1.6.2). Heated debates take place addressing the question which one works best. This is discussed in the last section.

1.6.1 Global standards

One of the most significant attempts to create an international standard is the '*Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*' in 2003 (see appendix 4). These Draft Norms are developed by the UN Sub-commission on Human Rights and contain obligations regarding compliance with international treaties governing human rights, labour, environment, consumer protection and anti-corruption laws. The Draft Norms had to be presented to the UN Commission on Human

² The World Bank defines NGOs as follows: 'the diversity of NGOs strains any simple definition. They include many groups and institutions that are entirely or largely independent of government and that have primarily humanitarian or cooperative rather than commercial objectives. They are private agencies in industrial countries that support international development; indigenous groups organized regionally or nationally; and member-groups in villages. NGOs include charitable and religious associations that mobilize private funds for development, distribute food and family planning services and promote community organization. They also include independent cooperatives, community associations, water-user societies, women's groups and pastoral associations. Citizen Groups that raise awareness and influence policy are also NGOs'.

Rights in order to adopt them. A vigorous, if sometimes polemical, debate then preceded the April 2004 session of the UN Commission on Human Rights with a number of business organisations and NGOs adopting contrasting positions on what the Commission should do with the Norms (BLIHR, 2004).

Many parties were involved in this debate on the Draft Norms. The completely opposite views can be represented by the human rights NGO Amnesty International on the one hand and the two main institutions representing business, the International Organization of Employers (IOE) and the International Chamber of Commerce (ICC) on the other hand. Amnesty (2003) called governments, advocates and companies to support the UN Human Rights Norms for Businesses, because it offers 'an authoritative and comprehensive statement' of the responsibilities of companies in relation to human rights. In contrast, the IOE/ICC (2004) regarded the UN draft norms to be undermining human rights and the right to development by undermining the business sector³. The following table represent the argument used by both parties to underpin their statements:

Arguments in favour of the Draft Norms	Arguments against the Draft Norms
Draft Norms, when adopted, are binding and can therefore be used to hold business accountable and prevent human rights abuses.	Human rights law is not or to a limited extent applicable to business
Draft Norms sets an international standard that business can measure itself against.	Business was not consulted in the drafting of the Draft Norms
Draft Norms provides clarity by providing more detail and highlighting best practice.	Draft Norms are very vague, and this will produce arbitrariness
Draft Norms provides credibility by providing for various modes of monitoring and enforcement.	Draft Norms privatises human rights by divorcing the activities of private businesses from the duties of the State, which would result in the violations of the rights of others
Draft Norms provides a benchmark against which national legislation can be judged.	Draft Norms will be used as a political tool to damage people.
Draft Norms provides an important reference and campaigning tool for NGOs and grassroots activists.	Draft Norms generally reflects a negative and distrusting attitude towards business

Table 1 Arguments used in the debate around the Draft Norms

Reacting on each other (see e.g. Chandler, 2004), the debate polarised. In the end, the debate ended in a deadlock and the result was that the Commission did not adopt them, stating that '*while the Norms contained useful elements and ideas for its consideration, as a draft the proposal has no legal standing*'. Instead, the Commission decided in 2005 to appoint a Special Representative of the UN Secretary-General on 'the issue of human rights and transnational corporations and other business enterprises' as a means to move beyond this deadlock. This Special Representative is Professor John Ruggie, who has been quoted earlier in this chapter. The mandate of the Special Representative ran from 2005 – 2007, was renewed to 2011 and is described in appendix 3.

Ruggie presented his view on the Draft Norms in his interim report in 2006, stating that the Draft Norms '*exaggerated legal claims and conceptual ambiguities*' by '*imposing higher obligations on corporations than on states with no justification*'. He found that the divisive debate over the Draft Norms obscured rather than illuminated promising areas of consensus and cooperation among business, civil society, governments and international institutions with respect to human rights. This perspective led to many disappointing reactions from civil society (see e.g. Kahn, 2006, Robinson, 2006, Joint NGOs statement, 2006, etc). The current expectation is that the Draft Norms will not be adopted any time

³ Despite the polarisation between business and civil society, not all companies refused the Draft Norms. Some member companies of the Business Leadership Initiative on Human Rights (BLIHR, 2004) have road tested the Draft Norms through different projects, with the conclusion that they can provide an added value to existing voluntary initiatives.

soon. The focus of the debate has now moved on to the question of implementation; both of the existing UN human rights framework by member states as well as the implementation by companies of their human rights responsibilities.

1.6.2 Voluntary initiatives

Since 1997, a few MNCs have committed themselves to respect human rights in all aspects of their operations. Amis et al (2005) indicated that in 2005 nearly 100 major global companies across a range of industries have adopted explicit human rights policies. Many reference or endorse the aspirations of the Universal Declaration of Human Rights. In mid 2008, the number has increased to 210 companies (Business and Human rights resource centre, 2008). As a proportion of the whole, this appears to be a negligible number, but it represents some of the biggest and most international of companies and provides an example for others (Chandler, 2003). For example, amongst the first companies to commit to human rights is the Dutch/British MNC Royal Dutch Shell (in short, Shell). Shell is a group of energy and petrochemicals companies that is the 5th largest MNC in the world measured against its foreign assets (UNCTAD, 2007). Besides these companies, over two thousand companies have endorsed the UN Global Compact principles, including those on human rights and labour standards (see below). And, Addo (1999) indicates that even though many companies do not have explicit policies and processes relating to human rights, many already have policies and activities that conform to their duty to respect the right of others, even if these are not necessarily conceived of in human rights terms.

Having performed a survey of human rights policies of the leading global 500 companies in the world, Ruggie (2006b) also indicated that the discourse of human rights is gaining recognition in the corporate arena. These leading global companies report having core elements of human rights policies or management practices in place. They encompass a spectrum of rights, are generally informed by international human rights instruments, exhibit relatively systematic patterns across countries and regions, and include several basic voluntary accountability mechanisms. At the same time, however, aspects of these policies and practices also raise issues of concern that merit further discussion and improvement.

Some examples of voluntary initiatives of individual companies include (BLIHR, 2004):

- Barclays, which formalised human rights related criteria for project finance;
- Novartis, which explored the role of the pharmaceutical company in sharing with other actors the responsibility of the realisation of the right to health,
- National Grid Transco, which used stakeholder mapping to try to identify its relevant boundaries,
- HP, which developed a sectoral set of standards regarding the supply chain
- MTV, which sought to define its responsibilities in both the adherence to human rights of its product and the opportunities for promoting human rights through its influence and market reach.

Next to many initiatives of individual companies, the following table shows a number of different collective voluntary initiatives:

Voluntary initiative	Short description	Stakeholders involved
UN Global Compact	Initiated by the UN Secretary General, the Global Compact provides a platform in support of ten principles, including human rights, labour, environment and anti-corruption. Companies report annually on their progress.	United Nations organisations, 2000 companies, civil society groups
OECD guidelines for multinational enterprises	The guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct	30 OECD member countries, 9 non-member countries

	including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.	
Fair Labor Association	The FLA aims to combine the efforts of industry, civil society organizations, and colleges and universities to protect workers' rights and improve working conditions worldwide by promoting adherence to international labour standards. The FLA conducts independent monitoring and verification and provides for public reporting.	20 companies, NGOs and 194 colleges and universities
Extractive Industries Transparency Initiative	The EITI aims to ensure that the revenues from extractive industries contribute to sustainable development and poverty reduction. At the core of the initiative is a set of Principles and Criteria that establish how EITI should be implemented.	11 companies, NGOs and governments
Kimberley Process Certification Scheme	The Kimberley Process is a joint government, international diamond industry and civil society initiative to stem the flow of conflict diamonds - rough diamonds that are used by rebel movements to finance wars against legitimate governments.	45 countries, including European community
Voluntary Principles on Security and Human Rights	Through dialogue, a set of voluntary principles have been developed to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms.	Governments of USA, The Netherlands, United Kingdom and Norway, 16 extractive companies, 7 NGOs.
Global Sullivan Principles of Social Responsibility	Voluntary code of conduct that seeks to enhance human rights, social justice, protection of the environment and economic opportunity for all workers, in all industries, in all nations.	Companies
ILO Declaration on the Fundamental Principles and Rights at Work	Adopted in 1998, the Declaration commits Member States to respect and promote principles and rights in four categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.	International Labour Organisation (ILO), Member states.

Table 2 Collective voluntary initiatives on standards for business and human rights

Not all of these collective initiatives have proved to provide for a comprehensive global standard, as Chandler (2004) explains:

'these have assisted in creating awareness of the risks and responsibilities of business today, but only a minority of transnational corporations have joined the Global Compact, the ILO covers only labour matters, and the OECD guidelines have proved an inadequate mechanism for improving corporate behaviour. Both the Compact and the OECD guidelines state in very general terms that companies should respect human rights, but neither effectively explains what this means'.

In order to help companies to manage human rights, several management tools have been developed from 2000 to date, described in the table below (not exhaustive):

Tool	Developed by
Conflict-Sensitive Business Practice: Guidance for Extractive Industries	International Alert
Human Rights Compliance Assessment	Danish Institute for Human Rights
Human Rights Training toolkit for the Oil and Gas industry	International Petroleum Industry Environmental Conservation Association (IPIECA)
Human rights impact assessment	International Finance Corporation and International Business Leaders Forum (IFC/IBLF)
Human rights matrix	Business Leaders Initiative on Human Rights (BLIHR)
OECD risk awareness tool for multinational enterprises in weak governance zones	Organisation for Economic Co-operation and Development (OECD)

Table 3 Business management tools on human rights

Some of these tools are used by different companies to a different extent and are continuously improved based on the experiences. Gaining experience through application is needed to further develop these tools (Bader, 2006).

1.6.3 Debate on global standards versus voluntary initiatives

What works best: global standards or voluntary initiatives? The advantage of international legal codes is that coherent universal standards can be established, something a competing array of private voluntary codes of conduct cannot do. Herz (2001) argues that the legal approach has a unique potential and provides some hope to deter future human rights abuses of multinationals. Besides, Pegg (2003) indicates that universal standards can also provide a 'level playing field' for all businesses. And there is some evidence that business leaders prefer obligation and clarity to voluntarism and confusion. The advantage is that human rights concepts and principles can provide guidelines for companies where diverse and sometimes conflicting national legal standards offer insufficient direction for ethical decision making (Kline, 2005).

However, the same author (Pegg, 2003) points out some disadvantages of the legal approach. Firstly, there are generic limitations to any legal approach in regulating corporate behaviour, which includes first that the development of new laws tends to lag behind the development of new forms of conduct that society might wish to see regulated. Second, corporate laws have tended to rely heavily on the responsibility or agency of individual corporate officers and not the corporation as a whole. Third, law can set minimum standards or prohibit certain conduct, but it is much less effective at eliciting positive behaviour or promoting higher standards. Because of these disadvantages, Kline (2005) therefore proposes a voluntary approach through codes of conducts developed by MNCs, which can help establish or clarify internal policies and procedures, promote a common company identity and communicate corporate standards to interested external stakeholders. Besides, voluntary codes can help encourage appropriate MNC conduct while also collectively reducing pressures for mandatory government action.

Nonetheless, voluntary codes of conduct and self-regulation are not the ideal approach either. First of all, the impact of these voluntary initiatives is limited, as Amis et al (2005) explain:

'Companies worldwide, large and small, are still being found guilty of exploiting or mistreating workers and communities in low-wage markets and areas lacking legal protection. Newspapers, websites and activist literature continue to report corporate complicity in the sometimes-violent displacement of private citizens from ancestral farmlands, fisheries and urban dwellings to make way for mineral exploration, oil pipelines or the construction of resorts and leisure facilities. There are those outside business who perceive that companies are still largely unaware of the potentially damaging human rights impacts of their activities or those of their business partners, suppliers, franchisees or loan recipients, or of the risk that third parties might misuse their products or services.'

Moreover, Amnesty International (2003) stipulates that experiences from the past showed that some form of legal framework is often necessary to restrain abuses of human rights. Only well intentioned companies have a human rights policy, but the majority of companies still have not. Secondly, as Ruggie (2006a) points out, most companies choose their own definitions and standards of human rights, which are influenced by but rarely based directly on internationally agreed standards. Those choices have as much to do with what is politically acceptable within and among the participating entities than with objective human rights needs. Much the same is true of their accountability provisions. Moreover, these initiatives tend not to include determined laggards, who constitute the biggest problem (Ruggie, 2006a). The result of this political influence was found in a recent survey amongst 500 global leading companies, which concluded that European-based companies are more likely to embrace the concept of

indivisibility of human rights than U.S.-based companies or companies based in emerging market countries (Ruggie, 2006b).

Hence, global standards and voluntary initiatives both have their own (dis)advantages. So far, the context of this research has been described. The next section describes the aims and questions of this research.

1.7 Research objective and questions

From what was described above, it can be concluded that on the one hand human rights is interpreted in many different ways and a globally agreed standard for business and human rights lacks. On the other hand, several MNCs do try to take the initiative to manage their commitment to human rights, but the perspective remains that it is not effective, i.e. some MNCs still violate human rights. So far, there has been little research done on how MNCs embed their global commitment to respect human rights and what their experiences are. The field of international business management theory is well developed, but management of ethical practices in general and human rights in particular has not or to a limited extent been addressed. This research therefore has the objective to expand the knowledge in the area of international business management by providing insight into explaining the factors that influence the process of embedding human rights mechanisms within a MNC.

This research does not aim to measure whether a specific MNC fails or succeeds in living up to its commitment to human rights, or put more simply is 'doing the right thing'. Rather, the interest of this research goes out to a MNC's capability of embedding human rights or 'doing things right'. In other words, it aims to find out whether human rights can be embedded by a MNC at all, since they are primarily designed for States and not for business organisations and constitute many ethical considerations. There may be different internal or external elements that influence the capability of embedding human rights than with other subjects. In order to reach the research objective, the following main question needs to be answered:

How is the degree in which the commitment to human rights within a multinational corporation is embedded explained?

Firstly, a sound understanding is needed how human rights is embedded within a MNC. This leads to the first, rather descriptive, sub-question:

1. How is the commitment to human rights embedded within a MNC?

Having identified the ways or mechanisms in which a MNC embeds human rights, it should be questioned whether these mechanisms are actually used and applied within a MNC, which leads to the second sub-question:

2. To what degree are these human rights mechanisms embedded within a MNC?

There may be internal and external elements that constrain and/or enable the degree in which a MNC is able to embed these human rights mechanisms. Thus, the third sub-question is:

3. What explains the degree in which these mechanisms are embedded?

These questions are aimed to be answered in the final chapter of this thesis.

1.8 Structure of the thesis

This first chapter introduced the context, relevance and focus of this research. The following two chapters aim to provide potential answers to the research questions as posed in the previous section, derived from theory. To that end, chapter 2 explores the literature both in the area of business and human rights as well as international business management in general in order to define a research model. In this chapter, the problems in embedding human rights are discussed and a research model is developed. This research model further defines the concept of (re-)embeddedness to find a general direction what principles are important in the process of embedding human rights. Based on this initial research model, the potential mechanisms for embedding the commitment to human rights are identified and possible explanations are determined for the degree of embedding these mechanisms from internal and external (global and local) contexts.

The third chapter describes the method of approach that is taken in this research. Because of the nature of the research questions, this research uses case study approach and action research methods. The research questions require in-depth research in a MNC that is committed to human rights in order to provide insight into the challenges of embedding human rights mechanisms. This MNC is Royal Dutch Shell, as earlier mentioned in section 1.6.2. Different research methods are discussed how to provide sound answers to the research questions in the context of this multinational corporation.

The second major part of this thesis is the empirical section with the aim to test the theoretically based answers found in chapter 2 in practice. This section comprises four chapters, each providing parts of the answers to the research questions. Chapter 4 focuses on the way Shell headquarters deals with embedding human rights mechanisms within the global context. It describes and analyses the mechanisms used within Shell headquarters, to what degree these mechanisms are embedded and how the internal and global contexts influence this. Chapter 5 presents an overview how human rights mechanisms are embedded within Shell subsidiaries, providing answers to research questions 1 (ways of embedding) and 2 (degree of embeddedness). Since Shell operates in over 140 countries and territories, more in-depth case studies are needed to find explanations for the degree of embedding the mechanisms that are used in particular subsidiaries. The following two chapters 6 and 7 therefore describe different case studies of how Shell subsidiaries embed human rights mechanisms in their local contexts in order to find these possible explanations.

Finally, the last chapter analyses and compares the answers to the research questions found in the empirical part with the answers found in the theoretical part. The structure of this thesis is visualised in figure 1.

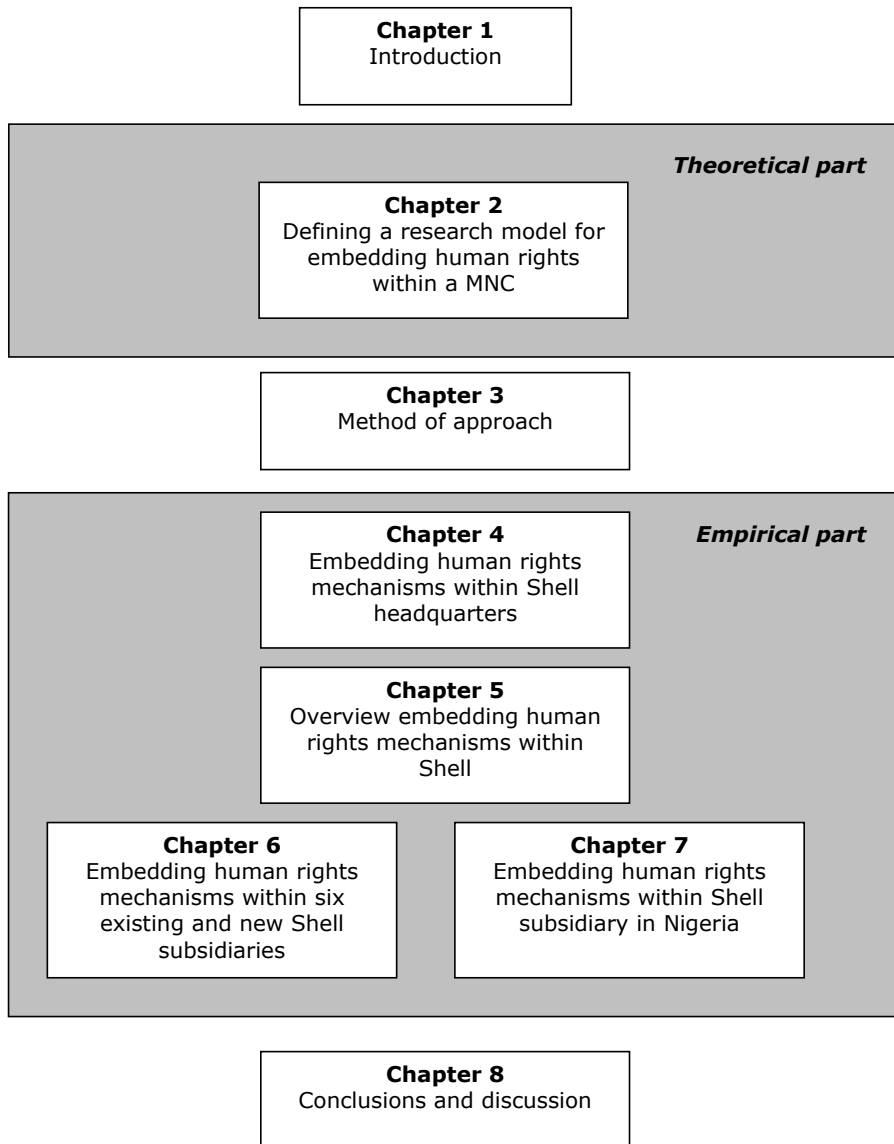


Figure 1 Structure of the thesis